



RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL  
TO:

Horwood Marcus & Berk Chtd.  
333 West Wacker Drive  
Suite 2800  
Chicago, Illinois 60606  
Attn: Kenneth W. Bosworth, Esq.

3 of 5 # 78-12-258-D2 LMH

**SECOND  
MORTGAGE, SECURITY AGREEMENT  
AND FINANCING STATEMENT - (KIMBERLY)**

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THIS SECOND MORTGAGE SECURITY AGREEMENT AND FINANCING STATEMENT (the "Second Mortgage") is made as of the 1st day of May, 1999, by and between 5060 N. KIMBERLY BUILDING LLC, an Illinois limited liability company (the "Mortgagor"), with its principal place of business at 5730 N. Tripp, Chicago, Illinois 60646, and COLE TAYLOR BANK, an Illinois state banking association (the "Mortgagee"), with offices at 350 E. Dundee Road, Wheeling, Illinois 60090.

WITNESSETH:

WHEREAS, the Mortgagor is the owner of certain land and improvements located thereon in Cook County, Illinois, described on Exhibit A attached hereto and made a part hereof; and

WHEREAS, the Mortgaged Premises, hereinafter defined, are currently encumbered by a certain Commercial Mortgage, Security Agreement and Fixture Filing given by Chicago Title and Trust Company, as Trustee under Trust Agreement dated May 12, 1994 and known as Trust No. 1099464 ("Trustee") in favor of Mortgagee dated June 30, 1994 and recorded in the Cook County Recorder's Office on July 5, 1994 as Document No. 94583431, as amended by that certain First Modification to Commercial Mortgage, Security Agreement and Fixture Filing, between Mortgagor as successor in interest to Trustee and Mortgagee of even date herewith (the "First Mortgage"); and

WHEREAS, 5730 N. Tripp Building LLC, an Illinois limited liability company ("Tripp LLC") and P.S. Greetings, Inc., an Illinois corporation (the "Company") (Tripp LLC and the Company are, collectively, "Obligors"), Mortgagee and LaSalle Bank National Association ("LaSalle") have entered into that certain Reimbursement Agreement of even date herewith, as the same may be amended or restated from time to time (the "Reimbursement Agreement") providing

**BOX 333-CTI**

for LaSalle to issue an irrevocable, transferable, direct pay letter of credit in the original stated amount of \$4,566,576.00 ("Letter of Credit");

WHEREAS, pursuant to a separate agreement between LaSalle and Mortgagee (the "Intercreditor Agreement"), Mortgagee agrees to reimburse LaSalle for any and all payments by made by LaSalle in accordance with the Letter of Credit;

WHEREAS, pursuant to the Reimbursement Agreement, Obligors are obligated to pay Mortgagee on demand any and all amounts for which Mortgagee becomes liable to LaSalle under the Intercreditor Agreement as well as all other amounts, obligations and liabilities due or to become due Mortgagee under the other loan documents related to the Reimbursement Agreement (collectively the "Obligations"), as the same may be amended, modified or supplemented from time to time; and

WHEREAS, as security for the Obligations, Tripp LLC has granted to Mortgagee a first and superior mortgage dated of even date herewith (the "Tripp Mortgage") against the property commonly known as 5730 N. Tripp, Chicago, Illinois (the "Tripp Property"); and

WHEREAS, as additional security for the Obligations and all documents, amendments, instruments or agreements, including without limitation, the Tripp Mortgage and the First Mortgage, delivered in connection with the Reimbursement Agreement (collectively, the "Loan Documents"), Mortgagor executes and delivers this Second Mortgage to and for the benefit of Mortgagee; and

WHEREAS, as further security for the Obligations under the Reimbursement Agreement and the Loan Documents, Mortgagor, which shares the same members as Tripp LLC and the same shareholders as Greetings and which will derive substantial financial benefit from the issuance of the Bonds, agrees that this Second Mortgage shall be cross collateralized and cross-defaulted with the First Mortgage and the Tripp Mortgage; and

WHEREAS, all acts and proceedings required by law necessary to constitute this Second Mortgage a valid, binding and legal obligation of the Mortgagor, and for the performance of the Mortgagor's undertakings expressed herein, have been done and taken; and the execution and delivery of this Second Mortgage has been in all respects duly authorized;

NOW, THEREFORE, in order to secure the payment of the Obligations, and to secure the performance and observance by the Mortgagor of each and every one of the terms, covenants and conditions herein and the performance and observance by Obligors in the Reimbursement Agreement and in consideration of the foregoing recitals which are incorporated herein as if fully restated and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Mortgagor has granted, bargained, sold, aliened, released, remised, transferred, mortgaged, conveyed and warranted and by these presents does hereby grant, bargain, sell, alien, release, remise, transfer, mortgage, convey and warrant unto the Mortgagee, and its successors and assigns, forever, in all and singular with MORTGAGE COVENANTS the (i) lands described on Exhibit A, which is attached hereto and made part hereof; together with all easements and appurtenances thereto, (ii) all right, title and interest of the Mortgagor in and to the buildings, structures and improvements now

or at any time hereafter erected, constructed and situated upon said lands or any part thereof and all apparatus, appliances, furnaces, boilers, machinery, engines, motors, compressors, dynamos, elevators, fittings, piping, connections conduits, ducts, equipment and other like property of every kind and description owned by Mortgagor and now or hereafter used or procured for use in connection with the heating, cooling, lighting, plumbing, ventilating, air conditioning, refrigeration, cleaning or general operation and which are components of any such building, structure or improvements (all of which are hereinafter referred to as "Building Equipment"), together with any and all alterations, replacements and additions to any such building, structure or improvement or Building Equipment, whether made by the Mortgagor or any successor in interest (all of the foregoing including the Building Equipment being hereinafter sometimes collectively called the "Buildings"), and (iii) all right title and interest of the Mortgagor now owned or hereafter acquired, in and to all and singular the tenements, hereditaments, privileges, easements, franchises, leases, licenses and appurtenances belonging or in any wise appertaining to said lands and Buildings and the reversions, remainders, rents, issues and profits thereof, and all the estate, rights, title and interest, claim and demand whatsoever, in law or in equity, which the Mortgagor now has or may hereafter acquire in and to such property, including, without intending to limit the generality of the foregoing, any award in condemnation, all of which (that is, (i), (ii) and (iii) above) are hereinafter sometimes collectively referred to as the "Mortgaged Premises" or "Premises";

TO HAVE AND TO HOLD the Mortgaged Premises hereby mortgaged, conveyed and assigned, or intended or entitled so to be, unto the Mortgagee, its successors and assigns forever;

And the Mortgagor hereby warrants to and covenants with the Mortgagee, its successors and assigns, that (a) Mortgagor has good title to, and good right and lawful authority to mortgage, convey and assign the Mortgaged Premises hereby conveyed by the Mortgagor, subject only to the First Mortgage and the easements, restrictions, limitations and other matters described on Exhibit B, which is attached hereto and made a part hereof, (b) the Mortgagor will maintain and preserve the lien of this Second Mortgage until the Indebtedness (hereinafter defined) secured hereby has been paid in full, and (c) Mortgagor will forever warrant and defend to the Mortgagee, its successors and assigns, the Mortgaged Premises against any and all claims and demands whatever, except as are specifically set forth in this Second Mortgage;

PROVIDED ALWAYS, and these presents are upon the express condition that if all of the Obligations shall be paid or discharged in accordance with the terms and conditions of the Loan Documents, and if the other terms, covenants and conditions of this Second Mortgage shall be fully performed and observed, then these presents to be void, otherwise this Second Mortgage to remain in full force and effect.

## IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. **Operating Covenants of Mortgagor.** Mortgagor shall: (a) promptly repair, restore or rebuild any buildings and other improvements now or hereafter on the Premises which may become damaged or destroyed to substantially the same character as prior to such damage or destruction, without regard to the availability or adequacy of any casualty insurance proceeds or eminent domain awards; (b) keep the Premises constantly in at least the condition and repair as of the date hereof,

without waste; (c) keep the Premises free from mechanics' liens or other liens or claims for liens (collectively called "Liens"); (d) make no material structural alterations in or on the Premises without Mortgagee's prior written consent; (e) suffer or permit no change in the general nature of the use or occupancy of the Premises without Mortgagee's prior written consent; (f) observe and comply with all conditions and requirements (if any) necessary to preserve and extend all rights, easements, licenses, permits (including without limitation zoning variations and any non-conforming uses and structures), privileges, franchises and concessions applicable to the Premises or contracted for in connection with any present or future use of the Premises; and (g) pay each item of Indebtedness secured by this Second Mortgage when due according to the terms hereof and of the Loan Documents. As used in this Paragraph 1 and elsewhere in this Second Mortgage, the term "Indebtedness" means and includes the Obligations, the unpaid principal sum evidenced by the Loan Documents, together with all interest and late charges, and all other sums at any time as provided in the Loan Documents, this Second Mortgage or any document evidencing or securing the same.

**2. Payment of Taxes.** Mortgagor shall pay all general taxes, special assessments and other charges before any penalty or interest attaches. Mortgagor shall, upon written request, furnish to Mortgagee duplicate receipts therefor within thirty (30) days following the date of payment. Mortgagor shall pay in full "under protest" any tax or assessment which Mortgagor may desire to contest, in the manner provided by law.

**3. Tax and Insurance Deposits.**

**3.1. Tax Deposits.** At Mortgagee's request or upon the occurrence of an Event of Default (as defined herein), Mortgagor shall deposit with the Mortgagee commencing on the first day of each month following such request or Event of Default and continuing on the first day of each month thereafter, a sum equal to all real estate taxes and assessments (general and special) next due upon or for the Premises (the amount of such taxes next due to be based upon the Mortgagee's reasonable estimate as to the amount of taxes and assessments to be levied and assessed) reduced by the amount, if any, then on deposit with the Mortgagee divided by the number of months to elapse before one (1) month prior to the date when such taxes and assessments will become due and payable. Such deposits are to be held without any allowance for interest to Mortgagor and are to be used for the payment of taxes and assessments (general and special) on the Premises next due and payable when they become due. If the funds so deposited are insufficient to pay any such taxes or assessments (general or special) when the same become due and payable, the Mortgagor shall, within ten (10) days after demand therefor from the Mortgagee, deposit such additional funds as may be necessary to pay such taxes and assessments (general and special) in full. If the funds so deposited exceed the amount required to pay such taxes and assessments (general and special) for any year the excess shall be applied to a subsequent deposit or deposits. Said deposits need not be kept separate and apart from any other funds of the Mortgagee.

**3.2. Insurance Deposits.** At Mortgagee's request or upon the occurrence of an Event of Default, for the purpose of providing funds with which to pay premiums when due on all policies of fire and other hazard insurance covering the Premises and the Collateral, as that term is defined in this Second Mortgage, Mortgagor shall deposit with the Mortgagee on the first day of each month a sum equal to the Mortgagee's estimate of the premiums that will next become due and

payable on such policies reduced by the amount, if any, then on deposit with the Mortgagee divided by the number of months to elapse before one (1) month prior to the date when such premiums become due and payable. No interest shall be allowed to Mortgagor on account of any deposit made hereunder and said deposit need not be kept separate and apart from any other funds of the Mortgagee.

**4. Mortgagee's Interest In and Use of Tax and Insurance Deposits; Security Interest.** In the event of a default hereunder, the Mortgagee may, at its option but without being required so to do, apply any monies at the time on deposit pursuant to Paragraphs 3.1 and 3.2 hereof to any of Mortgagor's obligations contained herein or in the Reimbursement Agreement, in such order and manner as the Mortgagee may elect. When the Indebtedness has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the Premises as the same appear on the records of the Mortgagee. A security interest, within the meaning of the Uniform Commercial Code of the State of Illinois, is hereby granted to the Mortgagee in and to all monies at any time on deposit pursuant to Paragraphs 3.1 and 3.2 hereof and such monies and all of Mortgagor's rights, title and interest therein are hereby assigned to Mortgagee, all as additional security for the Indebtedness hereunder and shall, in the absence of default hereunder, be applied by the Mortgagee for such purposes as the Mortgagee shall direct and shall not be subject to the direction or control of the Mortgagor; provided, however, that the Mortgagee shall be liable for any failure to apply to the payment of taxes or assessments or insurance premiums any amount so deposited unless Mortgagor, while not in default hereunder, shall have furnished Mortgagee with the original bills therefor and requested, in writing, of Mortgagee to make application of such funds to the payment of the particular taxes or assessments or insurance premiums for payment of which they were deposited. Mortgagee shall not be liable for any act or omission taken in good faith, but only for its gross negligence or willful misconduct.

**5. Insurance.** Mortgagor shall keep all improvements and the Collateral now or hereafter situated on, or used in connection with, said Premises fully insured against loss or damage by fire on a so-called "All Risks" basis and against such other hazards as may reasonably be required by Mortgagee. Mortgagor shall also provide insurance coverage with such limits for personal injury and death and property damage as Mortgagee may from time-to-time require and in no event less than the Indebtedness. Mortgagor shall also carry Builders Risk Insurance on an "all risks" basis for 100 percent of the full insurable value of any construction work in place or in progress from time to time insuring the Premises, including materials in storage and while in transit, against loss or damage by fire or other casualty, with extended coverage, vandalism and malicious mischief coverage, bearing a replacement cost agreed amount endorsement. All policies of insurance to be furnished hereunder shall be in forms, companies and amounts satisfactory to Mortgagee, with "Class X" companies rated A or A+ in the latest Best's Insurance reports, showing Mortgagee as additional insured and loss payee, with waiver of subrogation and replacement cost endorsements and a standard non-contributory Mortgagee clause attached to all policies, including a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to the Mortgagee. Mortgagor shall deliver all original policies, including additional and renewal policies, to Mortgagee and, in the case of insurance about to expire, shall deliver renewal policies not less than thirty (30) days prior to their respective dates of expiration. If Mortgagor fails to maintain insurance in compliance with this paragraph 5, Mortgagee may, but shall

not be obligated to, obtain such insurance and pay the premium therefor and Mortgagor shall, on demand, reimburse Mortgagee for all sums, advances and expenses incurred in connection therewith, together with interest thereon computed at the Delinquency Rate (as defined in the Term Note).

Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon under a standard non-contributory mortgagee clause acceptable to Mortgagee. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee the original policy or policies of such insurance. In the event of a foreclosure of the lien of this Second Mortgage, or of a transfer of title to the Premises either in lieu of foreclosure or by purchase at the foreclosure sale, all interest in all insurance policies in force shall pass to Mortgagee, transferee or purchaser, as the case may be.

Within ninety (90) days following the end of each fiscal year of Mortgagor, at the request of the Mortgagee, Mortgagor agrees to furnish evidence of replacement cost, without cost to the Mortgagee, such as are regularly and ordinarily made by insurance companies to determine the then replacement cost of the building(s) and other improvements on the Premises.

## **6. Adjustment of Losses with Insurer and Application of Proceeds of Insurance.**

(a) In case of loss or damage by fire or other casualty, Mortgagee is authorized to settle and adjust any claim under insurance policies which insure against such risks. Mortgagee is authorized to collect and receipt for any such insurance monies. Such insurance proceeds may, at the option of the Mortgagee be: (x) applied in reduction of the Indebtedness, whether due or not; or (y) held by the Mortgagee and applied to pay for the cost of repair, rebuilding or restoration of the buildings and other improvements on the Premises. If the Mortgagee shall allow the insurance proceeds to be used for repair, restoration or rebuilding, then the Mortgagee agrees to make said proceeds available to Mortgagor for the cost of repair, rebuilding or restoration of buildings or other improvements on the Premises, provided that such proceeds shall be made available in the manner and under the conditions that the Mortgagee may require, including a right to approve all plans and specifications of such work before such work shall be commenced. If the proceeds are made available by the Mortgagee to reimburse the Mortgagor or any lessee for the cost of repair, rebuilding or restoration, any surplus, after payment of the cost of repair, rebuilding, restoration and the reasonable charges of the Disbursing Party, as that term is hereinafter defined, shall, at the option of the Mortgagee, be applied on account of the Indebtedness or paid to any party entitled thereto as the same appear on the records of the Mortgagee. No interest shall be allowed to Mortgagor on any proceeds of insurance held by the Disbursing Party.

(b) As used in this Paragraph 6, the term "Disbursing Party" refers to the Mortgagee and to any responsible trust or title insurance company selected by the Mortgagee.

**7. Stamp Tax; Effect of Changes in Laws Regarding Taxation.** If, by the laws of the United States of America or of any state or subdivision thereof having jurisdiction over the Mortgagor, Mortgagee or the Premises, any tax (except for any tax which is calculated on the income of Mortgagee) is due or becomes due in respect of the Reimbursement Agreement or any document securing same, the Mortgagor covenants and agrees to pay such tax in the manner required by any such law. The Mortgagor further covenants to reimburse the Mortgagee for any sums which Mortgagee may expend by reason of the imposition of any such tax.

In the event of the enactment, after this date, of any law of the State of Illinois deducting from the value of the land for the purpose of taxation any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Premises, or the manner of collection of taxes, so as to affect this Second Mortgage or the Indebtedness secured hereby or the holder thereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments or reimburse the Mortgagee therefor; provided, however, that if in the opinion of counsel for the Mortgagee: (a) it might be unlawful to require Mortgagor to make such payment; or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law; then and in any such event, the Mortgagee may elect, by notice in writing given to the Mortgagor, to declare all of the Indebtedness to be and become due and payable thirty (30) days from the giving of such notice.

**8. Observance of Lease Assignment.**

(a) As additional security for the payment of the amounts due under the Reimbursement Agreement and for the faithful performance of the terms and conditions contained herein, Mortgagor has assigned to the Mortgagee all of its rights, title and interest as landlord in and to all current and future leases of the Premises.

(b) Mortgagor will not, without Mortgagee's prior written consent: (i) execute any assignment or pledge of any rents or any leases of all or any portion of the Premises except an assignment or pledge securing the Indebtedness; (ii) accept any payment of any installment of rent more than thirty (30) days before the due date thereof; (iii) modify, alter, amend or in any way change the terms and provisions of any lease; or (iv) waive the obligation of any tenant under any of the leases to fully and timely perform in strict accordance with the terms thereof.

(c) Mortgagor, at its sole cost and expense, will: (i) at all times promptly discharge and perform all of the covenants, conditions and agreements contained in all leases of the Premises, on the part of the landlord thereunder to be kept and performed; (ii) enforce or secure the performance of all of the covenants, conditions and agreements of such leases on the part of the tenants to be kept and performed; (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with such leases or the obligations, duties or liabilities of the landlord or of any tenants thereunder; (iv) transfer and assign or cause to be separately transferred and assigned to Mortgagee, upon written request of Mortgagee, any lease or leases of the

Premises or any portion thereof hereafter entered into, and make, execute and deliver to Mortgagee upon demand, any and all instruments required to effectuate said assignment; (v) furnish Mortgagee, within ten (10) days after a request by Mortgagee so to do, a written statement containing the names of all tenants and the terms of all leases of the Premises, including the spaces occupied and the rentals payable thereunder; and (vi) exercise within five (5) days of any demand therefor by Mortgagee any right to request from the tenant under any lease of the Premises, a certificate with respect to the status thereof.

(d) Nothing in this Second Mortgage or in any other documents relating to the Reimbursement Agreement shall be construed to obligate Mortgagee, expressly or by implication, to perform any of the covenants of any landlord under any of the leases assigned to Mortgagee or to pay any sum of money or damages therein provided to be paid by the landlord, each and all of which covenants and payments Mortgagor agrees to perform and pay or cause to be performed and paid.

(e) At the option of the Mortgagee, this Second Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in eminent domain), to any one or more leases affecting any part of the Premises, upon the execution by Mortgagee and recording or registration thereof, at any time hereafter, in the office wherein this Second Mortgage was registered or filed for record, of a unilateral declaration to that effect.

