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This Document Prepared by and
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Bank of America National Trust
and Savings Association
231 South LaSalle Street
Chicago, Illinois 60697
Attention: Susan J. Goldstein, Esq.
The Private Bank
IL1-231-03-10

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Cook County Recorder 63.50



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MORTGAGE
with Assignment of Rents, Security Agreement and
Fixture Filing
(Illinois)

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The parties to this Mortgage, made as of July 12, 1999, are ALLISON DAVIS and SUSAN O'CONNOR ("Mortgagor"), and BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION ("Mortgagee").

*husband and wife

1. Grant and Secured Obligations

1.1 Grant. For the purpose of securing payment and performance of the Secured Obligations defined and described in Section 1.2, Mortgagor hereby irrevocably and unconditionally grants, conveys, mortgages and warrants to Mortgagee, with right of entry and possession, all estate, right, title and interest which Mortgagor now has or may later acquire in and to the following property (all or any part of such property, or any interest in all or any part of it, as the context may require, the "Property"):

(a) the real property located in the County of Cook, State of Illinois, as described in Exhibit A, together with all existing and future easements and rights affording access to it (the "Land"); together with

(b) all buildings, structures and improvements now located or later to be constructed on the Land (the "Improvements"); together with

(c) all existing and future appurtenances, privileges, easements, franchises and tenements of the Land, including all minerals, oil, gas, other hydrocarbons and associated

substances, sulphur, nitrogen, carbon dioxide, helium and other commercially valuable substances which may be in, under or produced from any part of the Land, all development rights and credits, air rights, water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, and any land lying in the streets, roads or avenues, open or proposed, in front of or adjoining the Land and Improvements; together with

(d) all existing and future leases, subleases, subtenancies, licenses, occupancy agreements and concessions ("Leases") relating to the use and enjoyment of all or any part of the Land and Improvements, and any and all guaranties and other agreements relating to or made in connection with any of such leases; together with

(e) all real property and improvements on it, and all appurtenances and other property and interests of any kind or character, whether described in Exhibit A or not, which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Land and Improvements; together with

(f) all goods, materials, supplies, chattels, furniture, fixtures, equipment and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Land and Improvements, whether stored on the Land or elsewhere, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment, all of which shall be considered to the fullest extent of the law to be real property for purposes of this Mortgage; together with

(g) all building materials, equipment, work in process or other personal property of any kind, whether stored on the Land or elsewhere, which have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Land or Improvements; together with

(h) all rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Mortgagor with third parties (including all utility deposits), contract rights, development and use rights, governmental permits and licenses, applications, architectural and engineering plans, specifications and drawings, as-built drawings, chattel paper, instruments, documents, notes, drafts and letters of credit (other than letters of credit in favor of Mortgagee), which arise from or relate to construction on the Land or to any business now or later to be conducted on it, or to the Land and Improvements generally; together with

(i) all proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the Land, Improvements or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in

connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Land, Improvements or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud or concealment of a material fact; together with

(j) all books and records pertaining to any and all of the property described above, including computer-readable memory and any computer hardware or software necessary to access and process such memory ("**Books and Records**"); together with

(k) all proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

Capitalized terms used above and elsewhere in this Mortgage without definition have the meanings given them in the Loan Agreement referred to in subsection 1.2(a)(i) below.

1.2 **Secured Obligations.**

(a) Mortgagor makes the grant, conveyance, and mortgage set forth in Section 1.1 and grants the security interest set forth in Article III for the purpose of securing the following obligations (the "**Secured Obligations**") in any order of priority that Mortgagee may choose:

(i) Payment of all obligations at any time owing under that certain Loan Agreement (the "**Loan Agreement**"), dated as of July 12, 1999, as amended from time to time, payable by Mortgagor as borrower in the maximum principal amount of One Million Two Hundred Thousand Dollars (\$1,200,000) to Mortgagee and with a maturity date of July 12, 2015; and

(ii) Payment and performance of all obligations of Mortgagor under this Mortgage; and

(iii) Payment and performance of any obligations of Mortgagor under any other documents or instruments which are executed by Mortgagor pursuant to the Loan Agreement (the "**Loan Documents**"); and

(iv) Payment and performance of all future advances and other obligations that Mortgagor or any successor in ownership of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Mortgagee, when a writing evidences the parties' agreement that the advance or obligation be secured by this Mortgage; and

(v) Payment and performance of all modifications, amendments, extensions, and renewals, however evidenced, of any of the Secured Obligations.

(b) All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of the Secured Obligations and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. These terms include any provisions in the Loan Agreement which permit borrowing, repayment and reborrowing, or which provide that the interest rate on one or more of the Secured Obligations may vary from time to time.

2. Assignment of Rents.

2.1 Assignment. Mortgagor hereby irrevocably, absolutely, presently and unconditionally assigns to Mortgagee all rents, royalties, issues, profits, revenue, income, accounts, proceeds and other benefits of the Property, whether now due, past due or to become due, including all prepaid rents and security deposits (some or all collectively, as the context may require, "Rents"). This is an absolute assignment, not an assignment for security only.

