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Document prepared by
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Daniel Kohn, Esq.
Duane, Morris & Heckscher
227 West Monroe Street
Suite 3400
Chicago, IL 60606

CONSTRUCTION MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT

THIS CONSTRUCTION MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT (this "Mortgage") is made as of August 31, 1999 by BSG HOMEWOOD, L.L.C., an Illinois limited liability company ("Borrower") with a mailing address c/o Mid-North Equities Management, Ltd., 3100 West Dundee Road, Northbrook, Illinois 60062, Attention: William A. Shiner to AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association ("Lender"), with a mailing address of 120 South LaSalle Street, 12th Floor, Chicago, Illinois 60603, Attention: James E. Phillip and pertains to the real estate described in Exhibit "A" attached hereto and made a part hereof (the "Premises").

I

RECITALS

A. Pursuant to that certain Construction Loan Agreement of even date herewith between Borrower and Lender (the "Loan Agreement"), Borrower has executed and delivered to Lender a Mortgage Note of even date herewith (together with all renewals, amendments, supplements, restatements, extensions, and modifications thereof and thereto, the "Note"), wherein Borrower promises to pay to the order of Lender the principal amount of Six Million Three Hundred Thirty-Four Thousand Two Hundred and No/100 Dollars (\$6,334,200.00), in repayment of a loan from Lender in the amount of Six Million Three Hundred Thirty-Four Thousand Two Hundred and No/100 Dollars (\$6,334,200.00) (the "Loan"), together with interest thereon, at variable rates of interest and otherwise as set forth in the Note, which Note is due and payable on or before August 31, 2001; and

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B. As security for the repayment of the Loan, in addition to this Mortgage, certain other loan documents have been executed and delivered to Lender (the Loan Agreement, the Note, this Mortgage, that certain Guaranty of Payment and Performance of even date herewith executed by William A. Shiner ("Shiner"), David P. Bossy ("Bossy") and Scott H. Gendell ("Gendell"; Shiner, Bossy and Gendell, together with any other guarantors of the indebtedness secured hereby, whether now or hereafter existing, are referred to collectively herein as the "Guarantors" and individually as a "Guarantor"), and all other documents or instruments executed and/or delivered as additional evidence of, or security for repayment of, the Loan, whether now or hereafter existing, and all renewals, amendments, supplements, restatements, extensions, and modifications thereof and thereto, are hereinafter sometimes collectively referred to as the "Loan Documents"). The terms and provisions of the other Loan Documents are hereby incorporated herein by this reference.

C. In consideration of advances, credits and other financial accommodations heretofore or hereinafter made to Borrower by Lender, Lender has required Borrower hereby to deliver, pledge, assign, transfer, mortgage and warrant to Lender the Mortgaged Property (as that term is hereinafter defined) as security for repayment of the Loan as well as any and all other amounts owed to Lender under the terms of the Loan Documents. All capitalized terms not expressly defined herein shall have the same meanings as set forth in the Loan Agreement.

II

THE GRANT

NOW, THEREFORE, to secure the payment of the principal amount of the Note and interest thereon (at variable rates and as otherwise provided therein) and all fees and premiums, if any, thereon, and all other sums due thereunder or advanced by Lender and all costs and expenses incurred by Lender in connection with any of the Loan Documents (all such obligations and payments are sometimes referred to herein as the "indebtedness secured hereby") and to secure the observance and performance of the agreements contained herein and in the other Loan Documents, Borrower hereby GRANTS, BARGAINS, CONVEYS, and MORTGAGES to Lender, its successors and assigns, forever all of Borrower's estate, right, title and interest, whether now or hereafter acquired, in and to the Premises, together with the following described property, whether now or hereafter acquired (the Premises, together with a security interest in and a lien on the following described property being hereinafter referred to collectively as the "Mortgaged Property"), all of which other property is hereby pledged on a parity with the Premises and not secondarily:

(a) All buildings and other improvements of every kind and description now or hereafter erected or placed thereon and all materials intended for construction, reconstruction, alteration and repair of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the Mortgaged Property immediately upon the delivery thereof to the Premises;

(b) All right, title and interest of Borrower, including, without limitation, any after-acquired title or reversion, in and to the beds of the ways, streets, avenues, sidewalks and alleys adjoining the Premises;

(c) Each and all of the tenements, hereditaments, easements, appurtenances, passages, waters, water courses, riparian rights and any and all other rights, liberties and privileges of the Premises or in any way now or hereafter appertaining thereto, including homestead and any other claim at law or in equity, as well as any after-acquired title, franchise or license and the reversions and remainders thereof;

(d) All leases now or hereafter on or affecting the Premises, whether written or oral, and all agreements for use of the Premises, together with all rents, issues, deposits, profits and other benefits now or hereafter arising from or in respect of the Premises accruing and to accrue from the Premises and the avails thereof;

(e) All fixtures and personal property now or hereafter owned by Borrower and attached to, contained in or used in connection with the Premises or the aforesaid improvements thereon, including, without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, inventory, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring and all renewals or replacements thereof or articles in substitution therefor, whether or not the same be attached to such improvements, it being agreed that all such property owned by Borrower and placed on the Premises or used in connection with the operation or maintenance thereof shall, so far as permitted by law, be deemed for the purpose of this Mortgage to be part of the real estate constituting and located on the Premises and covered by this Mortgage;

(f) All judgments, insurance proceeds, awards of damages and settlements which may result from any damage to all or any portion of the Premises and the other Mortgaged Property, or any part thereof, or to any rights appurtenant thereto;

(g) All compensation, awards, damages, claims, rights of actions and proceeds of or on account of (i) any damage or taking, pursuant to the power of eminent domain, of the Premises and the other Mortgaged Property or any part thereof, (ii) damage to all or any portion of the Premises and the other Mortgaged Property by reason of the taking, pursuant to the power of eminent domain, of all or any portion of the Premises and the other Mortgaged Property or of other property, or (iii) the alteration of the grade of any street or highway on or about the Premises and the other Mortgaged Property or any part thereof; and except as otherwise provided herein, Lender is hereby authorized to collect and receive said

awards and proceeds and to give proper receipts and acquittances therefor and to apply the same toward the payment of the indebtedness and other sums secured hereby;

(h) All contract rights, general intangibles, actions and rights in action, including, without limitation, all rights to insurance proceeds and unearned premiums arising from or relating to damage to the Premises or the other Mortgaged Property or any part thereof;

(i) All proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Premises or the other Mortgaged Property;

(j) All building materials and goods which are procured or to be procured for use on or in connection with the Mortgaged Property, whether or not such materials and goods have been delivered to the Premises;

(k) All plans, specifications, architectural renderings, drawings, licenses, permits, soil test reports, other reports of examinations or analyses, contracts for services to be rendered Borrower, or otherwise in connection with the Mortgaged Property and all other property, contracts, reports, proposals, and other materials now or hereafter existing in any way relating to the Premises or the other Mortgaged Property or construction of additional improvements thereto; and

(l) The proceeds from any sale, transfer, pledge or other disposition of any or all of the foregoing described Mortgaged Property;

To have and to hold the same unto Lender and its successors and assigns forever, for the purposes and uses herein set forth together with all right to possession of the Premises after the occurrence of any Default (as hereinafter defined in **Paragraph 4.01** hereof) hereunder subject only to the Permitted Exceptions (as defined in the Loan Agreement); the Borrower hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State where the Premises are located.