(f) In the event of the enforcement by Mortgagee of any remedies provided for by law or by this Second Mortgage, the tenant under each lease of the Premises shall, at the option of the Mortgagee (but provided automatic attornment is provided for in each such lease), attorn to any person succeeding to the interest of landlord as a result of such enforcement and shall recognize such successor-in-interest as landlord under such lease without change in the terms or other provisions thereof; provided, however, that said successor-in-interest shall not be bound by any payment of rent or additional rent for more than one month in advance or any amendment or modification to any lease made without the consent of Mortgagee or said successor-in-interest. Each tenant, upon request by said successor-in-interest, shall execute and deliver an instrument or instruments confirming such attornment.

(g) Mortgagee shall have the option to declare this Second Mortgage in default because of material default of landlord in leases of the Premises whether or not such default is cured by Mortgagee pursuant to the right granted herein. It is covenanted and agreed that a default under any Assignment of Rents and Leases executed pursuant to this Paragraph 8 shall constitute a default hereunder, on account of which the whole of the Indebtedness shall at once, at the option of the Mortgagee, become immediately due and payable, without notice to the Mortgagor.

**9. Mortgagee's Performance of Defaulted Acts.** In case of default herein by Mortgagor and same not being cured within the period, if any, hereinbelow provided, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner Mortgagee deems expedient, and may, but need not, make full or partial payments of principal or interest on encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other lien on title or claim thereof, or redeem from any tax sale or forfeiture affecting said

Premises or contest any tax or assessment or cure any default of any landlord in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred to protect the Premises or the lien hereof, shall be so much additional Indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the rate of interest set forth in the Reimbursement Agreement applicable to a default thereunder. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

## 10. Acceleration of Indebtedness in Case of Default.

(a) Each of the following shall be deemed to be events of default pursuant to this Second Mortgage: (i) failure of the Obligors to make any due and punctual payment of principal or interest on the amounts due pursuant to the Reimbursement Agreement, or any other payment due in accordance with the terms thereof or hereof; or (ii) the occurrence of an Event of Default as defined under the Reimbursement Agreement or any of the Loan Documents; (iii) the Mortgagor, either Obligor or any Guarantor shall; (A) file a petition of liquidation, reorganization or adjustment of debt under Title 11 of the United States Code (11 U.S.C. §§ 101 *et seq.*) or any similar law, state or federal, whether now or hereafter existing, or (B) file any answer admitting insolvency or inability to pay its debts, or (C) fail to obtain a vacation or stay of involuntary proceedings within thirty (30) days, as hereinafter provided; or (iv) any order for relief of the Mortgagor, either Obligor or any Guarantor shall be entered in any case under Title 11 of the United States Code, or a trustee or a receiver shall be appointed for the Mortgagor, either Obligor or any Guarantor, or for all or the major part of the property of Mortgagor, either Obligor or any Guarantor in any voluntary or involuntary proceeding, or any court shall have taken jurisdiction of all or the major part of the property of the Mortgagor, either Obligor or any Guarantor in any voluntary or involuntary proceeding for the reorganization, dissolution, liquidation, adjustment of debt or winding up of the Mortgagor, either Obligor or any Guarantor and such trustee or receiver shall not be discharged or such jurisdiction not be relinquished or vacated or stayed on appeal or otherwise stayed within ten (10) days; or (v) Mortgagor, either Obligor or any Guarantor shall make an assignment for the benefit of creditors, or shall admit in writing its/ his inability to pay its/his debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator of all or any major part of its/his property; or (vi) default shall be made in the due observance or performance of any other covenant, agreement or condition hereinbefore or hereinafter contained and required to be kept or performed or observed by Mortgagor, either Obligor or any Guarantor and same is not cured within ten (10) days after written notice thereof from Mortgagee to Mortgagor, either Obligor or any Guarantor, provided however that if such cure has been commenced within said ten (10) day period but, despite diligent attempts by Mortgagor, either Obligor or any Guarantor to cure, the cure cannot be completed within said ten (10) day period, then Mortgagor, either Obligor or any Guarantor shall have an additional thirty (30) days to complete such cure so long as Mortgagor, either Obligor or any Guarantor is diligently pursuing such cure; or (vii) default shall be made in the due observance or performance of any covenant, agreement or condition required to be kept or observed by Mortgagor, either Obligor or any Guarantor in any of the Loan Documents or in any other instrument given at any time to secure the payment of the monies due under the Reimbursement Agreement or any other Loan Document.

(b) Upon the occurrence of any of the events described in Paragraph (a) above then and in any such event, the whole of the Indebtedness shall at once, at the option of the Mortgagee, become immediately due and payable without further notice to Mortgagor. If, while any insurance proceeds or condemnation awards are held by or for the Mortgagee to reimburse Mortgagor or any lessee for the cost of repair, rebuilding or restoration of building(s) or other improvement(s) or other improvement(s) on the Premises, the Mortgagee shall be or become entitled to accelerate the maturity of the Indebtedness, then and in such event, the Mortgagee shall be entitled to apply all such insurance proceeds and condemnation awards then held by or for it in reduction of the Indebtedness, and any excess held by it over the amount of the Indebtedness shall be paid to Mortgagor or any party entitled thereto, without interest, as the same appear on the records of the Mortgagee.

## **11. Foreclosure; Expense of Litigation.**

(a) When the Indebtedness or any part thereof becomes due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or any part thereof. Or, if Mortgagee so elects, Mortgagee may institute foreclosure proceedings only with respect to a portion of the Indebtedness or to a portion of the Premises (such partial proceedings being hereinafter referred to as a partial foreclosure). Mortgagor agrees that sale pursuant to a partial foreclosure, if such sale is so made, shall not in any manner affect the remainder of the secured Indebtedness, but as to such remainder, this Second Mortgage and the lien thereon shall remain in full force and effect just as though no foreclosure shall had been made under the provisions of this paragraph. Notwithstanding the filing of any partial foreclosure or entry of a decree of sale therein, Mortgagee may elect at any time prior to a foreclosure sale pursuant to such decree, to discontinue such partial foreclosure and to accelerate the entire secured Indebtedness by reason of any Event of Default upon which this partial foreclosure was predicated or by reason of any other Event of Default, and proceed with full foreclosure proceedings. It is further agreed that several foreclosure sales may be made pursuant to partial foreclosures without exhausting the right of full or partial foreclosure sale for any remainder of the secured Indebtedness, it being the purpose hereof to provide for a partial foreclosure sale of the secured Indebtedness without exhausting the power to foreclose and to sell the Premises pursuant to any such partial foreclosure for any other part of the secured Indebtedness whether matured at the time or subsequently maturing and without exhausting any right of acceleration in full foreclosure.

(b) In any civil action to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the order or judgment for foreclosure and sale all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of said order or judgment) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such civil action or to evidence to bidders at any sale which may be had pursuant to such order or judgment the true condition of the title to, or the value of, the Premises. All expenditures and expenses of the nature in this paragraph mentioned and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this

Mortgage, including the fees of any attorneys employed by Mortgagee in any litigation or proceeding affecting this Second Mortgage, the Reimbursement Agreement, any Loan Document or the Premises, including probate, appellate and bankruptcy proceedings, or in preparations for the commencement or defense of any action or proceeding or threatened action or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the rate set forth in the Reimbursement Agreement applicable to a default thereunder and shall be secured by this Second Mortgage.