2.2 Grant of License. Mortgagee hereby confers upon Mortgagor a license ("License") to collect and retain the Rents as they become due and payable, so long as no Event of Default, as defined in Section 6.2, shall exist and be continuing. If an Event of Default has occurred and is continuing, Mortgagee shall have the right, which it may choose to exercise in its sole discretion, to terminate this License without notice to or demand upon Mortgagor, and without regard to the adequacy of Mortgagee's security under this Mortgage.

2.3 Collection and Application of Rents. Subject to the License granted to Mortgagor under Section 2.2, Mortgagee has the right, power and authority to collect any and all Rents. Mortgagor hereby appoints Mortgagee its attorney-in-fact to perform any and all of the following acts, if and at the times when Mortgagee in its sole discretion may so choose:

- (a) demand, receive and enforce payment of any and all Rents; or
- (b) give receipts, releases and satisfactions for any and all Rents; or
- (c) sue either in the name of Mortgagor or in the name of Mortgagee for any and all Rents.

Mortgagee's right to the Rents does not depend on whether or not Mortgagee takes possession of the Property as permitted under subsection 6.3(c). In Mortgagee's sole discretion, it may choose to collect Rents either with or without taking possession of the Property. Mortgagee shall apply all Rents collected by it in the manner provided under Section 6.6. If an Event of Default occurs while Mortgagee is in possession of all or part of the Property and is collecting and applying Rents as permitted under this Mortgage, Mortgagee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Mortgage and at law or in equity.

2.4 **Mortgagee Not Responsible.** Under no circumstances shall Mortgagee have any duty to produce Rents from the Property. Regardless of whether or not Mortgagee, in person or by agent, takes actual possession of the Land and Improvements, unless Mortgagee agrees in writing to the contrary, Mortgagee is not and shall not be deemed to be:

- (a) a "mortgagee in possession" for any purpose; or
- (b) responsible for performing any of the obligations of the lessor under any lease; or
- (c) responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair or control of the Property; or
- (d) liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it.

2.5 **Leasing.** Mortgagor shall not accept any deposit or prepayment of Rents for any rental period exceeding one (1) month without Mortgagee's prior written consent. Mortgagor shall not lease the Property or any part of it except strictly in accordance with the Loan Agreement. Mortgagor shall apply all Rents in the manner required by the Loan Agreement.

3. **Grant of Security Interest.**

3.1 **Security Agreement.** The parties intend for this Mortgage to create a lien on the Property, and an absolute assignment of the Rents, all in favor of Mortgagee. The parties acknowledge that some of the Property and some or all of the Rents, may be or be determined to be personal property, Mortgagor as debtor hereby grants Mortgagee as secured party a security interest in all such Property and Rents, to secure payment and performance of the Secured Obligations. This Mortgage constitutes a security agreement under the Illinois Uniform Commercial Code, covering all such Property and Rents.

3.2 **Financing Statements.** Mortgagor shall execute one or more financing statements and such other documents as Mortgagee may from time to time require to perfect or continue the perfection of Mortgagee's security interest in any Property or Rents. As provided in Section 5.9, Mortgagor shall pay all fees and costs that Mortgagee may incur in filing such documents in public offices and in obtaining such record searches as Mortgagee may reasonably require. In case Mortgagor fails to execute any financing statements or other documents for the perfection or continuation of any security interest, Mortgagor hereby appoints Mortgagee as its true and lawful attorney-in-fact to execute any such documents on its behalf. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall never be construed as in any way derogating from or impairing this Mortgage or the rights or obligations of the parties under it.

3.3 **Construction Mortgage.** This Mortgage also constitutes a "Construction Mortgage" as defined in the Uniform Commercial Code adopted by the jurisdiction in which the Property is located to the extent that it secures an obligation incurred for the construction of improvements, including the acquisition cost of the land.

4. **Fixture Filing.**

This Mortgage constitutes a financing statement filed as a fixture filing under Sections 9-313 and 9-402 of the Illinois Uniform Commercial Code, as amended or recodified from time to time, covering any Property which now is or later may become fixtures attached to the Land or Improvements.

5. **Rights and Duties of the Parties**

5.1 **Representations and Warranties.** Mortgagor represents and warrants that, except as previously disclosed to Mortgagee in a writing making reference to this Section:

- (a) Mortgagor lawfully possesses and holds fee simple title to all of the Land and Improvements;
- (b) Mortgagor has or will have good title to all Property other than the Land and Improvements;
- (c) Mortgagor has the full and unlimited power, right and authority to encumber the Property and assign the Rents;
- (d) this Mortgage creates a first and prior lien on the Property;
- (e) the Property includes all property and rights which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Land and Improvements;
- (f) Mortgagor owns any Property which is personal property free and clear of any security agreements, reservations of title or conditional sales contracts, and there is no financing statement affecting such personal property on file in any public office; and
- (g) Mortgagor's place of business, or its chief executive office if it has more than one place of business, is located at the address specified below.