BORROWER REPRESENTS, WARRANTS AND COVENANTS, to Lender that Borrower is lawfully seized of the Premises, that the same is unencumbered except by the Permitted Exceptions, if any, and that it has good right, full power and lawful authority to convey and mortgage the same, and that Borrower will warrant and forever defend said parcels and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

If and when the principal amount of the Note and all interest as provided thereunder has been paid, and Borrower has satisfied all obligations thereunder and under the Loan Agreement and the other Loan Documents, then this Mortgage shall be released at the cost of Borrower, but otherwise shall remain in full force and effect.

III

GENERAL AGREEMENTS

3.01 Principal and Interest. Borrower shall pay or cause to be paid promptly when due the principal and interest on the indebtedness evidenced by the Note at the times, at the variable rates and in the manner provided in the Note, the Loan Agreement, this Mortgage and the other Loan Documents. Any amount not paid when due hereunder shall accrue interest at the Default Interest Rate (as defined in the Note).

3.02 Property Taxes. Borrower shall pay immediately, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer charges, and any other charges that may be asserted against the Mortgaged Property or any part thereof or interest therein, and furnish to Lender duplicate receipts therefor within thirty (30) days after payment thereof. Borrower may, in good faith and with reasonable diligence, contest the validity or amount of any such taxes or assessments, provided that:

(a) such contest shall have the effect of preventing the collection of the tax or assessment so contested and the sale or forfeiture of the Mortgaged Property or any part thereof or interest therein to satisfy the same;

(b) Borrower has notified Lender in writing of the intention of Borrower to contest the same before any tax or assessment has been increased by any interest, penalties or costs; and

(c) Borrower has deposited with Lender, at such place as Lender may from time to time in writing designate, a sum of money or other security acceptable to Lender that is sufficient, in Lender's sole and absolute judgment, to pay in full such contested tax and assessment and all penalties and interest that might become due thereon, and shall keep on deposit an amount sufficient, in Lender's sole and absolute judgment, to pay in full such contested tax and assessment, increasing such amount to cover additional penalties and interest whenever, in Lender's sole and absolute judgment, such increase is advisable. Upon the consummation of such contest, and provided there is no existing Default hereunder, any excess funds held by Lender shall be returned to Borrower.

In the event Borrower fails to prosecute such contest in good faith and with reasonable diligence, Lender may, at its option, apply the monies and liquidate any securities deposited with Lender in payment of, or on account of, such taxes and assessments, or any portion thereof then unpaid, including all penalties and interest thereon. If the amount of the money and any such security so deposited is insufficient for the payment in full of such taxes and assessments, together with all penalties and interest thereon, Borrower shall forthwith, upon demand, either deposit with Lender a sum that, when added to such funds then on deposit, is sufficient to make such payment in full, or, if Lender has applied funds on deposit on account of such taxes and assessments, restore such deposit to an amount satisfactory to Lender. Provided no Default exists hereunder, Lender

shall, if so requested in writing by Borrower, after final disposition of such contest and upon Borrower's delivery to Lender of an official bill for such taxes, apply the money so deposited in full payment of such taxes and assessments or that part thereof then unpaid, together with all penalties and interest thereon, and any excess security shall be returned to Borrower.

3.03 Tax Escrow. Upon Lender's request, Borrower, to provide for the payment of real estate taxes and assessments pertaining to the Premises, shall, simultaneously with Borrower's monthly payments of interest and principal to Lender, deposit monthly with Lender one-twelfth (1/12th) of one hundred percent (100%) of the annual real estate taxes as reasonably estimated by Lender from time to time in such manner as Lender may prescribe so as to provide for the current year's real estate tax obligation. If the amount estimated to pay said taxes is not sufficient, Borrower shall pay the difference within five (5) days following Lender's demand therefor. Should Borrower fail to deposit sufficient amounts with Lender to pay such obligations, Lender may, but shall not be obligated to, advance monies necessary to make up any deficiency in order to pay such obligations. Any monies so advanced by Lender shall become so much additional indebtedness secured hereby and shall become immediately due and payable with interest due thereon at the Default Interest Rate. Lender is not obligated to inquire into the validity or accuracy of the real estate tax obligations before making payments of the same and nothing herein contained shall be construed as requiring Lender to advance other monies for said purpose nor shall Lender incur any personal liability for anything it may do or omit to do hereunder. It is agreed that all such payments made, at the option of Lender, shall be (i) held in trust by it without earnings for the payment of the real estate tax obligations; (ii) carried in a tax account for the benefit of Borrower and withdrawn by Lender to pay the real estate tax obligations; or (iii) credited to the unpaid balance of said indebtedness as received, provided that Lender advances upon this obligation sums sufficient to pay said items as the same accrue and become payable. If such items are held in trust or carried in a tax account for Borrower, the same are hereby pledged together with any other account of Borrower, or any Guarantor, held by Lender to further secure the indebtedness secured hereby, and any officer of Lender is authorized to withdraw the same and apply said sums as aforesaid.

3.04 Payments by Lender. In the event of a Default hereunder, Lender is hereby authorized to make or advance, in the place and stead of Borrower, any payment relating to taxes, assessments, water and sewer charges, and other governmental charges, fines, impositions or liens that may be asserted against the Mortgaged Property or any part thereof, and may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy thereof or into the validity of any tax, assessment, lien, sale, forfeiture or title or claim relating thereto. In the event of a Default hereunder, Lender is further authorized to make or advance, in the place and stead of Borrower, any payment relating to any apparent or threatened adverse title, lien, statement of lien, encumbrance, claim, charge or payment, as well as take any and all actions which Lender deems necessary or appropriate on Borrower's behalf whenever, in Lender's sole and absolute judgment and discretion, such payments or actions seem necessary or desirable to protect the full security intended to be created by this Mortgage. In connection with any such advance, Lender is further authorized, at its option, to obtain a continuation report of title or title insurance policy prepared by a title insurance company of Lender's choosing. All payments, costs and other expenses incurred by Lender pursuant to this Paragraph 3.04, including without

limitation reasonable attorneys' fees, expenses and court costs, shall constitute additional indebtedness secured hereby and shall be repayable by Borrower upon demand with interest at the Default Interest Rate.