(c) At all times the Mortgagee shall appear in and defend any suit, action or proceeding that might in any way in the sole judgment of Mortgagee affect the value of the Premises, the priority of this Second Mortgage or the rights and powers of Mortgagee hereunder or under any document given at any time to secure the Indebtedness, Mortgagor shall, at all times, indemnify, hold harmless and reimburse Mortgagee on demand for any and all loss, damage, expense or cost, including cost of evidence of title and reasonable attorneys' fees, arising out of or incurred in connection with any such suit, action or proceeding, and the sum of such expenditures shall be secured by this Second Mortgage and shall bear interest after demand at the rate set forth in the Reimbursement Agreement applicable to a default thereunder, and such interest shall be secured hereby and shall be due and payable on demand.

**12. Application of Proceeds of Foreclosure Sale.** The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings; second, all other items which may, under the terms hereof, constitute Indebtedness additional to that evidenced by the Reimbursement Agreement, with interest thereon as therein provided; third, all principal and interest remaining unpaid on the monies due under the Reimbursement Agreement; and fourth, any overplus to any party entitled thereto as their rights may appear on the records of the Mortgagee.

**13. Appointment of Receiver or Mortgagee-In-Possession.** Upon, or at any time after, the commencement of an action to foreclose this Second Mortgage, the court in which such action was commenced may, upon request of the Mortgagee, appoint a receiver of the Premises either before or after foreclosure sale, without notice and without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises, the Mortgagee or any beneficiary under the Reimbursement Agreement may be appointed as such receiver or as mortgagee in possession. Such receiver, or the mortgagee-in-possession, shall have power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure action and, in case of a sale and a deficiency, during the full statutory period of redemption, if any, whether there be redemption or not, as well as during any further times, if any, when Mortgagor, except for the intervention of such receiver or mortgagee-in-possession, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver or mortgagee-in-possession to apply the net income in its hands in payment in whole or in part of: (a) the Indebtedness or the indebtedness secured by a decree foreclosing the lien of this Second Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien

hereof or the lien of such order or judgment, provided such application is made prior to the foreclosure sale; (b) the deficiency in case of a sale and deficiency.

**14. Rights Cumulative.** Each right, power and remedy conferred upon the Mortgagee by this Second Mortgage and by all other documents evidencing or securing the Indebtedness and conferred by law and in equity is cumulative and in addition to every other right, power and remedy, express or implied, given now or hereafter existing, at law and in equity; and each and every right, power and remedy herein or therein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagee; and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of, or discontinuance by, the Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

**15. Mortgagee's Right of Inspection.** Mortgagee shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

**16. Condemnation.** Mortgagor hereby assigns, transfers and sets over unto the Mortgagee the entire proceeds of any award and any claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation. The Mortgagee may elect at its option: (a) to apply the proceeds of the award or claim upon or in reduction of the Indebtedness, whether due or not; or (b) to make those proceeds available to Mortgagor or any lessee for repair, restoration or rebuilding of the Premises, in the manner and under the conditions that the Mortgagee may require. In any event, if the improvement(s) are repaired, restored or rebuilt, it shall be accomplished in accordance with plans and specifications to be submitted to and approved by the Mortgagee. If the proceeds are made available by the Mortgagee, any surplus which may remain out of said award after payment of such cost of repair, rebuilding, restoration and the reasonable charges of the Disbursing Party shall, at the option of the Mortgagee, be applied on account of the Indebtedness or paid to any party entitled thereto as the same appear on the records of the Mortgagee. If, as a result of the condemnation or eminent domain, the balance of the Premises do not, in Mortgagee's judgment, result in a complete economic unit having equivalent value to the Premises as it existed before the taking, Mortgagee can immediately demand repayment of the entire Indebtedness.

**17. Release Upon Payment and Discharge of the Mortgagor's Obligations; Partial Release.** Mortgagee shall release this Second Mortgage and the lien hereof by proper instrument upon indefeasible payment and discharge of all Indebtedness (including a return and cancellation of the Letter of Credit) and upon payment of a reasonable fee to Mortgagee for the execution of such proper instrument. Notwithstanding the provisions of paragraph 26 of this Second Mortgage, provided that there is not then existing a default or any condition or circumstance which, with the giving of notice and/or the passage of time, would constitute a default hereunder or in any of the Loan Documents, Mortgagee agrees to release the lien of this Second Mortgage if:

(a) the Indebtedness is less than eighty percent (80%) of the appraised value of the Tripp Property, as determined by an appraiser selected by Mortgagee in its sole discretion (hereinafter, the "Tripp Value"); or

(b) Mortgagor sells or otherwise transfers the Mortgaged Premises and the Indebtedness is less than eighty percent (80%) of the sum of the Tripp Value plus cash deposited with Mortgagee from the sale proceeds of the Mortgaged Premises.

**18. Giving of Notice.** Any notice or other communication which any party hereby may desire or may be required to give to any party hereto shall be in writing, and shall be deemed given (i) when personally delivered, (ii) upon receipt if sent by a nationally recognized overnight courier service (e.g. Federal Express), addressed to a party at its address set forth below, or (iii) on the second business day after being deposited with the United States Postal Service, certified mail, postage prepaid, addressed to a party at its address set forth below, or to such other address as the party to receive such notice may have designated to all other parties by notice in accordance herewith:

If to Mortgagee: Cole Taylor Bank  
350 E. Dundee Road  
Wheeling, Illinois 60090  
Attention: Nikole H. Dolson,  
Vice-President

With a copy to: Horwood Marcus & Berk Chartered  
333 West Wacker Drive  
Suite 2800  
Chicago, Illinois 60606  
Attention: Kenneth W. Bosworth, Esq.

If to Mortgagor: 5060 N. Kimberly Building LLC  
c/o 5730 N. Tripp  
Chicago, Illinois 60646  
Attention: Mark McCracken

With a copy to: Nadelhoffer Kuhn Mitchell Moss Saloga Kocsis &  
Lechowicz, P.C.  
111 E. Jefferson Avenue, P.O. Box 359  
Naperville, Illinois 60566-0359  
Attention: Paul M. Mitchell, Esq.

Any party may at any time change its address for such notices by delivering or mailing to the other parties hereto, as aforesaid, a notice of such change.

