

Loan No. C-332144 Illinois

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO

The Northwestern Mutual Life Ins. Co.
720 East Wisconsin Avenue - Rm NI6WC
Milwaukee, WI 53202
Attn: Nadine T. Hansohn

SPACE ABOVE THIS LINE FOR RECORDER'S USE

This instrument was prepared by Thomas O. Rabenn, Attorney, for The Northwestern Mutual Life Insurance Company, 720 East Wisconsin Avenue, Milwaukee, WI 53202.

MORTGAGE and SECURITY AGREEMENT

THIS MORTGAGE and SECURITY AGREEMENT, made as of the 24th day of June, 1998 between NORTH AND CLYBOURN, L.L.C., an Illinois limited liability company, 1331 Davis Road, Elgin, IL 60123, herein (whether one or more in number) called "Mortgagor", and THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation, 720 E. Wisconsin Avenue, Milwaukee, WI 53202, herein called "Mortgagee":

WITNESSETH, That Mortgagor, in consideration of the indebtedness herein mentioned, does hereby grant, convey, mortgage and warrant unto Mortgagee forever, with power of sale and right of entry and possession, the following property (herein referred to as the "Property"):

- A. The land in the City of Chicago, County of Cook, State of Illinois, described in Exhibit "A" attached hereto and incorporated herein (the "Land") and all appurtenances thereto; and
- B. All buildings and improvements now existing or hereafter erected thereon, all waters and water rights, all engines, boilers, elevators and machinery, all heating apparatus, electrical equipment, air-conditioning and ventilating equipment, water and gas fixtures, all furniture and easily removable equipment



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and all other fixtures of every description belonging to Mortgagor which are or may be placed or used upon the Land or attached to the buildings or improvements, all of which, to the extent permitted by applicable law, shall be deemed an accession to the freehold and a part of the realty as between the parties hereto.

Mortgagor agrees not to sell, transfer, assign or remove anything described in B above now or hereafter located on the Land without prior written consent from Mortgagee unless (i) such action does not constitute a sale or removal of any buildings or improvements or the sale or transfer of waters or water rights and (ii) such action results in the substitution or replacement with similar items of equal value.

Without limiting the foregoing grants, Mortgagor hereby pledges to Mortgagee, and grants to Mortgagee a security interest in, all of Mortgagor's present and hereafter acquired right, title and interest in and to the Property and any and all

- C. cash and other funds now or at any time hereafter deposited by or for Mortgagor on account of tax, special assessment, replacement or other reserves required to be maintained pursuant to the Loan Documents (as hereinafter defined) with Mortgagee or a third party, or otherwise deposited with, or in the possession of, Mortgagee pursuant to the Loan Documents; and
- D. surveys, soils reports, environmental reports, architect's contracts, construction contracts, drawings and specifications, applications, permits, surety bonds and other contracts relating to the acquisition, design, development, construction and operation of the Property; and
- E. present and future rights to condemnation awards, insurance proceeds or other proceeds at any time payable to or received by Mortgagor on account of the Property or any of the foregoing personal property.

All personal property hereinabove described is hereinafter referred to as the "Personal Property".

If any of the Property is of a nature that a security interest therein can be perfected under the Uniform Commercial Code, this instrument shall constitute a security agreement and financing statement if permitted by applicable law and Mortgagor agrees to join with

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Mortgagee in the execution of any financing statements and to execute any other instruments that may be required for the perfection or renewal of such security interest under the Uniform Commercial Code.

TO HAVE AND TO HOLD the same unto Mortgagee for the purpose of securing:

(a) Payment to the order of Mortgagee of the indebtedness evidenced by a promissory note of even date herewith (and any restatement, extension or renewal thereof and any amendment thereto) executed by Mortgagor for the principal sum of TWELVE MILLION DOLLARS (\$12,000,000.00), with final maturity no later than July 15, 2018 and with interest as therein expressed (which promissory note, as such instrument may be amended, restated, renewed and extended, is hereinafter referred to as the "Note"), it being recognized that the funds may not have been fully advanced as of the date hereof but may be advanced in the future in accordance with the terms of a written contract; and

(b) Payment of all sums that may become due Mortgagee under the provisions of, and the performance of each agreement of Mortgagor contained in, the Loan Documents.

As used herein, "Loan Documents" means this instrument, the Note, that certain Absolute Assignment of Leases and Rents of even date herewith between Mortgagor and Mortgagee (the "Absolute Assignment"), that certain Certification of Borrower and Principals of even date herewith, and any other agreement entered into by Mortgagor and delivered to Mortgagee in connection with the indebtedness evidenced by the Note, except for any separate environmental indemnity agreement, as any of the foregoing may be amended from time to time.

TO PROTECT THE SECURITY OF THIS MORTGAGE, MORTGAGOR COVENANTS AND AGREES:

Payment of Debt. Mortgagor agrees to pay the indebtedness hereby secured (the "Indebtedness") promptly and in full compliance with the terms of the Loan Documents.

Ownership. Mortgagor represents that it owns the Property and has good and lawful right to convey the same and that the Property is free and clear from any and all encumbrances whatsoever, except as appears in the title evidence accepted by Mortgagee. Mortgagor does hereby forever warrant and shall forever defend the title and possession thereof against the lawful claims of any and all persons whomsoever. Notwithstanding the foregoing, prior to Mortgagee asserting a claim against Mortgagor relating to Mortgagor's title to the Property, Mortgagee agrees to first assert a claim therefor against the title company that issued the loan title insurance policy that Mortgagee obtained in connection with this Mortgage and Security Agreement.

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Maintenance of Property and Compliance with Laws. Mortgagor agrees to keep the buildings and other improvements now or hereafter erected on the Land in good condition and repair; not to commit or suffer any waste; to comply with all laws, rules and regulations affecting the Property; and to permit Mortgagee to enter at all reasonable times on reasonable prior written notice and in accordance with the Container Store Lease (as hereinafter defined) or the Euromarket Lease (as hereinafter defined) if entry is into that portion of the property leased to Container Store (as hereinafter defined) or Euromarket (as hereinafter defined), respectively, for the purpose of inspection and of conducting, in a reasonable and proper manner, such tests as Mortgagee determines to be necessary in order to monitor Mortgagor's compliance with applicable laws and regulations regarding hazardous materials affecting the Property.