3.05 Insurance.

(a) Hazard. (i) Borrower agrees to maintain insurance against loss or damage to the building and all improvements and betterments on the Mortgaged Property ("Loss"), in such amounts and with such limits as Lender may require from time to time. The coverage shall be equivalent or better than the Causes of Loss - Special Form (CP1030) as published by the Insurance Services Office ("ISO") and shall be on a replacement cost, agreed amount basis or as otherwise provided in the Loan Agreement. Borrower must pay promptly, when due, any premium on such insurance. All such insurance policies and renewals thereof shall be written in companies having a Best's rating of A- or better. All such policies and renewals thereof (or binders evidencing the same) shall be delivered to Lender at least thirty (30) days before the expiration of the existing policies and shall have attached thereto a standard mortgagee clause entitling Lender to collect any and all proceeds payable under such insurance. The policy shall contain a waiver of subrogation in favor of the Lender. If more than one policy is written insuring the Mortgaged Property, this separate policy must also include a standard mortgagee clause and waiver of subrogation in favor of Lender. In the event of a change in ownership or of occupancy of the Mortgaged Property, or any portion thereof, Borrower shall give immediate notice thereof to Lender.

(ii) In case of any Loss, the insurance proceeds shall be paid to Lender and, at the option of Lender (after deducting all costs, if any, incurred in connection with the collection of such proceeds or award), applied to the payment of the principal balance, accrued interest and all other sums due and owing on Loan or to the costs of restoring or repairing that part of the Mortgage Property not so damaged, upon such procedures as may be established by Lender, provided, however, that in the event that the following conditions are met; (i) no Monetary Default or Non-Monetary Default exists, nor does any event or circumstance exist which, if written notice of default had been previously given and if with the passage of time, would in the reasonable opinion of Lender, constitute a Monetary Default or Non-Monetary Default, in the opinion of Lender, both at the time of service of the notice and upon the commencement of the extension period, (ii) the Loan will remain "In Balance" in the reasonable opinion of Lender, (iii) the Construction Schedule will continue to be complied with and (iv) all other provisions of this Mortgage, the Loan Agreement, Note and Loan Documents will be complied with, then insurance proceeds shall be applied to the cost of repairing or restoring the Mortgage Property upon such procedures as may be established by Lender.

Notwithstanding anything herein to the contrary, in case of any Loss after foreclosure proceedings have been instituted, all insurance proceeds shall, at Lender's option, be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such

proceedings, and the balance, if any, shall be paid to the owner of the equity of redemption if said owner shall then be entitled to the same, or as the court may otherwise direct. In case of the foreclosure of this Mortgage, the court in its decree may provide that the mortgagee's clause attached to each of said insurance policies may be canceled and that the decree creditor may cause a new loss clause to be attached to each of said policies making the loss thereunder payable to said decree creditor. Any foreclosure decree may further provide that in case of any one or more redemptions made under said decree, each successive redepton may cause the preceding loss clause attached to each insurance policy to be canceled and a new loss clause to be attached thereto, making the loss thereunder payable to such redepton. In the event of foreclosure sale, Lender is hereby authorized, without the consent of Borrower, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as Lender may deem advisable, to cause the interest of such purchaser to be protected by any of the said insurance policies.

Nothing contained in this Mortgage shall create any responsibility or obligation on Lender to collect any amount owing on any insurance policy, to rebuild, repair or replace any damaged or destroyed portion of the Mortgaged Property, or to perform any act hereunder.

(b) Liability. Borrower shall carry and maintain commercial general liability insurance against bodily injury and property damage written with companies having a Best's rating of A- or better. Coverage shall be written on an occurrence form equivalent or better than the occurrence form (CG0001) as published by the ISO with minimum limits of One Million and No/100 Dollars (\$1,000,000.00) each occurrence and Five Million and No/100 Dollars (\$5,000,000.00) general aggregate. The policy shall name Lender as an additional insured with respect to liability arising out of the Mortgage Property. Certificates of insurance showing Lender as additional insured, premiums prepaid, shall be deposited with Lender and shall contain provision for thirty (30) days notice to Lender prior to any cancellation or non-renewal except for ten (10) days notice for non-payment of premium.

(c) Builder's Risk. Upon the request of Lender, Borrower shall obtain or shall cause to be obtained builder's risk insurance on a special perils basis for 100% of the insurable value of all construction work (except for a \$5,000.00 deductible) in place or in progress from time to time insuring the Mortgaged Property and materials in storage and while in transit. Insurance shall include Replacement Cost, Agreed Amount coverage.

(d) Worker's Compensation. Evidence of worker's compensation insurance covering all persons working on or about the Mortgaged Property and death, injury and/or property damage occurring on or about the Mortgaged Property or resulting from activity therefrom, with liability insurance limits for death of or injury to persons and/or damage to property of not less than the amounts from time to time required by statute.

(e) Flood Area. If the Premises are now or hereafter located in an area which has been identified by the Secretary of Housing and Urban Development as a flood hazard area and in which flood insurance has been made available under the National Flood Insurance

Act of 1968 (the "Act"), Borrower, at its sole cost and expense shall keep the Premises insured by flood insurance in an amount not less than the maximum limit of coverage available under the Act.

(f) Other Insurance. Upon Lender's written request, Borrower at its sole cost and expense, shall, carry and maintain or cause to carry and maintain such other insurance coverage(s) as Lender may, in its sole and absolute discretion, deem necessary or appropriate in such amounts, with such companies and in such form as Lender deems satisfactory in its sole discretion, all at Borrower's sole expense.