**19. Waiver of Defense.** No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Reimbursement Agreement.

**20. Waivers.**

**20.1. Waiver of Statutory Rights Including Right of Redemption.** Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws or any so-called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of the lien of this Second 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 estates comprising the Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. Mortgagor does hereby expressly waive any and all rights of redemption from sale under any order or judgment of foreclosure of the lien of this Second Mortgage on behalf of the Mortgagor, and each and every person, except judgment creditors of the Mortgagor in its representative capacity, acquiring any interest in or title to the Premises subsequent to the date of this Second Mortgage. To the full extent permitted by law, Mortgagor agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Mortgagee, but will suffer and permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, (i) Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Loan Documents executed in connection herewith; and (ii) to the extent not prohibited by law, Mortgagor does hereby waive any right to a trial jury in any action or proceeding to enforce or defend any rights of the Mortgagee under this Second Mortgage, any of the Loan Documents, or relating thereto or arising therefrom and agree that any such action or proceeding shall be tried before a court and not before a jury.

**20.2. Waiver of Marshalling.** Notwithstanding the existence of any other security interests in the Premises and/or Collateral held by Mortgagee or by any other party, Mortgagee shall have the right to determine the order in which any or all portions of the Indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Mortgagor and any other party who consents to this Second Mortgage and any party who now or hereafter acquires a security interest in the Premises and/or Collateral hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

**21. Furnishing of Financial Statements, Operating Statements and Leasing Reports to Mortgagee.** Mortgagor covenants and agrees that it will keep and maintain books and records of account in which full, true and correct entries shall be made of all dealings and transactions relative to the Premises, which books and records of account shall, at reasonable times and on reasonable notice, be open to the inspection of the Mortgagee and its accountants and other duly authorized representatives. Such books and records of account shall be kept and maintained (i) in accordance with generally accepted accounting principles consistently applied; and (ii) at the principal place of business of the Mortgagor located at 5730 N. Tripp, Chicago, Illinois 60646, which principal place of business will not be changed without first notifying Mortgagee. Mortgagor covenants and agrees to furnish to the Mortgagee the financial statements as described in the Reimbursement Agreement.

**22. Filing and Recording Charges and Taxes.** Mortgagor will pay all filing, registration, recording and search and information fees, and all expenses incident to the execution and acknowledgment of this Second Mortgage and all other documents securing the Reimbursement Agreement and all federal, state, county and municipal taxes, other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution, delivery, filing, recording or registration of the rights under the Reimbursement Agreement, this Second Mortgage and all other documents securing the Reimbursement Agreement and all assignments thereof.

**23. Usury Exemption; Business Loan.** Mortgagor and Mortgagee agree at all times to comply with applicable law now or hereafter governing the interest payable under the Reimbursement Agreement. If the applicable law is ever revised, repealed or judicially interpreted so as to render usurious any amount called for under the Reimbursement Agreement, or if Mortgagee's acceleration of the Indebtedness results in Mortgagor having paid any interest in excess of that permitted by law, then it is Mortgagor's and Mortgagee's express intent that all excess amounts theretofore collected by Mortgagee be credited on the principal balance due under the Reimbursement Agreement (or, if the Indebtedness has been paid in full, refunded to Mortgagor), and the provisions of the Reimbursement Agreement and this Second Mortgage and other Loan Documents immediately be deemed reformed and the amounts thereafter collectable hereunder and thereunder reduced, without the necessity of the execution of any new document. Mortgagor agrees and represents that: (i) this instrument and the rights and obligations of all parties hereunder shall be governed by and construed under the substantive laws of the State of Illinois, without reference to the conflict of law principles of such state; (ii) the Indebtedness and the Obligations evidenced by the Reimbursement Agreement are an exempted transaction under the Truth In Lending Act, 15 U.S.C. §1601, et seq.; and (iii) said Obligations constitute a business loan under the laws of the State of Illinois.

**24. Miscellaneous.**

**24.1. Severability and Applicable Law.** In the event one or more of the provisions contained in this Second Mortgage, the Reimbursement Agreement, the Loan Documents or in any other document given at any time to secure the payment of the monies due under the Reimbursement Agreement or any other Loan Document shall, for any reason, be held to be invalid,

illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Mortgagee, not affect any other provision of this Second Mortgage, the Reimbursement Agreement or other document and this Second Mortgage, the Reimbursement Agreement, the Loan Documents or other document shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein. The validity and interpretation of this Second Mortgage, the Reimbursement Agreement or the Loan Documents it secures and any other document given at any time to secure the payment of the monies due under the Reimbursement Agreement or any other Loan Document are to be construed in accordance with and governed by the laws of the State of Illinois.

**24.2. Estoppel Certificate.** Mortgagor, within fifteen (15) days of a request by the Mortgagee, agrees to furnish from time to time a signed statement setting forth the amount of the Indebtedness and whether or not any default, offset or defense then is alleged to exist against the Indebtedness and, if so, specifying the nature thereof and such other items reasonably requested by Mortgagee.

**24.3. Regulation G and Regulation U Clause.** Mortgagor covenants that no portion of the proceeds evidenced by the Reimbursement Agreement will be used for the purchase or carrying of registered equity securities within the purview and operation of Regulation G or Regulation U issued by the Board of Governors of the Federal Reserve System.

**24.4. Indemnity.** Mortgagor hereby indemnifies, protects, saves and holds forever harmless the Mortgagee, and its directors, officers, employees, successors, assigns, agents and independent contractors, (for the purposes of this paragraph, the "Indemnified Parties") from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses, including, without limitation, court costs and reasonable attorneys' fees and expenses, imposed upon, incurred by or asserted against the Indemnified Parties, or any of them, as a result of, in connection with or arising from (a) the ownership or operation of the Premises or any interest therein or receipt by the Mortgagor of any rent or other sum therefrom; (b) any accident, injury to or death of persons or loss or damage to property occurring in, on or about the Premises or any part thereof or on the adjoining sidewalks, curbs, vaults and vault space, if any, adjacent parking areas, streets or ways, (c) the condition of the Premises or any part thereof or the adjoining sidewalks, curbs, vaults and vault space, if any, the adjacent parking areas, streets or ways; (d) any failure on the part of the Mortgagor or any Guarantor to perform or comply with any of the terms, covenants, conditions and provisions of the loan documents; or (e) the performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof. Any amounts payable to the Indemnified Parties, or any of them, under this paragraph which are not paid within three (3) business days after written demand therefor by the Indemnified Parties shall be so much additional Indebtedness hereby secured and shall bear interest from the date of such demand to the date of receipt by the Indemnified Parties of payment at the rate set forth in the Reimbursement Agreement applicable to a default thereunder, and the Mortgagee shall, in addition to any other right, power or remedy available to the Mortgagee, have the same rights, powers and remedies in the event of nonpayment of any such sum by the Mortgagor as in the case of a default by the Mortgagor in the payment of the Indebtedness. The obligations of the Mortgagor under this paragraph shall survive any termination, release or satisfaction of this Second Mortgage.