5.2 **Taxes, Assessments and Deposits.** Mortgagor shall pay prior to delinquency all taxes, levies, charges and assessments, including assessments on appurtenant water stock, imposed by any public or quasi-public authority or utility company which are (or if not paid, may become) a lien on all or part of the Property or any interest in it, or which may cause any decrease in the value of the Property or any part of it. If any such taxes, levies, charges or

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assessments become delinquent, Mortgagee may require Mortgagor to present evidence that they have been paid in full, on ten (10) days' written notice by Mortgagee to Mortgagor.

5.3 **Performance of Secured Obligations.** Mortgagor shall promptly pay and perform each Secured Obligation in accordance with its terms.

5.4 **Liens, Charges and Encumbrances.** Mortgagor shall immediately discharge any lien on the Property which Mortgagee has not consented to in writing. Mortgagor shall pay when due each obligation secured by or reducible to a lien, charge or encumbrance which now does or later may encumber or appear to encumber all or part of the Property or any interest in it, whether the lien, charge or encumbrance is or would be senior or subordinate to this Mortgage.

5.5 **Damages and Insurance and Condemnation Proceeds.**

(a) Mortgagor hereby absolutely and irrevocably assigns to Mortgagee, and authorizes the payor to pay to Mortgagee, the following claims, causes of action, awards, payments and rights to payment:

(i) all awards of damages and all other compensation payable directly or indirectly because of a condemnation, proposed condemnation or taking for public or private use which affects all or part of the Property or any interest in it; and

(ii) all other awards, claims and causes of action, arising out of any warranty affecting all or any part of the Property, or for damage or injury to or decrease in value of all or part of the Property or any interest in it; and

(iii) all proceeds of any insurance policies payable because of loss sustained to all or part of the Property; and

(iv) all interest which may accrue on any of the foregoing.

(b) Mortgagor shall immediately notify Mortgagee in writing if:

(i) any damage occurs or any injury or loss is sustained in the amount of \$25,000 or more to all or part of the Property, or any action or proceeding relating to any such damage, injury or loss is commenced; or

(ii) any offer is made, or any action or proceeding is commenced, which relates to any actual or proposed condemnation or taking of all or part of the Property.

(c) If Mortgagee chooses to do so, it may in its own name appear in or

prosecute any action or proceeding to enforce any cause of action based on warranty, or for damage, injury or loss to all or part of the Property, and it may make any compromise or settlement of the action or proceeding. Mortgagee, if it so chooses, may participate in any action or proceeding relating to condemnation or taking of all or part of the Property, and may join Mortgagor in adjusting any loss covered by insurance.

(d) All proceeds of these assigned claims, other property and rights which Mortgagor may receive or be entitled to shall be paid to Mortgagee. In each instance, Mortgagee shall apply those proceeds first toward reimbursement of all of Mortgagee's costs and expenses of recovering the proceeds, including attorneys' fees. If, in any instance, each and all of the following conditions are satisfied in Mortgagee's reasonable judgment, Mortgagee shall permit Mortgagor to use the balance of the proceeds ("**Net Claims Proceeds**") to pay costs of repairing or reconstructing the Property in the manner described below:

(i) The plans and specifications, cost breakdown, construction contract, construction schedule, contractor and payment and performance bond for the work of repair or reconstruction must all be acceptable to Mortgagee.

(ii) Mortgagee must receive evidence satisfactory to it that after repair or reconstruction, the Property would be at least as valuable as it was immediately before the damage or condemnation occurred.

(iii) The Net Claims Proceeds must be sufficient in Mortgagee's determination to pay for the total cost of repair or reconstruction, including all associated development costs and interest projected to be payable on the Secured Obligations until the repair or reconstruction is complete; or Mortgagor must provide its own funds in an amount equal to the difference between the Net Claims Proceeds and a reasonable estimate, made by Mortgagor and found acceptable by Mortgagee, of the total cost of repair or reconstruction.

(iv) Mortgagee must receive evidence satisfactory to it that all leases which it may find acceptable will continue after the repair or reconstruction is complete.

(v) No Event of Default shall have occurred and be continuing.

If Mortgagee finds that the conditions are met, Mortgagee shall hold the Net Claims Proceeds and any funds which Mortgagor is required to provide in a noninterest-bearing account and shall disburse them to Mortgagor to pay costs of repair or reconstruction upon presentation of evidence reasonably satisfactory to Mortgagee that repair or reconstruction has been completed satisfactorily and lien-free. However, if Mortgagee finds that one or more of the conditions are not satisfied, it may apply the Net Claims Proceeds to pay or prepay (without premium) some or all of the Secured Obligations in such order and proportions as it in its sole discretion may choose.