3.06 Condemnation and Eminent Domain. Any and all awards heretofore or hereafter made or to be made to the present or any subsequent owner of the Mortgaged Property by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Mortgaged Property, (including any award from the United States government at any time after the allowance of a claim therefor, the ascertainment of the amount thereto, and the issuance of a warrant for payment thereof), are hereby assigned by Borrower to Lender, which awards Lender is hereby authorized to negotiate, collect and receive from the condemnation authorities. Lender is hereby authorized to give appropriate receipts and acquittances therefor. Borrower shall give Lender immediate notice of the actual or threatened commencement of any condemnation or eminent domain proceedings of which it has knowledge affecting all or any part of the Mortgaged Property (including severance of, consequential damage to or change in grade of streets), and shall immediately deliver to Lender copies of any and all papers served in connection with any such proceedings. Borrower further agrees to make, execute and deliver to Lender, free and clear of any encumbrance of any kind whatsoever, any and all further assignments and other instruments deemed necessary by Lender for the purpose of validly and sufficiently assigning all awards and other compensation heretofore, now and hereafter made to Borrower for any taking, either permanent or temporary, under any such proceeding. Any such award shall be applied toward the indebtedness secured by this Mortgage or applied toward restoring the Mortgaged Property in accordance with the provisions of and in the same manner as is provided for insurance proceeds in **Paragraph 3.05(a)** hereof. Notwithstanding the foregoing, any expenses, including, without limitation, attorneys' fees and expenses, incurred by Lender in intervening in such action or compromising and settling such action or claim, or collecting such proceeds, shall be reimbursed to Lender first out of the proceeds.

3.07 Maintenance of Property. No portion of the Mortgaged Property shall be altered, removed or demolished, severed, removed, sold or mortgaged, without the prior written consent of Lender. In the event of the demolition or destruction in whole or in part of any of the fixtures, chattels or articles of personal property covered by this Mortgage or by any separate security agreement executed in conjunction herewith, the same shall be replaced promptly by similar fixtures, chattels and articles of personal property at least equal in value, quality and condition to those replaced, free from any other security interest therein, encumbrances thereon or reservation of title thereto. Borrower shall, promptly repair, restore or rebuild any building or other improvement or any part thereof now or hereafter situated on the Premises that may become damaged or be destroyed whether or not proceeds of insurance are available or sufficient for such purpose. Any such building

or other improvement or any part thereof shall be repaired, restored or rebuilt so as to be of at least equal value and of substantially the same character as prior to such damage or destruction.

Borrower further agrees not to permit, commit or suffer any waste, impairment or deterioration of the Mortgaged Property or any part thereof, to keep and maintain the Mortgaged Property and every part thereof in good repair and condition, to effect such repairs as Lender may reasonably require, and, from time to time, to make all necessary and proper replacements thereof and additions thereto so that the Premises and such buildings, other improvements, fixtures, chattels and articles of personal property will, at all times, be in good condition, fit and proper for the respective purposes for which they were originally erected or installed.

3.08 Compliance with Laws. Borrower shall: (i) comply with, all statutes, ordinances, regulations, rules, orders, decrees and other requirements relating to the Mortgaged Property, or any part thereof, by any federal, state or local authority, including, without limitation, the Americans with Disabilities Act of 1990, and (ii) observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including, without limitation, zoning variances, special exceptions, and nonconforming uses), privileges, franchises and concessions that are applicable to the Mortgaged Property or that have been granted to or contracted for by Borrower in connection with any existing or presently contemplated use of the Mortgaged Property or any part thereof. Borrower shall not initiate or acquiesce in any changes to or termination of any of the foregoing or of zoning design actions affecting the use of the Mortgaged Property or any part thereof without the prior written consent of Lender.

3.09 Liens and Transfers. Without Lender's prior written consent, Borrower shall not, directly or indirectly, create, suffer or permit to be created or filed or to remain against the Mortgaged Property, or any part thereof, hereafter any mortgage lien or other lien, encumbrance or charge on, pledge of, or conditional sale or other title retention agreement with respect to the Mortgaged Property, whether superior or inferior to the lien of this Mortgage, except as permitted or contemplated by the Loan Agreement; provided, however, that Borrower may, within ten (10) days after the filing thereof, contest in good faith by appropriate legal or administrative proceedings any lien claim arising from any work performed, material furnished or obligation incurred by Borrower upon furnishing Lender a bond issued by a company approved by Lender in its sole and absolute discretion covering the lien claim, or an endorsement to Lender's title insurance policy insuring Lender's interest in the Premises insuring over said lien claim, each in form and substance satisfactory to Lender in its sole and absolute discretion, or such other security and indemnification satisfactory to Lender, in its sole and absolute discretion, for the final payment and discharge thereof. In the event Borrower hereafter creates, suffers or permits any superior or inferior lien to be attached to the Mortgaged Property or any part thereof without such consent or without furnishing security as aforesaid, Lender shall have the unqualified right, at its option, to accelerate the maturity of the Note, causing the entire principal balance thereof and all interest accrued thereon to be immediately due and payable.

Except as otherwise permitted by the Loan Agreement, if Borrower, without Lender's prior written consent, sells, leases, transfers, conveys, assigns, pledges, hypothecates or otherwise disposes of the title to all or any portion of the Mortgaged Property, whether by operation of law, voluntarily or otherwise, or any interest (beneficial or otherwise) thereto, or enters into any agreement to do any of the foregoing, Lender shall have the unqualified right, at its option, to accelerate the maturity of the Note, causing the entire principal balance, and accrued interest to be immediately due and payable. Without limiting the generality of the foregoing, each of the following events shall be deemed a sale, transfer, conveyance, assignment, pledge, hypothecation or other disposition prohibited by the foregoing sentence:

(a) if any of Borrower is a corporation, any sale, conveyance, assignment or other transfer of all or any portion of the stock of such corporation, that results in a material change in the identity of the person(s) or entities in control of such corporation, or any corporation which controls any of Borrower;

(b) if any of Borrower is a partnership, any sale, conveyance, assignment or other transfer of all or any portion of the partnership interest of Borrower or any entity or entities in control of Borrower, or any partnership which controls Borrower;

(c) if any of Borrower is a limited liability company, any sale, conveyance, assignment or other transfer of all or any portion of the membership interest of any member of Borrower;

(d) any sale, conveyance, assignment or other transfer of all or any portion of the stock, partnership or membership interest of any entity directly or indirectly in control of any corporation, partnership or limited liability company constituting any of Borrower or any corporation, partnership or limited liability company which controls Borrower, or any sale, conveyance, assignment or other transfer by Borrower in any corporation, partnership or limited liability company in which Borrower has a controlling interest, directly or indirectly; and

(e) any hypothecation of all or any portion of any stock, partnership or membership interest of any of Borrower, or of all or any portion of the stock, partnership or membership interest of any entity directly or indirectly in control of such corporation, partnership or limited liability company or any corporation, partnership or limited liability company which controls Borrower, or any sale, conveyance, assignment or other transfer by Borrower in any corporation, partnership or limited liability company in which Borrower has a controlling interest, directly or indirectly.

Any waiver by Lender of the provisions of this **Paragraph 3.09** shall not be deemed to be a waiver of the right of Lender in the future to insist upon strict compliance with the provisions hereof.