Notwithstanding the above, Mortgagor covenants not to lease any portion of the Property, without the prior written consent of Mortgagee, to (i) dry cleaning operations that perform dry cleaning on site with chlorinated solvents or (ii) any other tenants that use chlorinated solvents in the operations of their business.

Insurance. Mortgagor agrees to keep, or cause to be kept, the Property insured for the protection of Mortgagee and Mortgagor's wholly owned subsidiaries and agents in such manner, in such amounts and in such companies as Mortgagee may from time to time reasonably approve, and to keep certificates of insurance (Acord 27 for all property insurance and Acord 25-S for all liability insurance) evidencing all insurance coverages required hereunder on deposit with Mortgagee, which certificates shall provide at least thirty (30) days notice of cancellation to Mortgagee and shall list Mortgagee as the certificate holder; that, subject to the terms and conditions set forth in this Section, all insurance loss proceeds (less expenses of collection) shall, at Mortgagee's option, be applied on the Indebtedness, whether due or not, or to the restoration of the Property, or be released to Mortgagor, but such application or release shall not cure or waive any default under any of the Loan Documents. If Mortgagee elects to apply the insurance loss proceeds on the Indebtedness, no prepayment privilege fee shall be due thereon.

Notwithstanding the foregoing provision, Mortgagee agrees that if the insurance loss proceeds are less than the unpaid principal balance of the Note and if the casualty occurs prior to the last two years of the term of the Note, then the insurance loss proceeds (less expenses of collection) shall be applied to restoration of the Property to its condition prior to the casualty, subject to satisfaction of the following conditions:

- (a) There is no existing Event of Default at the time of casualty, and if there shall occur any Event of Default after the date of the casualty, Mortgagee shall have no further obligation to release insurance loss proceeds hereunder.

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- (b) The casualty insurer has not denied liability for payment of insurance loss proceeds as a result of any act, neglect, use or occupancy of the Property by Mortgagor or any tenant of the Property.
- (c) Mortgagee shall be satisfied that all insurance loss proceeds so held, together with supplemental funds received from Mortgagor, shall be sufficient to complete the restoration of the Property. Any remaining insurance loss proceeds may, at the option of Mortgagee, be applied on the Indebtedness, whether or not due, or be released to Mortgagor.
- (d) If required by Mortgagee, Mortgagee shall be furnished a satisfactory report addressed to Mortgagee from an environmental engineer or other qualified professional reasonably satisfactory to Mortgagee to the effect that no adverse environmental impact to the Property resulted from the casualty which will not be satisfactorily mitigated or remedied by the restoration of the Property.
- (e) Mortgagee shall release casualty insurance proceeds as restoration of the Property progresses provided that Mortgagee is furnished satisfactory evidence of the costs of restoration and if, at the time of such release, there shall exist no default under the Loan Documents with respect to which Mortgagee shall have given Mortgagor notice pursuant to the **Notice of Default** provision herein. If the estimated cost of restoration exceeds \$250,000.00, (i) the drawings and specifications for the restoration shall be approved by Mortgagee in writing prior to commencement of the restoration, and (ii) Mortgagee shall receive an administration fee equal to 1% of the cost of restoration.
- (f) Prior to each release of funds, Mortgagor shall obtain for the benefit of Mortgagee an endorsement to Mortgagee's title insurance policy insuring Mortgagee's lien as a first and valid lien on the Property subject only to liens and encumbrances theretofore approved by Mortgagee.
- (g) Mortgagor shall pay all costs and expenses incurred by Mortgagee, including, but not limited to, outside legal fees, title insurance costs, third-party disbursement fees, third-party engineering reports and inspections deemed necessary by Mortgagee.
- (h) All reciprocal easement and operating agreements, if any, shall remain in full force and effect between the parties thereto on and after restoration of the Property.

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- (i) Mortgagee shall be satisfied that Projected Debt Service Coverage of at least 1.20 will be produced from the leasing of not more than 69,900 square feet of space to former tenants or approved new tenants with leases satisfactory to Mortgagee for terms of at least 15 years to commence not later than (30) days following completion of such restoration ("Approved Leases").
- (j) All leases in effect at the time of the casualty with tenants who have entered into Mortgagee's form of Non-Disturbance and Attornment Agreement or similar agreement shall remain in full force and each tenant thereunder shall be obligated, or shall elect, to continue the lease term at full rental (subject only to abatement, if any, during any period in which the Property or a portion thereof shall not be used and occupied by such tenant as a result of the casualty).

Notwithstanding the foregoing provisions and provided no Event of Default (as defined below) exists, if a casualty occurs to any portion of the Property leased to either (i) Euromarket Designs, Inc. ("Euromarket") pursuant to that certain lease (the "Euromarket Lease") entered into by and between Mortgagor and Euromarket dated March 7, 1996, as subsequently amended on December 12, 1996 and April 13, 1998, or (ii) The Container Store, Inc. ("Container Store") pursuant to that certain lease (the "Container Store Lease") by and between Mortgagor and Container Store dated December 11, 1996, the insurance loss proceeds applicable thereto shall be made available, to the extent required by the applicable lease, to Euromarket or Container Store, as the case may be, or to Mortgagee, as may be required under the terms of the applicable lease, for the restoration of that portion of the Property so damaged in accordance with the terms and conditions set forth in such applicable lease; provided, however, that Mortgagee reserves the right to require that such insurance loss proceeds be disbursed through a title insurance company pursuant to a written escrow agreement in a form reasonably acceptable to Mortgagee that shall provide, among other things, that such title insurance company shall provide Mortgagee with affirmative title insurance coverage over all construction liens relating to the labor and materials provided for such restoration work. All costs and expenses charged by such title insurance company for acting as the escrow agent and providing such title insurance coverage shall be paid by Mortgagor.