5.6 Maintenance and Preservation of Property.

(a) Mortgagor shall insure the Property as required by the Loan Agreement and keep the Property in good condition and repair.

(b) Mortgagor shall not remove or demolish the Property or any part of it, or alter, restore or add to the Property, or initiate or allow any change in any zoning or other land use classification which affects the Property or any part of it, except as permitted or required by the Loan Agreement or with Mortgagee's express prior written consent in each instance.

(c) If all or part of the Property becomes damaged or destroyed, Mortgagor shall promptly and completely repair and/or restore the Property in a good and workmanlike manner in accordance with sound building practices, regardless of whether or not Mortgagee agrees to disburse insurance proceeds or other sums to pay costs of the work of repair or reconstruction under Section 5.5.

(d) Mortgagor shall not commit or allow any act upon or use of the Property which would violate: (i) any applicable law or order of any governmental authority, whether now existing or later to be enacted and whether foreseen or unforeseen; or (ii) any public or private covenant, condition, restriction or equitable servitude affecting the Property. Mortgagor shall not bring or keep any article on the Property or cause or allow any condition to exist on it, if that could invalidate or would be prohibited by any insurance coverage required to be maintained by Mortgagor on the Property or any part of it under the Loan Agreement.

(e) Mortgagor shall not commit or allow waste of the Property, including those acts or omissions characterized under the Loan Agreement as waste which arises out of "Hazardous Substances" (as defined in the Loan Agreement).

(f) Mortgagor shall perform all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value.

5.7 Releases, Extensions, Modifications and Additional Security. From time to time, Mortgagee may perform any of the following acts without incurring any liability or giving notice to any person:

(a) release any person liable for payment of any Secured Obligation;

(b) extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation;

(c) accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security;

- (d) alter, substitute or release any property securing the Secured Obligations;
- (e) consent to the making of any plat or map of the Property or any part of it;
- (f) join in granting any easement or creating any restriction affecting the Property; or
- (g) join in any subordination or other agreement affecting this Mortgage or the lien of it.

5.8 **Release.** When all of the Secured Obligations have been paid in full and all fees and other sums owed by Mortgagor under Section 5.9 have been received, Mortgagee shall release this Mortgage, the lien created thereby, and all notes and instruments evidencing the Secured Obligations. Mortgagor shall pay any costs of recordation of such release.

5.9 **Compensation, Exculpation, Indemnification.**

(a) Mortgagor agrees to pay fees in the maximum amounts legally permitted, or reasonable fees as may be charged by Mortgagee when the law provides no maximum limit, for any services that Mortgagee may render in connection with this Mortgage, including Mortgagee's providing a statement of the Secured Obligations or providing the release pursuant to Section 5.8. Mortgagor shall also pay or reimburse all of Mortgagee's costs and expenses which may be incurred in rendering any such services. Mortgagor further agrees to pay or reimburse Mortgagee for all costs, expenses and other advances which may be incurred or made by Mortgagee in any efforts to enforce any terms of this Mortgage, including any rights or remedies afforded to Mortgagee under Section 6.3, whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Mortgage, including attorneys' fees and other legal costs, costs of any Foreclosure Sale (as defined in subsection 6.3(i)) and any cost of evidence of title. If Mortgagee chooses to dispose of Property through more than one Foreclosure Sale, Mortgagor shall pay all costs, expenses or other advances that may be incurred or made by Mortgagee in each of those Foreclosure Sales.

(b) Mortgagee shall not be directly or indirectly liable to Mortgagor or any other person as a consequence of any of the following:

(i) Mortgagee's exercise of or failure to exercise any rights, remedies or powers granted to it in this Mortgage;

(ii) Mortgagee's failure or refusal to perform or discharge any obligation or liability of Mortgagor under any agreement related to the Property or under this Mortgage; or

(iii) any loss sustained by Mortgagor or any third party resulting from

Mortgagee's failure to lease the Property, or from any other act or omission of Mortgagee in managing the Property, after an Event of Default, unless the loss is caused by the willful misconduct and bad faith of Mortgagee.

Mortgagor hereby expressly waives and releases all liability of the types described above, and agrees that no such liability shall be asserted against or imposed upon Mortgagee.

(c) Mortgagor agrees to indemnify Mortgagee against and hold it harmless from all losses, damages, liabilities, claims, causes of action, judgments, court costs, attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other costs and expenses which it may suffer or incur:

(i) in performing any act required or permitted by this Mortgage or any of the other Loan Documents or by law;

(ii) because of any failure of Mortgagor to perform any of its obligations; or

(iii) because of any alleged obligation of or undertaking by Mortgagee to perform or discharge any of the representations, warranties, conditions, covenants or other obligations in any document relating to the Property other than the Loan Documents.

This agreement by Mortgagor to indemnify Mortgagee shall survive the release and cancellation of any or all of the Secured Obligations and the full or partial release of this Mortgage.