3.10 Subrogation to Prior Lienholder's Rights. If the proceeds of the Loan secured hereby or any part thereof, or any amount paid out or advanced by Lender is used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Mortgaged Property or any part thereof, then Lender shall be subrogated to the rights of the holder thereof in and to such other lien or encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.

3.11 Lender's Dealings with Transferee. In the event of the sale or transfer, by operation of law, voluntarily or otherwise, of all or any part of the Mortgaged Property, which is not the subject of Lender's partial release of mortgage lien as contemplated by the Loan Agreement, Lender shall be authorized and empowered to deal with the vendee or transferee with regard to the Mortgaged Property, the indebtedness secured hereby and any of the terms or conditions hereof as fully and to the same extent as it might with Borrower, without in any way releasing or discharging Borrower from its covenants hereunder, specifically including those contained in Paragraph 3.09 hereof, and without waiving Lender's right of acceleration pursuant to Paragraph 3.09 hereof.

3.12 Stamp Taxes. If at any time the United States government or any federal, state or municipal governmental subdivision requires Internal Revenue or other documentary stamps, levies or any tax on this Mortgage or on the Note, or requires payment of the United States Interest Equalization Tax on any of the indebtedness secured hereby, then such indebtedness and all interest accrued thereon shall be and become due and payable, at the election of the Lender, thirty (30) days after the mailing by Lender of notice of such election to Borrower; provided, however, that such election shall be unavailing, and this Mortgage and the Note shall be and remain in effect, if Borrower may and does lawfully pay for such stamps or tax, including interest and penalties thereon, to or on behalf of Lender.

3.13 Change in Tax Laws. In the event of the enactment, after the date of this Mortgage, of any law of the state in which the Premises are located deducting from the value of the Premises, for the purpose of taxation, the amount of any lien thereon, or imposing upon Lender the payment of all or any part of the taxes, assessments, charges or liens hereby required to be paid by Borrower, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Borrower's interest in the Mortgaged Property, or the manner of collection of taxes so as to affect this Mortgage or the indebtedness secured hereby or the holder thereof, then Borrower, upon demand by Lender, shall pay such taxes, assessments, charges or liens, or reimburse Lender therefor; provided, however, that if, in the opinion of counsel for Lender, it might be unlawful to require Borrower to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then Lender may elect, by notice in writing given to Borrower, to declare all of the indebtedness secured hereby to become due and payable thirty (30) days after the giving of such notice. Nothing contained in this Paragraph 3.13 shall be construed as obligating Lender to pay any portion of Borrower's federal income tax.

3.14 Inspection of Property. Borrower shall permit Lender and its representatives and agents to inspect the Mortgaged Property from time to time upon reasonable prior telephonic notice during normal business hours and as frequently as Lender considers reasonable.

3.15 Inspection of Books and Records. Borrower shall keep and maintain full and correct books and records showing in detail the income and expenses of the Mortgaged Property and after demand therefor by Lender shall permit Lender and its agents and representatives to visit its offices, discuss its financial affairs with its officers and independent public accountants whether or not any representative of Borrower is present and to examine such books and records and all supporting vouchers and data, copies of any leases encumbering the Premises and such other information as Lender may deem reasonably necessary or appropriate at any time and from time to time on Lender's request at Borrower's offices, at the address hereinabove identified or at such other location as may be reasonably requested by Lender.

3.16 Financial Information. Borrower shall deliver, or cause to be delivered, to Lender (i) on at least an annual basis and at such other times as Lender may reasonably request, financial statements for the Guarantors on a form approved by Lender, and (ii) such other financial information as required pursuant to the terms of the Loan Agreement.

3.17 Acknowledgment of Debt. Borrower shall furnish from time to time, within ten (10) days after Lender's request, a written statement, duly acknowledged, specifying the amount due under the Note, this Mortgage, the Loan Agreement and any of the other Loan Documents and disclosing whether any alleged offsets or defenses exist against the indebtedness secured hereby.

3.18 Other Amounts Secured; Maximum Indebtedness. Borrower acknowledges and agrees that this Mortgage secures the entire principal amount of the Note and interest accrued thereon, regardless of whether any or all of the loan proceeds are disbursed on or after the date hereof, and regardless of whether the outstanding principal is repaid in whole or part and future advances made at a later date as well as any amounts owed to Lender pursuant to **Paragraphs 3.02 and 3.04** hereof, any and all litigation and other expenses pursuant to **Paragraphs 4.05 and 4.06** hereof and any other amounts as provided herein or in any of the other Loan Documents, including, without limitation, the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or paid or incurred by Lender in connection with the Loan, all in accordance with the loan commitment issued in connection with this transaction and the Loan Documents. Under no circumstances, however, shall the total indebtedness secured hereby exceed Eighteen Million and No/100 Dollars (\$18,000,000.00).

3.19 Declaration of Subordination. At the option of Lender, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation or eminent domain award) to any and all leases of all or any part of the Mortgaged Property upon the execution by Lender and recording thereof, at any time hereafter, in the appropriate official records of the county wherein the Premises are situated, of a unilateral declaration to that effect.

3.20 Releases. Lender, without notice and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens thereon, may release from the liens of Lender all or any part of the Mortgaged Property, or release from liability any person or entity obligated to repay any indebtedness secured hereby, without in any way affecting

the liability of any party pursuant to the Note, this Mortgage or any of the other Loan Documents, including, without limitation, any guaranty given as additional security for the indebtedness secured hereby, and without in any way affecting the priority of the lien of this Mortgage, and may agree with any party liable therefor to extend the time for payment of any part or all of such indebtedness. Any such agreement shall not in any way release or impair the lien created by this Mortgage or reduce or modify the liability of any person or entity obligated personally to repay the indebtedness secured hereby, but shall extend the lien hereof as against the title of all parties having any interest, subject to the indebtedness secured hereby, in the Mortgaged Property.

3.21 Borrower's Representations. Borrower hereby represents and covenants to Lender that:

(a) Borrower is lawfully seized of the Mortgaged Property hereby mortgaged, granted and conveyed and has the right to mortgage, grant and convey the Mortgaged Property, that the Mortgaged Property is unencumbered except by the Permitted Exceptions, if any, and that Borrower will represent, warrant and defend generally the title to the Mortgaged Property, or any portion thereof, against any and all claims and demands, subject only to the Permitted Exceptions, if any.

(b) Intentionally Omitted.

(c) Borrower (i) is an Illinois limited liability company duly organized and validly existing under the laws of the State of Illinois and is in good standing in the State of Illinois; (ii) has the power and authority to own its properties and to carry on its business as now being conducted; and (iii) is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it.