**24.5 No Joint Venture; No Third Party Beneficiary.** Mortgagor acknowledges and agrees that in no event shall Mortgagee be deemed to be a partner or joint venturer with it. Without limitation of the foregoing, Mortgagee shall not be deemed to be such a partner or joint venturer on account of its becoming a Mortgagee in possession or exercising any rights pursuant to this Second Mortgage or pursuant to any other instrument or document securing any portion of the Indebtedness or otherwise. No person shall be deemed to have any right or priority under this Second Mortgage to any extent or for any purpose whatsoever, nor shall any other person have any claim or right of action with respect to the Premises or proceeds of the Indebtedness or be deemed a third party beneficiary under this Second Mortgage or under the Loan Documents.

**25. Security Agreement and Financing Statement.**

(a) Mortgagor and Mortgagee agree: (i) that this Second Mortgage shall constitute a Security Agreement within the meaning of the Uniform Commercial Code (the "Code") of the State of Illinois with respect to all sums on deposit with the Mortgagee (the "Deposits") and with respect to any personal property included in the definition herein of the word "Premises", which personal property may not be deemed to form a part of the real estate described in Exhibit A or may not constitute a "fixture" (within the meaning of Section 9-313 of the Code), and all replacements of such property, substitutions for such property, additions to such property, and the proceeds thereof (said property, replacements, substitutions, additions and the proceeds thereof being sometimes herein collectively referred to as the "Collateral"); and (ii) that a security interest in and to the Collateral and the Deposits is hereby granted to the Mortgagee; and (iii) that the Deposits and all of the Mortgagor's right, title and interest therein are hereby assigned to the Mortgagee; all to secure payment of the Indebtedness and to secure performance by the Mortgagor of the terms, covenants and provisions hereof.

(b) In the event of a default under this Second Mortgage, and such is not cured within the period, if any, so provided hereinabove, the Mortgagee, pursuant to the appropriate provisions of the Code, shall have an option to proceed with respect to both the real property and the improvements thereon and Collateral in accordance with its rights, powers and remedies with respect to the real property and the improvements thereon, in which event the default provisions of the Code shall not apply. The parties agree that if the Mortgagee shall elect to proceed with respect to the Collateral separately from the real property and the improvements thereon, thirty (30) days notice of the sale of the Collateral shall be reasonable notice. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by the Mortgagee shall include, but not be limited to, reasonable attorneys' fees and legal expenses incurred by Mortgagee, including, but not limited to, equitable actions and all appeals. The Mortgagor shall, from time to time, on request of the Mortgagee, deliver to the Mortgagee at the cost of the Mortgagor: (i) such further financing statements and security documents and assurances as Mortgagee may require, to the end that the liens and security interests created hereby shall be and remain perfected and protected in accordance with

the requirements of any present or future law; and (ii) an inventory of the Collateral in reasonable detail. The Mortgagor covenants and represents that all Collateral now owned is, or when acquired will be, and that all replacements thereof, substitutions therefor or additions thereto, unless the Mortgagee otherwise consents, will be free and clear of liens, encumbrances, title retention devices and security interests of others.

(c) The Mortgagor and Mortgagee agree, to the extent permitted by law, that: (i) all of the goods described within the definition of the word "Premises" herein are or are to become fixtures on the land described in Exhibit A; (ii) this instrument, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of Sections 9-313 and 9-402 of the Code; and (iii) Mortgagor is a record owner of the land described in Exhibit A.

(d) If the Collateral is sold in connection with a sale of the Premises, Mortgagor shall notify the Mortgagee prior to such sale and shall require as a condition of such sale that the purchaser specifically agree to assume Mortgagor's obligations as to the security interests herein granted and to execute whatever agreements and filings are deemed necessary by the Mortgagee to maintain Mortgagee's first perfected security interest in the Collateral, Deposits and the deposits described in Paragraph 3 above.

## 26. Due on Sale or Further Encumbrance Clause.

(a) In determining whether or not to make the loan evidenced by the Reimbursement Agreement and secured hereby, Mortgagee examined the credit-worthiness of Mortgagor and each member of Mortgagor, found them acceptable, and relied and continues to rely upon same as the means of repayment of the monies due under the Reimbursement Agreement. Mortgagee also evaluated the background and experience of Mortgagor in owning and operating property such as the Premises, found same acceptable, relied and continues to rely upon same as the means of maintaining the value of the Premises. Mortgagor is an entity well-experienced in borrowing money and owning and operating property such as the Premises, was ably represented by a licensed attorney at law in the negotiation and documentation of the loan evidenced by the monies due under the Reimbursement Agreement and secured hereby and bargained at arm's length and without duress of any kind for all of the terms and conditions of the loan, including this provision. Mortgagor recognizes that Mortgagee is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan, if the security for which is purchased by a party other than the original Mortgagor. Mortgagor further recognizes that any additional secondary or junior financing placed upon the Premises or any interest in the Mortgagor, (i) may divert funds which would otherwise be used to pay the monies due under the Reimbursement Agreement; (ii) could result in acceleration and foreclosure by any such additional junior encumbrance which would force Mortgagee to take measures and incur expenses to protect its security; (iii) would detract from the value of the Premises should Mortgagee come into possession thereof with the intention of selling same; and (iv) impair Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Premises.

(b) In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security, both of repayment and of the value of the Premises; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; (iii) allowing Mortgagee to raise the interest rate and/or collect assumption fees; and (iv) keeping the Premises free of subordinate financing liens, Mortgagor agrees that if this paragraph be deemed a restraint on alienation, that it is a reasonable one and that any sale, conveyance, assignment, further encumbrance or other transfer of title to the Premises or any interest therein (whether voluntary or by operation of law) without the Mortgagee's prior written consent shall be a default hereunder for which no notice need be given and no cure period shall be permitted. For the purpose of, and without limiting the generality of, the preceding sentence, the occurrence at any time of any of the following events, shall be deemed to be an unpermitted transfer of title to the Premises and therefore a default hereunder:

(A) any sale, conveyance, assignment or other transfer of, or the grant of a security interest in all or any part of the title to the Premises; or

(B) any sale, conveyance, assignment or other transfer of, or the grant of a security interest in, any membership interest of Mortgagor, or interest in any legal entity directly or indirectly controlling such Mortgagor.

Any consent by the Mortgagee, or any waiver of an event of default, under this paragraph shall not constitute a consent to, or waiver of any right, remedy or power of the Mortgagee upon a subsequent event of default under this Paragraph.

## **27. Hazardous Substances - Status and Indemnity.**

(a) As a material inducement to Mortgagee to disburse the funds to Mortgagor evidenced by the Reimbursement Agreement secured hereby, the Mortgagor does hereby represent and covenant that to the best of Mortgagor's knowledge (i) there is no presence of any Hazardous Substances, as that term is hereinafter defined, on, at, in or affecting the Premises or the groundwater underlying same; (ii) no spills, releases, discharges, or disposal of Hazardous Substances that have occurred or are presently occurring on, in, at or onto the Premises; (iii) no spills or disposal of Hazardous Substances that have occurred or are occurring off the Premises as a result of any construction on, at, in or the operation and use of the Premises; (iv) there is no presence of any equipment containing polychlorinated biphenyl ("PCB"); (v) there is no presence of any asbestos in use or on the Premises; and (vi) there are not and have never been any underground storage tanks on the Premises.