(d) Mortgagor shall pay all obligations to pay money arising under this Section 5.9 immediately upon demand by Mortgagee. Each such obligation shall be added to, and considered to be part of, the principal balance under the Loan Agreement, and shall bear interest from the date the obligation arises at the rate then being applied to the principal balance under the Loan Agreement.

5.10 Defense and Notice of Claims and Actions. At Mortgagor's sole expense, Mortgagor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this Mortgage and the rights and powers of Mortgagee created under it, against all adverse claims. Mortgagor shall give Mortgagee prompt notice in writing if any claim is asserted which does or could affect any of these matters, or if any action or proceeding is commenced which alleges or relates to any such claim.

5.11 Subrogation. Mortgagee shall be subrogated to the liens of all encumbrances, whether released of record or not, which are discharged in whole or in part by Mortgagee in accordance with this Mortgage or with the proceeds of any loan secured by this Mortgage.

5.12 Site Visits, Observation and Testing. Mortgagee and its agents and

representatives shall have the right at any reasonable time to enter and visit the Property for the purpose of performing appraisals. In addition, Mortgagee and its agents and representatives shall have the right at any reasonable time to enter and visit the Property for the purposes of observing the Property, taking and removing soil or groundwater samples, and conducting tests on any part of the Property. Mortgagee has no duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation or testing by Mortgagee shall impose any liability on Mortgagee. In no event shall any site visit, observation or testing by Mortgagee be a representation that Hazardous Substances are or are not present in, on or under the Property, or that there has been or shall be compliance with any law, regulation or ordinance pertaining to Hazardous Substances or any other applicable governmental law. Neither Mortgagor nor any other party is entitled to rely on any site visit, observation or testing by Mortgagee. Mortgagee owes no duty of care to protect Mortgagor or any other party against, or to inform Mortgagor or any other party of, any Hazardous Substances or any other adverse condition affecting the Property. Mortgagee shall give Mortgagor reasonable notice before entering the Property. Mortgagee shall make reasonable efforts to avoid interfering with Mortgagor's use of the Property in exercising any rights provided in this Section.

6. Defaults and Remedies

6.1 Accelerating Transfers

(a) "Accelerating Transfer" means any sale, contract to sell, conveyance, encumbrance, lease not expressly permitted under the Loan Agreement, or other transfer of all or any material part of the Property or any interest in it, whether voluntary, involuntary, by operation of law or otherwise.

(b) Mortgagor acknowledges that Mortgagee is making one or more advances under the Loan Agreement in reliance on the expertise, skill and experience of Mortgagor; thus, the Secured Obligations include material elements similar in nature to a personal service contract. In consideration of Mortgagee's reliance, Mortgagor agrees that Mortgagor shall not make any Accelerating Transfer, unless the transfer is preceded by Mortgagee's express written consent to the particular transaction and transferee. Mortgagee may withhold such consent in its sole discretion. If any Accelerating Transfer occurs, Mortgagee in its sole discretion may declare all of the Secured Obligations to be immediately due and payable, and Mortgagee may invoke any rights and remedies provided by Section 6.3 of this Mortgage.

6.2 Events of Default. Mortgagor will be in default under this Mortgage upon the occurrence of any one or more of the following events (some or all collectively, "Events of Default"; any one singly, an "Event of Default").

- (a) An "Event of Default" occurs under the Loan Agreement; or,
- (b) Mortgagor fails to perform any obligation arising under this Mortgage.

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6.3 **Remedies.** At any time after an Event of Default, Mortgagee shall be entitled to invoke any and all of the rights and remedies described below, in addition to all other rights and remedies available to Mortgagee at law or in equity. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

(a) **Acceleration.** Mortgagee may declare any or all of the Secured Obligations to be due and payable immediately.

(b) **Receiver.** Mortgagee shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under or through Mortgagor, and without regard for the solvency or insolvency of Mortgagor or the then value of the Property, to the extent permitted by applicable law, be entitled to have a receiver appointed for all or any part of the Property and the Rents, and the proceeds, issues and profits thereof, with the rights and powers referenced below and such other rights and powers as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Such receiver shall have all powers and duties prescribed by Section 15-1704 of the Act (as defined in subsection (g) below), all other powers which are necessary or usual in such cases for the protection, possession, control, management and operation of the Property, and such rights and powers as Mortgagee would have, upon entering and taking possession of the Property under subsection (c) below.

(c) **Entry.** Mortgagee, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and may also do any and all other things in connection with those actions that Mortgagee may in its sole discretion consider necessary and appropriate to protect the security of this Mortgage. Such other things may include: taking and possession all of Mortgagor's or the then owner's books and records; entering into, enforcing, modifying or canceling leases on such terms and conditions as Mortgagee may consider proper; obtaining and evicting tenants; fixing or modifying Rents; collection and receiving any payment of money owing to Mortgagee; completing any unfinished construction; and/or contracting for and making repairs and alterations. If Mortgagee so requests, Mortgagor shall assemble all of the Property that has been removed from the Land and make all of it available to Mortgagee at the site of the Land. Mortgagor hereby irrevocably constitutes and appoints Mortgagee as Mortgagor's attorney-in-fact to perform such acts and execute such documents as Mortgagee in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Mortgagor's name on any instruments.