As used herein, "Projected Debt Service Coverage" means a number calculated by dividing Projected Operating Income Available for Debt Service for the first fiscal year following restoration of the Property by the debt service during the same fiscal year under all indebtedness secured by any portion of the Property. For purposes of the preceding sentence, "debt service" means the greater of (x) debt service due under all such indebtedness during the first fiscal year following completion of the restoration of the Property or (y) debt service that would be due and payable during such fiscal year if all

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such indebtedness were amortized over 20 years (whether or not amortization is actually required) and if interest on such indebtedness were due as it accrues at the face rate shown on the notes therefor (whether or not interest payments based on such face rates are required).

As used herein, "Projected Operating Income Available for Debt Service" means projected gross annual rent from the Approved Leases for the first full fiscal year following completion of the restoration of the Property less: (A) the operating expenses of the Property for the last fiscal year preceding the casualty, and (B) the following: (i) the amount, if any, by which actual gross income during such fiscal period exceeds that which would be earned from the rental of 95% of the gross leasable area in the Property, (ii) the amount, if any, by which the actual management fee is less than 2% of gross revenue during such fiscal period, (iii) the amount, if any, by which the actual real estate taxes are less than \$6.50 per sq. ft. per annum, and (iv) the amount, if any, by which total operating expenses, excluding management fees, real estate taxes and replacement reserves, are less than \$1.40 per sq. ft. per annum.

All projections referenced above shall be calculated in a manner satisfactory to Mortgagee.

Condemnation. Mortgagor hereby assigns to Mortgagee (i) any award and any other proceeds resulting from damage to, or the taking of, all or any portion of the Property in connection with condemnation proceedings or the exercise of any power of eminent domain and (ii) the proceeds from any sale or transfer in lieu thereof; if such award and proceeds are less than the unpaid principal balance of the Note and such damage or taking occurs prior to the last two years of the term of the Note, such award and proceeds (less expenses of collection) shall be applied to restoration of the Property, subject to the conditions stated above for application of insurance loss proceeds and subject to the further condition that restoration or replacement of the improvements on the Land to their functional and economic utility prior to such damage or taking be possible. Any portion of such award and proceeds not applied to restoration shall, at Mortgagee's option, be applied on the Indebtedness, whether due or not, or be released to Mortgagor, but such application or release shall not cure or waive any default under any of the Loan Documents.

Notwithstanding the foregoing provisions and provided no Event of Default (as defined below) exists, if any portion of the Property leased to either (i) Euromarket pursuant to that certain lease entered into by and between Mortgagor and Euromarket dated March 7, 1996, as subsequently amended on December 12, 1996 and April 13, 1998, or (ii) Container Store pursuant to that certain lease by and between Mortgagor and Container Store dated December 11, 1996, is taken as provided above as the result of a condemnation proceeding or the exercise of any power of eminent domain, the award and proceeds (less expenses of collection) received by Mortgagee as a result of such taking

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shall be made available, to the extent required by the applicable lease, to Euromarket or Container Store, as the case may be, or to Mortgagor, as may be required under the terms of the applicable lease, for restoration and rebuilding of the remaining portion of the Property so occupied by such party; provided, however, that Mortgagee reserves the right to require that such award and proceeds be disbursed through a title insurance company pursuant to a written escrow agreement in a form reasonably acceptable to Mortgagee that shall provide, among other things, that such title insurance company shall provide Mortgagee with affirmative title insurance coverage over all construction liens relating to the labor and materials provided for such rebuilding and restoration. All costs and expenses charged by such title insurance company for acting as the escrow agent and providing such title insurance coverage shall be paid by Mortgagor.

Taxes and Special Assessments. Mortgagor agrees to pay before delinquency all taxes and special assessments of any kind that have been or may be levied or assessed against the Property, this instrument, the Note or the Indebtedness, or upon the interest of Mortgagee in the Property, this instrument, the Note or the Indebtedness, and to procure and deliver to Mortgagee the official receipt of the proper officer showing timely payment of all such taxes and assessments; provided, however, that Mortgagor shall not be required to pay any such taxes or special assessments if the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings and funds sufficient to satisfy the contested amount have been deposited in an escrow satisfactory to Mortgagee.

Personal Property. With respect to the Personal Property, Mortgagor hereby represents, warrants and covenants as follows:

(a) Except for the security interest granted hereby, Mortgagor is, and as to portions of the Personal Property to be acquired after the date hereof will be, the sole owner of the Personal Property, free from any lien, security interest, encumbrance or adverse claim thereon of any kind whatsoever. Mortgagor shall notify Mortgagee of, and shall indemnify and defend Mortgagee and the Personal Property against, all claims and demands of all persons at any time claiming the Personal Property or any part thereof or any interest therein.

(b) Except as otherwise provided above, Mortgagor shall not lease, sell, convey or in any manner transfer the Personal Property without the prior consent of Mortgagee.

(c) Mortgagor maintains a place of business at the address set forth above in this instrument, and Mortgagor shall immediately notify Mortgagee in writing of any change in its place of business.

(d) At the request of Mortgagee, Mortgagor shall join Mortgagee in executing one or more financing statements and continuations and amendments thereof pursuant to

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the Uniform Commercial Code of the jurisdiction in which the Property is located in form satisfactory to Mortgagee, and Mortgagor shall pay the cost of filing the same in all public offices wherever filing is deemed by Mortgagee to be necessary or desirable.

Other Liens. Mortgagor agrees to keep the Property free from all other mortgage liens and from all liens prior to the lien created hereby. The creation, without the written consent of Mortgagee, which consent may be withheld in Mortgagee's sole discretion, of any other mortgage lien, whether or not prior to the lien created hereby, the creation of any prior lien or the assignment or pledge by Mortgagor of its revocable license to collect, use and enjoy rents and profits from the Property shall constitute a default under the terms of this instrument. The term "mortgage" includes a mortgage, deed of trust, deed to secure debt or any other security interest in the Property.