(b) In connection with construction in, at or on the Premises or the operation and use of the Premises, there has been no failure to comply with all applicable local, state, and federal environmental laws, regulations, ordinances, and administrative and judicial orders relating to the generation, recycling, reuse, sale, storage, handling, transport, and disposal of any Hazardous Substances.

(c) In addition to all other obligations of the Mortgagor to indemnify the Mortgagee, Mortgagor agrees to indemnify and hold Mortgagee harmless from and against any and all claims, demands, damages, losses, liens, liabilities, penalties, fines, lawsuits, and other proceedings, costs, and expenses (including without limitation reasonable attorney's fees) arising directly or indirectly from, out of, or in any way connected with (i) the presence of any Hazardous Substances in, at, on or off the Premises or (ii) any violation or alleged violation of any local, state, or federal environmental law, regulation, ordinance, or administrative or judicial order relating to Hazardous Substances, whether attributable to events occurring before or after Mortgagor's acquisition of the Premises. The obligations of Mortgagor under this paragraph shall survive any termination, release or satisfaction of this Second Mortgage.

(d) Mortgagor covenants that they shall not create, store, or release or allow the creation, storage or release of any Hazardous Substances on the Premises and, at Mortgagor's sole cost and expense, they shall remove or cause to be removed any Hazardous Substances on, at or in the Premises or the groundwater underlying same.

(e) As used in this Second Mortgage, "Hazardous Substances" shall mean: Any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous or toxic substance, or other similar term by any federal, state, or local environmental statute, regulation, or ordinance presently in effect or that may be promulgated in the future as such statutes, regulations, or ordinances may be amended from time to time.

**28. Future Advances.** This Second Mortgage is given to secure payment due under the Reimbursement Agreement, whether the entire amount thereof shall have been advanced to the Mortgagor at the date hereof, or at a later date, and to secure the payment and performance of all other liabilities and obligations of Mortgagor under the Reimbursement Agreement or under the Loan Documents, and any other amount or amounts that may be added to the Indebtedness under the terms of this Second Mortgage, all of which Indebtedness being equally secured with and having the same priority as any amounts advanced at the date hereof. It is agreed that any future advances made by Mortgagee to or for the benefit of Mortgagor from time to time under this Second Mortgage or the Loan Documents shall be deemed to be obligatory, and the amount of any such advances and all interest accruing thereon, shall be equally secured by this Second Mortgage and shall have the same priority as all amounts, if any, advanced as of the date hereof and be subject to all of the terms and provisions of this Second Mortgage. At all times, regardless of whether any Letter of Credit proceeds have been disbursed, the total amount of Indebtedness that may be so secured may increase or decrease from time to time, but the total unpaid balance so secured at any one time, plus interest thereon, plus any disbursements made for the payment of taxes, levies, insurance or other liens, loan commissions, service charges, damages, attorneys fees, expenses, charges or encumbrances on the Premises, plus interest on such disbursements at the Delinquency Rate, shall not exceed 250% of the aggregate face amount of the monies due under the Reimbursement Agreement.

# UNOFFICIAL COPY

99526712

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

**5060 N. KIMBERLY BUILDING LLC,**  
an Illinois limited liability company

By: \_\_\_\_\_

Mark McCracken, Member

STATE OF ILLINOIS            )  
  ) SS.  
COUNTY OF COOK            )

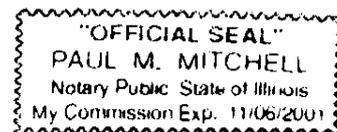
I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that Mark McCracken, personally known to me to be the duly authorized member of 5060 N. KIMBERLY BUILDING LLC, an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such duly authorized member, he signed and delivered the said instrument as his free and voluntary act, and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and official seal this 26th day of May, 1999.

\_\_\_\_\_  
Notary Public

Commission expires \_\_\_\_\_

Doc:58667/2/9919.000/



## EXHIBIT A

### LEGAL DESCRIPTION

THAT PART OF LOT 1 (EXCEPT PART TAKEN FOR ELSTON AVENUE) IN KIRSLING AND KENDBERG'S PARTITION OF LOTS 5 AND 6 OF REE'S SUBDIVISION OF THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTHEASTERLY OF THE SOUTHEASTERLY LINE OF THE RIGHT OF WAY OF JUNCTION RAILWAY COMPANY (NOW OPERATED BY CHICAGO AND NORTHWESTERN RAILWAY COMPANY) AND SOUTHWESTERLY OF A LINE DRAWN PARALLEL TO AND 555 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF SAID ELSTON AVENUE (SAID 555 FEET MEASURED ALONG THE SOUTHEASTERLY LINE OF LOT 1) IN COOK COUNTY, ILLINOIS

Commonly known as: 5060 N. Kimberly, Chicago, Illinois

P.I.N.: 13-10-302-009

# UNOFFICIAL COPY

## EXHIBIT B EASEMENTS, RESTRICTIONS AND LIMITATIONS

1. Taxes not yet due and payable.
2. Commercial Mortgage, Security Agreement and Fixture Filing dated June 30, 1994 and recorded July 5, 1994 as Document 94583431 made by Chicago Title and Trust Company, as Trustee under Trust Agreement dated May 12, 1994 and known as Trust Number 1099464 to Cole Taylor Bank, a corporation of Illinois to Secure a Note for \$740,000.00, as modified.
3. Assignment of Leases and Rents recorded July 5, 1994 as Document No. 94583432 made by Chicago Title and Trust Company, as Trustee under Trust Agreement dated May 12, 1994 and known as Trust Number 1099464 to Cole Taylor Bank.
4. Easement reserved to the Grantor, its successors and assigns to use tracks of Chicago and Northwestern Railway Company and to use a private roadway existing on the Southeasterly 15 feet of the land as set forth in the Quit Claim Deed dated September 1, 1936 and recorded October 3, 1939 as document 12377406 from P.F. Conway Company, a corporation of Delaware to Guo C. Wolff Coal Company, a corporation of Illinois.
5. Spur and switch track rights.
6. Right, title and interest of the Commonwealth Edison Company under unrecorded Service Agreements dated March 24, 1938, September 7, 1960 and October 20, 1965, granting the Commonwealth Edison Company the right to cross the land to serve additional customers.
7. Easement for public utilities over the southerly line east by approximately 15 feet and northerly line of the land as disclosed by survey.
8. Easement for sewers and catch basins as shown on survey 901105 by Robert Biederman dated June 5, 1990.
9. Possible party wall and party wall rights along the northeasterly line of the land, as disclosed by survey made by Gremley & Biederman, Inc. dated May 31, 1990 and recertified June 5, 1994 Order No. 901105.