(d) **Cure; Protection of Security.** Mortgagee may cure any breach or default of Mortgagor, and if it chooses to do so in connection with any such cure, Mortgagee may also enter the Property and/or do any and all other things which it may in its sole discretion consider necessary and appropriate to protect the security of this Mortgage. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Mortgagee under, this Mortgage; paying, purchasing,

contesting or compromising any encumbrance, charge, lien or claim of lien which in Mortgagee's sole judgment is or may be senior in priority to this Mortgage, such judgment of Mortgagee or to be conclusive as among the parties to this Mortgage; obtaining insurance and/or paying any premiums or charges for insurance required to be carried under the Loan Agreement; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Mortgagee. Mortgagee may take any of the actions permitted under this subsection 6.2(d) either with or without giving notice to any person. Any amounts expended by Mortgagee under this Section 6.2(d) shall be secured by this Mortgage.

(e) **Uniform Commercial Code Remedies.** Mortgagee may exercise any or all of the remedies granted to a secured party under the Illinois Uniform Commercial Code.

(f) **Foreclosure; Lawsuits.** Mortgagee shall have the right, in one or several concurrent or consecutive proceedings, to foreclose the lien hereof upon the Property or any part thereof, for the Secured Obligations, or any part thereof, by any proceedings appropriate under applicable law. Mortgagee or its nominee may bid and become the purchaser of all or any part of the Property at any foreclosure or other sale hereunder, and the amount of Mortgagee's successful bid shall be credited on the Secured Obligations. Without limiting the foregoing, Mortgagee may proceed by a suit or suits in law or equity, whether for specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure under the judgment or decree of any court of competent jurisdiction.

(g) **Other Remedies.** Mortgagee may exercise all rights and remedies contained in any other instrument, document, agreement or other writing heretofore, concurrently or in the future executed by Mortgagor or any other person or entity in favor of Mortgagee in connection with the Secured Obligations or any part thereof, without prejudice to the right of Mortgagee thereafter to enforce any appropriate remedy against Mortgagor. Mortgagee shall have the right to pursue all remedies afforded to a mortgagee under the Illinois Mortgage Foreclosure Law (the "Act") and other applicable law, and shall have the benefit of all of the provisions of the Act and such applicable law, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

(h) **Sale of Personal Property.** Mortgagee shall have the discretionary right to cause some or all of the Property, which constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law.

(i) For purposes of this power of sale, Mortgagee may elect to treat as personal property any Property which is intangible or which can be severed from the Land or Improvements without causing structural damage. If it chooses to do

so, Mortgagee may dispose of any personal property, in any manner permitted by Article 9 of the Illinois Uniform Commercial Code, including any public or private sale, or in any manner permitted by any other applicable law.

(ii) In connection with any sale or other disposition of such Property, Mortgagor agrees that the following procedures constitute a commercially reasonable sale: Mortgagee shall mail written notice of the sale to Mortgagor not later than forty-five (45) days prior to such sale. Once per week during the four weeks immediately preceding such sale, Mortgagee will publish notice of the sale in a local daily newspaper of general circulation. Upon receipt of any written request, Mortgagee will make the Property available to any bona fide prospective purchaser for inspection during reasonable business hours. Notwithstanding, Mortgagee shall be under no obligation to consummate a sale if, in its judgment, none of the offers received by it equals the fair value of the Property offered for sale. The foregoing procedures do not constitute the only procedures that may be commercially reasonable.

(i) **Single or Multiple Foreclosure Sales.** If the Property consists of more than one lot, parcel or item of property, Mortgagee may:

(i) designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition; and

(ii) elect to dispose of the lots, parcels and/or items through a single consolidated sale or disposition to be held or made under or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale; or through two or more such sales or dispositions; or in any other manner Mortgagee may deem to be in its best interest. (any foreclosure sale or disposition as permitted by the terms hereof is sometimes referred to herein as a "Foreclosure Sale"; and any two or more such sales, "Foreclosure Sales").

If it chooses to have more than one Foreclosure Sale, Mortgagee at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as it may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the liens of this Mortgage on any part of the Property which has not been sold, until all of the Secured Obligations have been paid in full.

6.4 **Credit Bids.** At any Foreclosure Sale, any person, including Mortgagor or Mortgagee, may bid for and acquire the Property or any part of it to the extent permitted by then applicable law. Instead of paying cash for that property, Mortgagee may settle for the purchase price by crediting the sales price of the property against the following obligations:

(a) First, the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Mortgagor is obligated to pay or

reimburse Mortgagee under Section 5.9; and

(b) Second, all other Secured Obligations in any order and proportions as Mortgagee in its sole discretion may choose.