Leases. Mortgagor represents and warrants that there is no assignment or pledge of any leases of, or rentals or income from, the Property now in effect; and covenants that, until the Indebtedness is fully paid, it (i) shall not make any such assignment or pledge to anyone other than Mortgagee, (ii) shall not, unless expressly permitted under another provision in this instrument, make any assignment or pledge to anyone of its hereinafter described revocable license to collect, use and enjoy the rents and profits, and (iii) shall not, without the prior written approval of Mortgagee, consent to a cancellation or surrender of any of said leases having at the time an unexpired term of more than two years or to a release or reduction of the liability of any party to such a lease.

In consideration of the Indebtedness, Mortgagor, pursuant to the Absolute Assignment, has assigned to Mortgagee all of Mortgagor's right, title and interest in said leases, including Mortgagor's right to collect, use and enjoy the rents and profits therefrom. Mortgagee has, in the Absolute Assignment, granted to Mortgagor a license to collect, use and enjoy said rents and profits. Such license is revocable by Mortgagee pursuant to the terms of the Absolute Assignment.

Costs, Fees and Expenses. Mortgagor agrees to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee hereunder: to pay all reasonable costs and expenses, including the cost of obtaining evidence of title and reasonable attorney's fees, incurred in connection with any such action or proceeding; and to pay any and all attorney's fees and expenses of collection and enforcement in the event the Note is placed in the hands of an attorney for collection, enforcement of any of the Loan Documents is undertaken or suit is brought thereon.

Failure of Mortgagor to Act. If Mortgagor fails to make any payment or do any act as herein provided, Mortgagee may, without obligation so to do, without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation hereof: (i) make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect

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the security hereof, Mortgagee being authorized to enter upon the Property for such purpose; (ii) appear in and defend any action or proceeding purporting to affect the security hereof, or the rights or powers of Mortgagee; (iii) pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of Mortgagee appears to be prior or superior hereto; and (iv) in exercising any such powers, pay necessary expenses, employ counsel and pay its reasonable fees. Sums so expended shall be payable by Mortgagor immediately upon demand with interest from date of expenditure at the Default Rate (as defined in the Note). All sums so expended by Mortgagee and the interest thereon shall be included in the Indebtedness and secured by the lien of this instrument. In no event shall the maximum amount secured hereby exceed three hundred percent (300%) of the principal amount of the Note.

Event of Default. Any default by Mortgagor in making any required payment of the Indebtedness or any default in any provision, covenant, agreement or warranty contained in any of the Loan Documents shall, except as provided in the two immediately succeeding paragraphs, constitute an "Event of Default".

Notice of Default. A default in any payment required in the Note or any other Loan Document, whether or not payable to Mortgagee, (a "Monetary Default") shall not constitute an Event of Default unless Mortgagee shall have given a written notice of such Monetary Default to Mortgagor and Mortgagor shall not have cured such Monetary Default by payment of all amounts in default (including payment of interest at the Default Rate, as defined in the Note, from the date of default to the date of cure on amounts owed to Mortgagee) within five (5) business days after the date on which Mortgagee shall have given such notice to Mortgagor.

Any other default under the Note or under any other Loan Document (a "Non-Monetary Default") shall not constitute an Event of Default unless Mortgagee shall have given a written notice of such Non-Monetary Default to Mortgagor and Mortgagor shall not have cured such Non-Monetary Default within thirty (30) days after the date on which Mortgagee shall have given such notice of default to Mortgagor (or, if the Non-Monetary Default is not curable within such 30-day period, Mortgagor shall not have diligently undertaken and continued to pursue the curing of such Non-Monetary Default and, if reasonably determinable by Mortgagee, deposited an amount sufficient to cure such Non-Monetary Default in an escrow account satisfactory to Mortgagee).

For purposes of this provision, written notice may be delivered personally or sent by certified mail or reputable courier service with charges prepaid, by telecopier or by such other method whereby the receipt thereof may be confirmed. Notice shall be deemed given on the date received. Any notice which is rejected, the acceptance of which is refused or which is incapable of being delivered for any reason shall be deemed received as of the date of attempted delivery.

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In no event shall the notice and cure period provisions recited above constitute a grace period for the purposes of commencing interest at the Default Rate (as defined in the Note).

Appointment of Receiver. Upon an Event of Default and commencement of any proceeding to enforce any right under this instrument, including foreclosure thereof, Mortgagee (without limitation or restriction by any present or future law, without regard to the solvency or insolvency at that time of any party liable for the payment of the Indebtedness, without regard to the then value of the Property, whether or not there exists a threat of imminent harm, waste or loss to the Property and or whether the same shall then be occupied by the owner of the equity of redemption as a homestead) shall have the absolute right to the appointment of a receiver of the Property and of the revenues, rents, profits and other income therefrom, and said receiver shall have (in addition to such other powers as the court making such appointment may confer) full power to collect all such income and, after paying all necessary expenses of such receivership and of operation, maintenance and repair of said Property, to apply the balance to the payment of any of the Indebtedness then due.