(d) The execution, delivery and performance of the Loan Agreement, the Note, this Mortgage and the other Loan Documents: (i) have received all necessary trust, partnership, governmental, and corporate approval; (ii) do not violate any provision of any law, any order of any court or agency of government or any indenture, agreement or other instrument to which Borrower or either one of them is a party, or by which it or any portion of the Mortgaged Property is bound; and (iii) are not in conflict with, nor will result in breach of, or constitute (with due notice or lapse of time) a default under any indenture, agreement, or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever, upon any of its property or assets, except as contemplated by the provisions of this Mortgage.

(e) The Loan Agreement, the Note, this Mortgage and the other Loan Documents, when executed and delivered by Borrower, as the case may be will constitute the legal, valid and binding obligations of Borrower and all other obligors named therein, if any, in accordance with their respective terms.

(f) All information, reports, papers, balance sheets, statements of profit and loss, and data given to Lender or its agents and employees regarding Borrower or any other party obligated under the terms of the Loan Agreement, the Note, this Mortgage or any of the other Loan Documents are accurate and correct in all material respects, and are complete insofar as completeness may be necessary to give Lender a true and accurate knowledge of the subject matter.

(g) There is not now pending against or affecting Borrower or any other party obligated under the terms of the Loan Agreement, the Note, this Mortgage or any of the other Loan Documents, nor, to the best of Borrower's knowledge, is there threatened any action, suit or proceeding at law, in equity or before any administrative agency which, if adversely determined, would materially impair or affect the financial condition or operation of Borrower, Guarantor or the Mortgaged Property.

3.22 Utilities. Borrower will (except to the extent paid by lessees) pay all utility charges incurred in connection with the Premises and all improvements thereon, and shall maintain all utility services now or hereafter available for use at the Premises.

3.23 Hazardous Waste. (a) Borrower represents, warrants covenants and agrees, to the best of its knowledge, after due inquiry, that:

(i) except as disclosed in the Phase I dated _____ prepared by _____ ("Phase I"), (A) there are no Hazardous Substances (as hereinafter defined) at, upon, over or under the Mortgaged Property, or, to the best of its knowledge, at, upon, over, or under those parcels of real estate adjacent to the Mortgaged Property, and (B) during the period of ownership of the Mortgaged Property by Borrower, and to the best of its knowledge, prior to Borrower's acquisition of its interest therein, there have not been any Hazardous Substances at, upon, over or under the Property or, to the best of its knowledge, at, upon, over or under those parcels of real estate adjacent to the Mortgaged Property; and

(ii) (A) the Mortgaged Property is in compliance with all Environmental Laws (as hereinafter defined); (B) Borrower shall comply with all Environmental Laws and Environmental Permits (as hereinafter defined); (C) Borrower shall require its tenants and others operating on the Mortgaged Property to comply with Environmental Laws and Environmental Permits; (D) Borrower shall provide Lender immediate notice of any correspondence, notices, demands or communications of any nature whatsoever received by any of Borrower or any Guarantor relating to any alleged or actual violation, or any investigation of any alleged or actual violation, of any Environmental Law or relating to any alleged or actual presence of Hazardous Substances at, under, over or under the Mortgaged Property or adjacent real estate, and to immediately provide Lender copies of any such correspondence, notices, demands or communications which are in writing; and (E) Borrower shall advise

Lender in writing as soon as any of Borrower or any Guarantor becomes aware of any condition or circumstance which makes any of Borrower's representations or warranties contained herein incomplete or inaccurate; and

(iii) all necessary Environmental Permits pertaining to the Mortgaged Property have been obtained by the appropriate party, and all reports, notices and other documents required under any Environmental Law in connection with the Mortgaged Property have been filed; and

(iv) Neither Borrower nor any Guarantor is a party to any litigation or administrative proceeding arising under any Environmental Law in connection with the Mortgaged Property or adjacent real estate, nor, to the best knowledge of Borrower, is there any such litigation or proceeding contemplated or threatened; and

(v) Borrower, any and all Guarantors and the Mortgaged Property are free from any judgment, decree, order or citation related to or arising out of any Environmental Law

In the event Lender determines in its sole and absolute discretion that there is any evidence that any circumstance might exist, whether or not described in any communication or notice to either Borrower or Lender, Borrower agrees, at its own expense and at the request of Lender, to permit an environmental audit to be conducted by Lender or an independent agent selected by Lender. This provision shall not relieve Borrower from conducting its own environmental audits or taking any other steps necessary to comply with any Environmental Law or Environmental Permits. If, in the opinion of Lender, there exists any uncorrected violation of any Environmental Law or Environmental Permits or any condition which requires or may require any cleanup, removal or other remedial action under any Environmental Law, and such clear up, removal or other remedial action is not completed within sixty (60) days from the date of written notice from Lender to Borrower, the same shall, at the option of Lender constitute a Default hereunder, without further notice or cure period.

(b) Borrower hereby represents, warrants and certifies to Lender that: (i) the execution and delivery of the Loan Documents is not a "transfer of real property" under and as defined in the Illinois Responsible Property Transfer Law, as amended (Illinois Code Ann. 765 ILCS 9011 et. seq.) ("IRPTA"); (ii) except as disclosed in the Phase I, there are no above ground storage tanks ("ASTs") or underground storage tanks ("USTs") at, upon, over or under the Mortgaged Property which are subject to the notification requirements under Section 9002 of the Solid Waste Disposal Act, as amended (42 U.S.C. §6991); (iii) there is no facility located on or at the Mortgaged Property which is subject to the reporting requirements of Section 312 of the Federal Emergency Planning and Community Right to Know Act of 1986, as amended, and the federal regulations promulgated thereunder (42 U.S.C. §11022), as the term "facility" is defined in the IRPTA, (iv) except disclosed in the Phase I, during the periods of ownership of the Mortgaged Property by Borrower, and prior to Borrower's acquisition of its interest therein, there have been no ASTs or USTs at, upon,

over or under the Mortgaged Property, and (v) Borrower will not cause or allow any ASTs or USTs to be installed at, upon, over or under the Mortgaged Property.