6.5 **Application of Foreclosure Sale Proceeds.** The proceeds of any Foreclosure Sale shall be applied in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Mortgagor is obligated to reimburse Mortgagee under Section 5.9;

(b) Second, to pay the portion of the Secured Obligations attributable to any sums expended or advanced by Mortgagee under the terms of this Mortgage which then remain unpaid;

(c) Third, to pay all other Secured Obligations in any order and proportions as Mortgagee in its sole discretion may choose; and

(d) Fourth, to remit the remainder, if any, to the person or persons entitled to it.

6.6 **Application of Rents and Other Sums.** Mortgagee shall apply any and all Rents collected by it, and any and all sums other than proceeds of a Foreclosure Sale which Mortgagee may receive or collect under Section 6.3, in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the costs and expenses of operation and collection that may be incurred by Mortgagee or any receiver;

(b) Second, to pay all other Secured Obligations in any order and proportions as Mortgagee in its sole discretion may choose; and

(c) Third, to remit the remainder, if any, to the person or persons entitled to it.

Mortgagee shall have no liability for any funds which it does not actually receive.

7. **Miscellaneous Provisions.**

7.1 **Additional Provisions.** The Loan Documents fully state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this Mortgage. The Loan Documents also grant further rights to Mortgagee and contain further agreements and affirmative and negative covenants by Mortgagor which apply to this Mortgage and to the Property.

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7.2 No Waiver or Cure.

(a) Each waiver by Mortgagee must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Mortgagee to take action on account of any default of Mortgagor. Consent by Mortgagee to any act or omission by Mortgagor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Mortgagee's consent to be obtained in any future or other instance.

(b) If any of the events described below occurs, that event alone shall not: cure or waive any breach, Event of Default or notice of default under this Mortgage or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and all other defaults under the Loan Documents have been cured); or impair the security of this Mortgage; or prejudice Mortgagee or any receiver in the exercise of any right or remedy afforded any of them under this Mortgage; or be construed as an affirmation by Mortgagee of any tenancy, lease or option, or a subordination of the lien of this Mortgage.

(i) Mortgagee, its agent or a receiver takes possession of all or any part of the Property in the manner provided in subsection 6.3(c).

(ii) Mortgagee collects and applies Rents as permitted under Sections 2.3 and 6.6, either with or without taking possession of all or any part of the Property.

(iii) Mortgagee receives and applies to any Secured Obligation proceeds of any Property, including any proceeds of insurance policies, condemnation awards, or other claims, property or rights assigned to Mortgagee under Section 5.5.

(iv) Mortgagee makes a site visit, observes the Property and/or conducts tests as permitted under Section 5.12 of this Mortgage or Section 8.5 of the Loan Agreement.

(v) Mortgagee receives any sums under this Mortgage or any proceeds of any collateral held for any of the Secured Obligations, and applies them to one or more Secured Obligations.

(vi) Mortgagee or any receiver invokes any right or remedy provided under this Mortgage.

7.3 Powers of Mortgagee.

(a) If Mortgagee performs any act which it is empowered or authorized to perform under this Mortgage, including any act permitted by Section 5.7 or subsection 6.3(d), that act alone shall not release or change the personal liability of any person for the payment and performance of the Secured Obligations then outstanding, or the lien of this Mortgage on all or the remainder of the Property for full payment and performance of all outstanding Secured Obligations. The liability of the original Mortgagor shall not be released or changed if Mortgagee grants any successor in interest to Mortgagor any extension of time for payment, or modification of the terms of payment, of any Secured Obligation. Mortgagee shall not be required to comply with any demand by the original Mortgagor that Mortgagee refuse to grant such an extension or modification to, or commence proceedings against, any such successor in interest.

(b) Mortgagee may take any of the actions permitted under subsections 6.3(b) and/or 6.3(c) regardless of the adequacy of the security for the Secured Obligations, or whether any or all of the Secured Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Mortgage.

(c) From time to time, Mortgagee may apply to any court of competent jurisdiction for aid and direction in executing and enforcing the rights and remedies created under this Mortgage. Mortgagee may from time to time obtain orders or decrees directing, confirming or approving acts in executing and enforcing these rights and remedies.

7.4 **Merger.** No merger shall occur as a result of Mortgagee's acquiring any other estate in or any other lien on the Property unless Mortgagee consents to a merger in writing.

7.5 **Applicable Law.** This Mortgage shall be governed by Illinois law.

7.6 **Successors in Interest.** The terms, covenants and conditions of this Mortgage shall be binding upon and inure to the benefit of the successors and assigns of the parties. However, this Section 7.6 does not waive the provisions of Section 6.1.

7.7 **Interpretation.**

(a) Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Mortgage are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation", and the word "including" means "including, but not limited to."

(b) The word "obligations" is used in its broadest and most comprehensive sense, and includes all primary, secondary, direct, indirect, fixed and contingent obligations. It further includes all principal, interest, prepayment charges, late charges, loan fees and any other fees and charges accruing or assessed at any time, as well as all obligations to perform acts or satisfy conditions.