Foreclosure. Upon the occurrence of an Event of Default, the entire unpaid Indebtedness shall, at the option of Mortgagee, become immediately due and payable for all purposes without any notice or demand, except as required by law, (ALL OTHER NOTICE OF THE EXERCISE OF SUCH OPTION, OR OF THE INTENT TO EXERCISE SUCH OPTION, BEING HEREBY EXPRESSLY WAIVED), and Mortgagee may, in addition to exercising any rights it may have with respect to the Personal Property under the Uniform Commercial Code of the jurisdiction in which the Property is located, institute proceedings in any court of competent jurisdiction to foreclose this instrument as a mortgage, or to enforce any of the covenants hereof, or Mortgagee may, either personally or by agent or attorney in fact, enter upon and take possession of the Property and may manage, rent or lease the Property or any portion thereof upon such terms as Mortgagee may deem expedient, and collect, receive and receipt for all rentals and other income therefrom and apply the sums so received as hereinafter provided in case of sale. Mortgagee is hereby further authorized and empowered, as agent or attorney in fact, either after or without such entry, to sell and dispose of the Property en masse or in separate parcels (as Mortgagee may think best), and all the right, title and interest of Mortgagor therein, by advertisement or in any manner provided by the laws of the jurisdiction in which the Property is located, (MORTGAGOR HEREBY EXPRESSLY WAIVES ANY RIGHT TO A HEARING PRIOR TO SUCH SALE), and to issue, execute and deliver a deed of conveyance, all as then may be provided by law; and Mortgagee shall, out of the proceeds or avails of such sale, after first paying and retaining all fees, charges, costs of advertising the Property and of making said sale, and attorneys' fees as herein provided, apply such proceeds to the Indebtedness, including all sums advanced or expended by Mortgagee or the legal holder of the Indebtedness, with

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interest from date of advance or expenditure at the Default Rate (as defined in the Note), rendering the excess, if any, as provided by law; such sale or sales and said deed or deeds so made shall be a perpetual bar, both in law and equity, against Mortgagor, the heirs, successors and assigns of Mortgagor, and all other persons claiming the Property aforesaid, or any part thereof, by, from, through or under Mortgagor. The legal holder of the Indebtedness may purchase the Property or any part thereof, and it shall not be obligatory upon any purchaser at any such sale to see to the application of the purchase money.

Waiver of Redemption. Mortgagor releases and waives all rights to retain possession of the Property after any default in payment or breach of any of the obligations, covenants, undertakings or agreements herein or in the note and after the expiration of any applicable cure period; Mortgagor hereby releases and waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on its own behalf and, if Mortgagor is a trust, on behalf of the Beneficiary of Mortgagor, and each and every person, except decree and judgment creditors of the Mortgagor, including any and all persons acquiring any interest in or title to the Property or any beneficial interest in Mortgagor. Mortgagor shall not, and will not, apply for or avail itself of any appraisal, valuation, stay, extension or exemption law, or so-called "Moratorium Laws" now existing or hereinafter enacted, in order to prevent or hinder the enforcement of foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the Property, and any estates comprising the Property, marshaled upon any foreclosure of the lien hereon and agree that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety. If Mortgagor is a trust, no provision of this paragraph or of this Mortgage shall prevent the Beneficiary of Mortgagor from bidding at any foreclosure sale of the Property.

Prohibition on Transfer/One-Time Transfer. The present ownership and management of the Property is a material consideration to Mortgagee in making the loan secured by this instrument, and Mortgagor shall not (i) convey title to all or any part of the Property, (ii) enter into any contract to convey (land contract/installment sales contract/contract for deed) title to all or any part of the Property which gives a purchaser possession of, or income from, the Property prior to a transfer of title to all or any part of the Property ("Contract to Convey"), or (iii) cause or permit a change in the proportionate ownership of Mortgagor without the prior written consent of Mortgagee. Except if resulting from the death or legal incompetency of any individual, any conveyance, entering into a Contract to Convey, or change in the proportionate ownership of Mortgagor shall constitute a default under the terms of this instrument.

For purposes of this instrument, a "change in the proportionate ownership of Mortgagor" means any conveyance, assignment or transfer resulting in Harry Seigle (or his Immediate Family Members) and Mark Seigle (or his Immediate Family Members) owning, directly or indirectly, less than a combined 51% interest in Mortgagor. For the purposes as used

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herein, "Immediate Family Members" shall mean the spouse and/or the children of such individual.

Notwithstanding the above, provided there is then no default in the terms and conditions of any Loan Document and upon prior written request from Mortgagor, Mortgagee shall not withhold its consent to a one-time transfer of the Property, provided (i) the Property shall have achieved Debt Service Coverage of at least 1.30 for the last full fiscal year and there are no junior liens on the Property not consented to in writing by Mortgagee; (ii) the transferee or an owner of the transferee (in either case, the "Creditworthy Party") has a net worth determined in accordance with generally accepted accounting principles of at least \$40 million with cash and cash equivalents of at least \$2 million after funding the equity needed to close the purchase and a minimum overall real estate portfolio debt service coverage ratio of 1.30 for the prior twelve (12) month period; (iii) one of the following is true: (i) the transferee is (a) Euromarket Design, Inc. d/b/a Crate & Barrel, or (b) Euromarket Design, Inc. II d/b/a Crate & Barrel, or (c) an entity controlling, controlled by, or under common control with Euromarket Design, Inc. or Euromarket Design, Inc. II or their respective successors, or (ii) the Creditworthy Party is experienced in the ownership and management of at least one million square feet of regional neighborhood shopping centers; (iv) the Creditworthy Party is not subject to any bankruptcy, reorganization or insolvency proceedings or any criminal charges or proceedings and is not a current or past litigant, plaintiff or defendant in any suit brought against or by Mortgagee; (v) the Creditworthy Party assumes or guarantees in writing all the obligations and liabilities of Mortgagor under the Loan Documents and Mortgagee receives a satisfactory enforceability opinion with respect thereto from counsel reasonably approved by Mortgagee; (vi) the Creditworthy Party executes Mortgagee's then current forms of Guarantee of Recourse Obligations (in which case, Mortgagor shall be released from the Guarantee of Recourse Obligations executed by Mortgagor as provided in such Guarantee of Recourse Obligations) and Environmental Indemnity Agreement, and Mortgagee receives a satisfactory enforceability opinion with respect thereto from counsel approved by Mortgagee; (vii) an environmental report on the Property no older than 90 days prior to the date of transfer which meets Mortgagee's then current requirements is provided to Mortgagee at least 30 days prior to the date of transfer and said report shall be satisfactory to Mortgagee at the time of transfer; (viii) Mortgagor, Harry Seigle, and Mark Seigle shall remain liable under the Environmental Indemnity Agreement dated of even date herewith, except for acts or occurrences after the date of the transfer of the Property; and (ix) the outstanding balance of the Indebtedness at the time of the transfer is not more than 74% of the gross purchase price of the Property. If Mortgagor shall make a one-time transfer as provided herein, Mortgagee shall be paid a fee equal to one percent (1%) of the then outstanding balance of the Note at the time of transfer. The fee shall be paid on or before the closing date of such one-time transfer. No modification of the interest rate or repayment terms of the Note will be required in connection with such transfer. No subsequent transfers of the Property or changes in the

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proportionate ownership of the Creditworthy Party shall be allowed without Mortgagee's prior written consent.