(c) Borrower agrees to indemnify, defend and hold harmless Lender and any and all current, future or former officers, directors, employees, representatives and agents from and against any and all Environmental Losses (as hereinafter defined) in any way arising from (except to the extent that such claims arise from the wilful or grossly negligent acts of Lender or its agents, or Lender or its agents introduce Hazardous Materials to the Mortgaged Property in violation of any Environmental Laws following Lender's acquisition of the Mortgaged Property by foreclosure sale, deed-in-lieu of foreclosure or otherwise): (i) any breach of any covenant, representation or warranty in this **Paragraph 3.23**; (ii) any Environmental Liability (as hereinafter defined); (iii) any failure to obtain or comply with any Environmental Permit; (iv) any Release (as hereinafter defined); (v) any Management (as hereinafter defined); (vi) any Environmental Condition (as hereinafter defined); (vii) the presence of any Hazardous Substance at any property other than the Mortgaged Property which is present due to either (A) any direct or indirect transportation whatsoever of a Hazardous Substance from the Property, or by any of Borrower or any Guarantor, to the property at which such Hazardous Substance is present or (B) migration or other movement from the Mortgaged Property to such other property of a Hazardous Substance Released at the Mortgaged Property; and (viii) any Response (as hereinafter defined) arising out of or in connection with any of the matters described in this **Paragraph 3.23(c)**. Any and all amounts owed by Borrower to Lender under this **Paragraph 3.23(c)** shall constitute additional indebtedness secured hereby.

(d) The following definitions apply throughout this Mortgage:

(i) The term "**Environmental Condition**" shall mean the presence of any Hazardous Substance at, upon, over, under or emanating from the Mortgaged Property, any other real estate to which any Hazardous Substance has migrated from the Mortgaged Property or any other real estate whatsoever to which any Hazardous Substance has been transported from the Mortgaged Property.

(ii) The term "**Environmental Laws**" shall mean all federal, state, and local laws, statutes, rules, regulations, ordinances, permits, guides, orders and consent decrees relating to health, safety and environmental matters as now exist and as may be enacted or amended after the date hereof. Such laws and regulations include, but are not limited to, the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., as amended; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq., as amended ("**CERCLA**"); the Toxic Substance Control Act, 15 U.S.C. §2601 et seq., as amended; the Clean Water Act 33 U.S.C. §1251 et seq., as amended; the Clean Air Act, 42 U.S.C. §7401 et seq., as amended; federal, state and local environmental cleanup programs; federal, state and local environmental lien programs; the

Occupational Safety and Health Act of 1970, 29 U.S.C. §651 et seq., as amended (“OSHA”); and U.S. Department of Transportation regulations applicable to the transportation of Hazardous Substances.

(iii) The term “**Environmental Liability**” shall mean any and all liabilities, whether fixed, absolute, or contingent, arising under any Environmental Law or arising under or in connection with any Environmental Permit or Environmental Condition; any and all claims of any nature whatsoever by a third party (including but not limited to governmental agencies) arising in any way under any Environmental Law or arising under or in connection with any Environmental Permit or Environmental Condition, including but not limited to demands for environmental cleanup, investigation or corrective action; any and all Environmental Losses incurred or sustained as a direct or indirect result of alleged or actual violations of Environmental Laws or Environmental Permits; any and all alleged or actual Environmental Conditions; any and all Releases; any and all Management; or any and all Responses.

(iv) The terms “**Environmental Loss**” or “**Environmental Losses**” shall mean any and all costs, expenses and expenditures, including, without limitation, court costs and reasonable attorneys’, experts’ and consultants’ fees and costs of litigation or any other losses whatsoever, including, without limitation, costs and expenses of investigation, cleanup, prevention of migration, monitoring, evaluating, assessment, removal or remediation of Hazardous Substances whether or not such costs or expenses are incurred in response to any governmental or third party action, claim or directive; damages; punitive damages actually awarded; obligations; deficiencies; liabilities, whether fixed, absolute, accrued, contingent or otherwise and whether direct, primary or secondary, known or unknown; claims; encumbrances; penalties; demands; assessments; and judgments.

(v) The term “**Environmental Permit**” shall mean authorization by any governmental entity to conduct activities governed in whole or in part by one or more Environmental Laws.

(vi) The term “**Hazardous Substance**” shall mean hazardous substances, hazardous wastes, hazardous waste constituents, by-products, hazardous materials, hazardous chemicals, extremely hazardous substances, pesticides, oil and other petroleum products and toxic substances, including, without limitation, asbestos and PCBs, as those terms are defined pursuant to or encompassed by any Environmental Law or by trade custom and usage.

(vii) The terms “**Manage**”, “**Managed**” or “**Management**” shall mean the generation, handling, manufacturing, processing, treatment, storing, use, reuse, refinement, recycling, reclaiming, blending, burning, recovery, incineration, accumulation, transportation, transfer, disposal, release or abandonment of any

Hazardous Substances, by any person at any property (including but not limited to facilities or properties other than the Mortgaged Property, as applicable).

(viii) The terms “Release”, “Released” or “Releases” shall mean any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of any Hazardous Substance at, upon, over or from the Mortgaged Property, any other real estate to which any Hazardous Substance has migrated from the Mortgaged Property or any other real estate whatsoever to which any Hazardous Substance has been transported from the Mortgaged Property.

(ix) The terms “Respond” or “Response” shall mean any action taken by any person, whether or not in response to a governmental or third party action, claim or directive, to correct, remove, remediate, clean up, prevent migration of, monitor, evaluate, investigate or assess, as appropriate, any Release of a Hazardous Substance, Environmental Condition, Management or actual or alleged violation of an Environmental Law or Environmental Permit.

(e) Any provisions of this Mortgage to the contrary notwithstanding, the representations, warranties, covenants, agreements and indemnification obligations contained in this **Paragraph 3.23** shall survive the foreclosure of the lien of this Mortgage by Lender or a third party or the conveyance thereof by deed in lieu of foreclosure and shall not be limited to the amount of any deficiency in any foreclosure sale of the Mortgaged Property) and all indicia of termination of the relationship between Borrower and Lender, including, but not limited to, the repayment of all amounts due under the Loan evidenced by the Note, the cancellation of the Note, satisfaction of any guaranty, and the release of this Mortgage.

3.24 Assignment of Rents. (a) As further security for the repayment of the Note, and any amounts due pursuant to this Mortgage, Borrower does hereby sell, assign and transfer to Lender all rents, leases, issues, deposits and profits now due and which may hereinafter become due under or by reason of any lease or any letting of, or any agreement for the use, sale, or occupancy of the Premises or any portion thereof (whether written or verbal), which may have been heretofore or may hereafter be made or agreed to or which may be made or agreed to by Lender under the powers herein granted, including without limitation sale contracts, leases, escrow and other agreements, it being Borrower's intention hereby to establish an absolute transfer and assignment of all such leases, contracts, escrows and agreements pertaining thereto (such leases, contracts, escrows and agreements being collectively referred to hereinbelow as “agreements” and any such individual lease, contract, escrow or other agreement being referred to hereinbelow as an “agreement”), and all the avails thereof, to Lender.