(c) No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Mortgage. The Exhibits to this Mortgage are hereby incorporated in this Mortgage.

7.8 **In-House Counsel Fees.** Whenever Mortgagor is obligated to pay or reimburse Mortgagee for any attorneys' fees, those fees shall include the allocated costs for services of in-house counsel.

7.9 **Waiver of Statutory Rights.** To the extent permitted by law, Mortgagor hereby agrees that it 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 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 estates comprising the Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety. Mortgagor acknowledges that the Property does not constitute agricultural real estate, as said term is defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act. Mortgagor hereby waives any and all rights of redemption from sale under any judgment of foreclosure of this Mortgage on behalf of Mortgagor and on behalf of each and every person acquiring any interest in or title to the Property of any nature whatsoever, subsequent to the date of this Mortgage. The foregoing waiver of right of redemption is made pursuant to the provisions of Section 15-1601(b) of the Act.

7.10 **Severability.** If any provision of this Mortgage should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and in no way affect the validity of this Mortgage except that if such provision relates to the payment of any monetary sum, then Mortgagee may, at its option, declare all Secured Obligations immediately due and payable.

7.11 **Notices.** The following addresses are the mailing addresses of Mortgagor, as debtor under the Illinois Uniform Commercial Code, and of Mortgagee, as secured party under the Illinois Uniform Commercial Code, respectively.

Mortgagor: Allison Davis and Susan O'Connor
680 North Lake Shore Drive, #705
Chicago, Illinois 60611

Mortgagee: Bank of America National Trust
and Savings Association
231 South LaSalle Street
Chicago, Illinois 60697
Attention: Hillary Wolfe, The Private Bank
IL1-231-02-05

7.12 **Future Advances.** The Loan Agreement defined in Section 1.2(c) hereof shall be deemed a "commitment" as provided in Section 15-1302(b)(1) of the Act. The parties hereby acknowledge and intend that all future advances whenever hereafter made, shall be a lien from the time this Mortgage is recorded, as provided in Section 15-1302 (b)(1) of the Act.

7.13 **Mortgagee's Lien for Service Charge and Expenses.** At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures (in addition to any loan proceeds disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by Mortgagee in connection with the loan to be secured hereby; provided, however, that in no event shall the total amount of loan proceeds, excluding principal and including such additional amounts of any loan commissions, service charges, liquidated damages, etc., exceed two hundred percent (200%) of the maximum principal amount permitted under the Loan Agreement secured by this Mortgage.

7.14 **WAIVER OF TRIAL BY JURY.** MORTGAGOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING IN ANY WAY IN CONNECTION WITH THIS MORTGAGE, THE NOTE, OR ANY OF THE OTHER LOAN DOCUMENTS, THE LOAN OR ANY OTHER STATEMENTS OR ACTIONS OF MORTGAGOR OR MORTGAGEE. MORTGAGOR ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS MORTGAGE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS DISCUSSED THIS WAIVER WITH SUCH LEGAL COUNSEL. MORTGAGOR FURTHER ACKNOWLEDGES THAT (i) IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER, (ii) THIS WAIVER IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO MAKE THE LOAN, ENTER INTO THIS MORTGAGE AND EACH OF THE OTHER LOAN DOCUMENTS, AND (iii) THIS WAIVER SHALL BE EFFECTIVE AS TO EACH OF SUCH OTHER LOAN DOCUMENTS AS IF FULLY INCORPORATED THEREIN.

IN WITNESS WHEREOF, Mortgagor has caused these presents to be signed and the day and year first above written.

X *Allison Davis*
ALLISON DAVIS
X *Susan O'Connor*
SUSAN O'CONNOR

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Allison Davis and Susan O'Connor, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal this 12 day of July, 1999.

Lisa Sweeney Christensen
Notary Public

My Commission Expires:

10/28/02

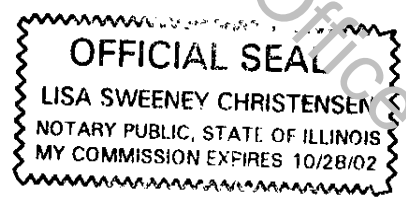


EXHIBIT A

Legal Description

.THE SOUTH 20 FEET OF THE WEST 225 FEET OF LOT 1 AND LOT 2 (EXCEPT THAT PART OF THE NORTH 10 FEET LYING EAST OF THE EAST LINE OF THE WEST 225 FEET THEREOF) IN BOGUE'S RESUBDIVISION OF LOTS 6, 7 AND 10 IN BLOCK 13 IN LYMAN, LARNED AND WOODBRIDGE'S SUBDIVISION OF THE EAST ½ OF THE NORTHWEST ¼ AND THE NORTHWEST ¼ OF THE NORTHEAST ¼ OF SECTION 11, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Tax Number

20-11-108-028-0000

part: 4835 S. Greenwood
Chicago, IL 60601