"Debt Service Coverage" means a number calculated by dividing Net Income Available for Debt Service for a fiscal period by the debt service during the same fiscal period under all indebtedness (including the Indebtedness) secured by any portion of the Property. For purposes of the preceding sentence, "debt service" means the greater of (x) actual debt service due under all indebtedness secured by any portion of the Property or (y) debt service that would have been due and payable if all indebtedness secured by any portion of the Property were amortized over 20 years (whether or not amortization is actually required) and if interest on such indebtedness were due monthly as it accrues (regardless of the face rate shown on the notes therefor and whether or not interest payments based on such face rates are required).

"Net Income Available for Debt Service" means net income (prior to giving effect to any capital gains or losses and any extraordinary items) from the Property, determined in accordance with generally accepted accounting principles, for a fiscal period plus (to the extent deducted in determining net income from the Property) the following:

- A) interest on indebtedness secured by any portion of the Property for such fiscal period;
- B) depreciation, if any, of fixed assets at or constituting the Property for such fiscal period;
- C) amortization, if any, of standard tenant finish expenditures at the Property (but specifically **excluding** the amortization of tenant finish expenditures by Mortgagor in excess of \$10.00 per square foot (i.e., above standard tenant finishes), free rent and rent concessions); and
- D) amortization of loan costs and leasing commissions which have been prepaid and

less the following:

- E) a replacement reserve for future tenant improvements, leasing commissions and structural items based on not less than \$0.15 per sq. ft. per annum;
- F) the amount, if any, by which actual gross income during such fiscal period exceeds that which would have been earned from the rental of 95% of the gross leasable area in the Property;

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- (G) the amount, if any, by which the actual management fee is less than 2% of gross revenue during such fiscal period;
- (H) the amount, if any, by which the actual real estate taxes are less than \$6.50 per sq. ft. per annum; and
- (I) the amount, if any, by which total actual operating expenses, excluding management fees, real estate taxes and replacement reserves, are less than \$1.40 per sq. ft. per annum.

All adjustments to net income referenced above shall be calculated in a manner reasonably satisfactory to Mortgagee.

Financial Statements. Mortgagor agrees to furnish to Mortgagee, at Mortgagor's expense and within 75 days after the close of each fiscal year of Mortgagor ("Financial Statements Due Date"), annual financial statements on the Property, including

- (a) a balance sheet; and
- (b) a statement of operations with a detailed line item breakdown of all operating expenses for the Property, including a separate supplemental schedule listing the capitalized costs associated with tenant improvements, lease commissions and capital improvements (collectively referred to herein as the "Statements").

Mortgagor also agrees to provide Mortgagee by the Financial Statements Due Date a current rent roll listing (to the extent available from tenants) tenant sales, sales per square foot and percentage rents for all retail spaces (the "Rent Roll") and a certification (the "Certification") by an authorized member(s) of Mortgagor stating that the Statements and Rent Roll are true and correct and the Statements have been prepared in accordance with generally accepted accounting principles. Mortgagor acknowledges that Mortgagee requires the Statements, Rent Roll and Certification in order to record accurately the value of the Property for financial and regulatory reporting.

If Mortgagor does not furnish, or cause to be furnished, the Statements, Rent Roll and Certification to Mortgagee by the Financial Statements Due Date, within 30 days after Mortgagee shall have given written notice to Mortgagor that the Statements, Rent Roll and/or Certification have not been received as required,

- (x) interest on the unpaid principal balance of the Indebtedness shall as of the Financial Statements Due Date, accrue and become payable at a rate equal to the

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sum of the Interest Rate (as defined in the Note) plus one percent (1%) per annum (the "Increased Rate"); and

(y) Mortgagee may elect to obtain an independent appraisal and audit of the Property at Mortgagor's expense, and Mortgagor agrees that it will, upon request, promptly make Mortgagor's books and records regarding the Property available to Mortgagee and the person(s) performing the appraisal and audit (which obligation Mortgagor agrees can be specifically enforced by Mortgagee).

The amount of the payments due under the Note during the time in which the Increased Rate shall be in effect shall be changed to an amount which is sufficient to amortize the then unpaid principal balance at the Increased Rate during the then remaining portion of a period of 20 years commencing with the Amortization Period Commencement Date (as defined in the Note). Interest shall continue to accrue and be due and payable monthly at the Increased Rate until the Statements, Rent Roll and Certification shall be furnished to Mortgagee as required. Commencing on the date on which the Statements, Rent Roll and Certification are received by Mortgagee, interest on the unpaid principal balance shall again accrue at the Interest Rate and the payments due during the remainder of the term of the Note shall be changed to an amount which is sufficient to amortize the then unpaid principal balance at the Interest Rate during the then remaining portion of a period of 20 years commencing with the Amortization Period Commencement Date. Notwithstanding the foregoing, Mortgagee shall have the right to conduct an independent audit at its own expense at any time.

Usury Law Compliance. The Indebtedness constitutes a loan secured by a mortgage on real estate under Chapter 815, Act 205, Section 4(1)(l) of Illinois Compiled Statutes, 1993, as the same may subsequently be amended.

Deposits by Mortgagor. To assure the timely payment of real estate taxes and special assessments, Mortgagee shall have the option, if Debt Service Coverage becomes less than 1.20, to require Mortgagor to semi-annually deposit funds with Mortgagee in amounts reasonably estimated by Mortgagee from time to time to be sufficient to pay real estate taxes and special assessments as they become due. If at any time the funds so held by Mortgagee shall be insufficient to pay any of said expenses, Mortgagor shall, upon receipt of notice thereof, immediately deposit such additional funds as may be necessary to remove the deficiency. All funds so deposited shall be irrevocably appropriated to Mortgagee to be applied to the payment of such real estate taxes and special assessments and, at the option of Mortgagee after default, the Indebtedness.

Liens Discharged by Proceeds. Mortgagee shall be subrogated to the lien of any and all prior encumbrances, liens or charges paid and discharged from the proceeds of the Note, and even though said prior liens have been released of record, the repayment of the Note

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shall be secured by such liens on the portion of the Property affected thereby to the extent of such payments, respectively.

Modification of Terms. Without affecting the liability of Mortgagor or any other person (except any person expressly released in writing) for payment of the Indebtedness or for performance of any obligation contained herein and without affecting the rights of Mortgagee with respect to any security not expressly released in writing, Mortgagee may, at any time and from time to time, either before or after the maturity of the Note, without notice or consent: (i) release any person liable for payment of all or any part of the Indebtedness or for performance of any obligation; (ii) make any agreement extending the time or otherwise altering the terms of payment of all or any part of the Indebtedness, or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof; (iii) exercise or refrain from exercising or waive any right Mortgagee may have; (iv) accept additional security of any kind; (v) release or otherwise deal with any property, real or personal, securing the Indebtedness, including all or any part of the Property.

Exercise of Options. Whenever, by the terms of this instrument, of the Note or any of the other Loan Documents, Mortgagee is given any option, such option may be exercised when the right accrues or at any time thereafter, and no acceptance by Mortgagee of payment of Indebtedness in default shall constitute a waiver of any default then existing and continuing or thereafter occurring.

Nature and Succession of Agreements. Each of the provisions, covenants and agreements contained herein shall inure to the benefit of, and be binding on, the heirs, executors, administrators, successors, grantees, and assigns of the parties hereto, respectively, and the term "Mortgagee" shall include the owner and holder of the Note

Legal Enforceability. No provision of this instrument, the Note or any other Loan Documents shall require the payment of interest or other obligation in excess of the maximum permitted by law. If any such excess payment is provided for in any Loan Documents or shall be adjudicated to be so provided, the provisions of this paragraph shall govern and Mortgagor shall not be obligated to pay the amount of such interest or other obligation to the extent that it is in excess of the amount permitted by law.

Captions. The captions contained herein are for convenience and reference only and in no way define, limit or describe the scope or intent of, or in any way affect this instrument.

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Governing Law. This instrument, the interpretation hereof and the rights, obligations, duties and liabilities hereunder shall be governed and controlled by the laws of the State of Illinois.

IN WITNESS WHEREOF, this instrument has been executed by the Mortgagor as of the day and year first above written.

NORTH AND CLYBOURN, L.L.C., an Illinois limited liability company

By: Harry J. Saigle

Name: HARRY J. SAIGLE

Title: MEMBER

102637-4

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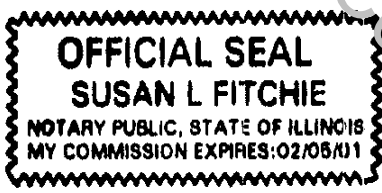
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STATE OF IL)
)ss.
COUNTY OF Kane)

The foregoing instrument was acknowledged before me this 24th day of June, 1998, by Harvey J. Seigle, the member of NORTH AND CLYBOURN, L.L.C., an Illinois limited liability company, on behalf of the limited liability company.

Susan L. Fitchie
_____, Notary Public

My commission expires:



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EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL 1:

THAT PART OF LOT 91 IN BLOCK 7 IN SHEFFIELD'S ADDITION TO CHICAGO, IN SECTION 32, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OR THE MOST EASTERLY CORNER OF SAID LOT 91 RUNNING THENCE WEST ALONG THE SOUTH LINE THEREOF 52.56 FEET MORE OR LESS TO A POINT WHICH IS 26.17 FEET 2 INCHES EAST OF THE SOUTHWEST CORNER OF SAID LOT 91; THENCE NORTHERLY ON A STRAIGHT LINE 53.90 FEET MORE OR LESS TO A POINT IN THE NORTHEASTERLY LINE OF SAID LOT 91 WHICH IS 25.28 FEET MEASURED AT RIGHT ANGLES EAST OF WEST LINE THEREOF; THENCE SOUTHEASTERLY ALONG SAID NORTHEASTERLY LINE 76.13 FEET MORE OR LESS TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOT 44 IN F. H. WINSTON'S SUBDIVISION OF BLOCK 7 IN SHEFFIELD'S ADDITION TO CHICAGO IN SECTION 32, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

LOTS 42, 43 AND 45 IN WINSTON'S SUBDIVISION OF BLOCK 7 IN SHEFFIELD'S ADDITION TO CHICAGO IN SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 4:

LOTS 8, 9, 10 AND 11 IN F. H. WINSTON'S SUBDIVISION OF BLOCK 7 IN SHEFFIELD'S ADDITION TO CHICAGO, IN SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 5:

THAT PART OF LOTS 6 AND 7, TAKEN AS A TRACT, IN WINSTON'S SUBDIVISION OF LOT (OR BLOCK) 7 IN SHEFFIELD'S ADDITION TO CHICAGO, IN SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 7; THENCE NORTH ON THE EAST LINE OF SAID LOT 7, A DISTANCE OF 73 FEET 11 INCHES; THENCE WEST 24 FEET 1/4 INCH TO A POINT 73 FEET 11-1/8 INCHES NORTH OF THE SOUTH LINE OF SAID TRACT; THENCE SOUTH 73 FEET 11-1/8 INCHES TO A POINT ON THE SOUTH LINE OF SAID TRACT 24 FEET 1 INCH WEST OF THE PLACE OF BEGINNING; THENCE EAST OF SOUTH LINE OF SAID TRACT 24 FEET 1 INCH TO THE PLACE OF

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LEGAL DESCRIPTION CONTINUED:

BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 6:

LOTS 12, 13, 14, 15, 16, 17 AND THE WEST 1/2 OF LOT 18 IN F. H. WINSTON'S SUBDIVISION OF BLOCK 7 IN SHEFFIELD'S ADDITION TO CHICAGO IN SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 7:

THE EAST 1/2 OF LOT 18 AND ALL OF LOTS 19, 20, 21, 22, 23, 24 AND 25 AND THE WEST 3 FEET OF LOT 26 ALL IN F. H. WINSTON'S SUBDIVISION OF BLOCK 7 IN SHEFFIELD'S ADDITION TO CHICAGO, IN SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 8:

LOTS 1, 2, 3, 4, 5, AND 6 IN THE RESUBDIVISION OF LOTS 28, 29 AND 30 IN WINSTON'S SUBDIVISION OF BLOCK 7 IN F. H. WINSTON'S SUBDIVISION OF BLOCK 7 IN SHEFFIELD'S ADDITION TO CHICAGO, IN SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 9:

LOT 26 (EXCEPT THE WEST 3 FEET THEREOF), ALL OF LOTS 27, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 AND 41, LOT 107 (EXCEPT THE WEST 1 FOOT THEREOF), AND (EXCEPT THE EAST 15 FEET OF THE WEST 19.5 FEET), LOTS 108, 109, 110, 111, 112 AND 113 IN F. H. WINSTON'S SUBDIVISION OF BLOCK 7 IN SHEFFIELD'S ADDITION TO CHICAGO IN SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 10:

ALL OF THE NORTH-SOUTH, THE EAST-WEST, AND THE NORTHWESTERLY-SOUTHEASTERLY 16 FOOT PUBLIC ALLEYS TOGETHER WITH A TRIANGULAR ALLEY AREA ADJOINING SAID 16 FOOT PUBLIC ALLEYS LYING NORTH OF THE NORTH LINE OF LOTS 16 TO 25, BOTH INCLUSIVE; LYING NORTHEASTERLY OF THE NORTHWESTERLY LINE OF LOTS 25, 26 AND 27, LYING SOUTHWESTERLY OF THE SOUTHWESTERLY LINE OF LOTS 31 TO 41, BOTH INCLUSIVE; LYING WEST OF THE WEST LINE OF LOT 41, LYING EAST OF THE EAST LINE OF LOT 113; LYING SOUTH OF THE SOUTH LINE OF LOTS 107 TO 113, BOTH INCLUSIVE, LYING EAST OF THE SOUTHERLY EXTENSION OF THE EAST LINE OF THE WEST 19.5 FEET OF LOT 107; LYING SOUTH OF A LINE DRAWN FROM THE NORTHWEST CORNER OF SAID LOT 41 TO THE NORTHEAST CORNER OF SAID LOT 113,

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LEGAL DESCRIPTION CONTINUED:

ALL IN F. H. WINSTON'S SUBDIVISION OF BLOCK 7 IN SHEFFIELD'S ADDITION TO CHICAGO IN SECTION 32, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTHWESTERLY OF THE SOUTHWESTERLY LINE OF LOT 2 IN RESUBDIVISION OF LOTS 28, 29 AND 30 IN WINSTON'S SUBDIVISION OF BLOCK 7 AFOREMENTIONED; LYING NORTHWESTERLY OF A LINE DRAWN FROM THE POINT OF INTERSECTION OF THE SOUTH AND SOUTHWESTERLY LINES OF LOT 2 IN RESUBDIVISION OF LOTS 28, 29 AND 30 IN WINSTON'S SUBDIVISION AFORESAID TO THE EAST CORNER OF LOT 27 IN F. H. WINSTON'S SUBDIVISION OF BLOCK 7 AFORESAID, SAID PUBLIC ALLEYS, PART OF PUBLIC ALLEY AND THE TRIANGULAR ALLEY AREA ADJOINING THE 16 FOOT PUBLIC ALLEYS TO BE VACATED, BEING FURTHER DESCRIBED AS THE REMAINING NORTH-SOUTH 16 FOOT PUBLIC ALLEY, THE EAST-WEST 16 FOOT PUBLIC ALLEY AND THE NORTHWESTERLY-SOUTHEASTERLY 16 FOOT PUBLIC ALLEY TOGETHER WITH A TRIANGULAR ALLEY AREA ADJOINING THE SAID 16 FOOT PUBLIC ALLEYS TO BE VACATED, ALL LYING EAST OF A LINE 375.50 FEET, MORE OR LESS, EAST OF AND PARALLEL WITH THE EAST LINE OF N. SHEFFIELD AVENUE, AS COLORED IN RED AND INDICATED BY THE WORDS "TO BE VACATED" ON THE DRAWING HERETO ATTACHED, WHICH DRAWING FOR GREATER CERTAINTY, IS HEREBY MADE A PART OF THIS ORDINANCE, BE AND THE SAME ARE HEREBY VACATED AND CLOSED, IN AS MUCH AS THE SAME ARE NO LONGER REQUIRED FOR PUBLIC USE AND THE PUBLIC INTEREST WILL BE SUBSERVED BY SUCH VACATIONS.

Property Address(es): 1630 Clybourn Avenue
Chicago, IL 60622

908 W. North Avenue
Chicago, IL 60622

850-855 W. North Avenue
Chicago, IL 60622

Permanent Tax No(s).: 14-32-423-047-0000
14-32-423-048-0000
14-32-423-049-0000
14-32-423-050-0000
14-32-423-052-0000
14-32-424-025-0000
14-32-424-026-0000
14-32-424-027-0000
14-32-424-049-0000
14-32-424-056-0000
14-32-424-060-0000
14-32-424-063-0000

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