Borrower does hereby irrevocably appoint Lender as its true and lawful attorney in its name and stead (with or without taking possession of the Premises) to rent, lease, let, or sell all or any portion of the Premises to any party or parties at such price and upon such term as Lender in its sole

discretion may determine, to exercise any and all rights including rights of first refusal and options of any Borrower to purchase and otherwise acquire title to all or any part of the Mortgaged Property, and to collect all of such rents, issues, deposits, profits and avails now due or that may hereafter become due under any and all of such agreements or other tenancies now or hereafter existing on the Premises, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Lender would have upon taking possession of the Premises pursuant to the provisions set forth hereinbelow.

This assignment confers upon Lender a power coupled with an interest and it cannot be revoked by Borrower.

(b) Borrower represents and agrees that without the prior written consent of the Lender, which consent shall not be unreasonably withheld, no rent for right of future possession will be paid by any person in possession of any portion of the Premises in excess of one installment thereof paid in advance and that no payment of rents to become due for any portion of the Premises has been or will be waived, conceded, released, reduced, discounted, or otherwise discharged or compromised by Borrower. Borrower waives any right of setoff against any person in possession of any portion of the Premises. Borrower agrees that it will not assign any of such rents, issues, profits, deposits or avails, and shall not agree to any modification of the terms, or a voluntary surrender, of any such lease or agreement without the prior written consent of Lender.

(c) Borrower further agrees to assign and transfer to Lender all future leases and agreements pertaining to all or any portion of the Premises and to execute and deliver to Lender, immediately upon demand of Lender, all such further assurances and assignments pertaining to the Premises as Lender may from time to time require.

(d) Borrower shall, at its own cost: (i) at all times perform and observe all of the covenants, conditions and agreements of the lessor under the terms of any or all leases or similar agreements affecting all or any part of the Premises; (ii) at all times enforce and secure the performance and observance of all of the material covenants, conditions and agreements of the lessees under the terms of any or all of said leases or other agreements; (iii) appear in and defend any action or other proceeding arising out of or in any manner connected with said leases and other agreements, and to pay any and all costs of Lender incurred by reason of or in connection with said proceedings, including, without limitation, reasonable attorneys' fees, expenses and court costs; and (iv) promptly furnish Lender with copies of any notices of default either sent or received by Borrower under the terms of or pursuant to any of said leases or other agreements.

(e) Although it is the intention of Borrower and Lender that the assignment, including, without limitation, the power of attorney appointment, contained in this **Paragraph 3.24** is a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Lender shall not exercise any of the rights and powers conferred upon it herein unless and until a Default hereunder has occurred,

or a condition which with the passage of time or giving of notice or both, would constitute a Default hereunder.

(f) Lender, in the exercise of the rights and powers conferred upon it herein, shall have full power to use and apply the rents, issues, deposits, profits and avails of the Premises to the payment of or on account of the following, in such order as Lender may, in its sole and absolute discretion determine:

(i) operating expenses of the Premises (including without limitation all costs of management, sale and leasing thereof, which shall include reasonable compensation to Lender and its agents, if management be delegated thereto, reasonable attorneys' fees, expenses and court costs, and lease or sale commissions and other compensation and expenses of seeking and procuring tenants or purchasers and entering into leases or sales), establishing any claims for damages, and premiums on insurance authorized hereinabove;

(ii) taxes, special assessments, water and sewer charges on the Premises now due or that may hereafter become due;

(iii) any and all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Premises (including without limitation the cost from time to time of installing or replacing personal property therein, and of placing the Premises in such condition as will, in the sole judgment of Lender, make them readily rentable or salable);

(iv) any indebtedness secured hereby or any deficiency that may result from any foreclosure sale pursuant thereto; and

(v) any remaining funds to Borrower or its successors or assigns, as their interests and rights may appear.

(g) Borrower does further specifically authorize and instruct each and every present and future lessee or purchaser of all or any portion of the Premises to pay all unpaid rentals or deposits agreed upon in any lease or agreement pertaining to the Premises to Lender upon receipt of demand from Lender to pay the same without any further notice or authorization by Borrower, and Borrower hereby waives any rights or claims it may have against any lessee by reason of such payments to Lender.

(h) Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any lease or agreement pertaining to the Premises, and Borrower shall and does hereby agree to indemnify and hold Lender harmless from and against any and all liability, loss and damage that Lender may or might incur under any such lease or agreement or under or by reason of the assignment thereof, as well as any and all claims and demands whatsoever which may

be asserted against Lender by reason of any alleged obligations or undertakings on Lender's part to perform or discharge any of the terms, covenants or conditions contained in such leases or agreements. Should Lender incur any such liability, loss or damage under any such lease or agreement, or under or by reason of the assignment thereof, or in the defense of any claims or demands relating thereto, Borrower shall reimburse Lender for the amount thereof (including, without limitation, reasonable attorneys' fees, expenses and court costs) immediately upon demand.

(i) Nothing herein contained shall be construed as making or constituting Lender a "mortgagee in possession" in the absence of the taking of actual possession of the Premises by Lender pursuant to the provisions set forth herein. In the exercise of the powers herein granted Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower.

(j) Borrower may only enter into new leases or amend, modify, terminate or cancel any existing lease or waive any rights thereunder, or accept a voluntary surrender of any lease, upon the prior written consent of Lender.

3.25 Security Agreement. (a) any such item is physically attached to the improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Lender, or (iii) any such item is referred to or reflected in any such Financing Statement so filed at any time. Similarly, the mention in any such Financing Statement of (1) the rights in or the proceeds of any fire or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) Borrower's interest as lessor in any present or future lease or rights to income growing out of the use or occupancy of the Mortgaged Property whether pursuant to lease or otherwise, shall never be construed as in any way altering any of the rights of Lender under this Mortgage or impugning the priority of the Lender's lien granted hereby or by any other recorded document, but such mention in the Financing Statement is declared to be for the protection of the Lender in the event any court or judge shall at any time hold with respect to (1), (2) and (3) that notice of Lender's priority of interest to be effective against a particular class of persons, including, but not limited to, the Federal Government and any subdivisions or entity of the Federal Government, must be filed in the Illinois Uniform Commercial Code records.

(b) Borrower shall execute, acknowledge and deliver to Lender, within ten (10) days after request by Lender, any and all security agreements, financing statements and any other similar security instruments reasonably required by Lender, in form and of content reasonably satisfactory to Lender, covering all property of any kind whatsoever owned by Borrower that, in the reasonable opinion of Lender, is essential to the operation of the Mortgaged Property and concerning which there may be any doubt whether title thereto has been conveyed, or a security interest therein perfected, by this Mortgage under the laws of the state in which the Premises are located. Borrower shall further execute, acknowledge and deliver any financing statement, affidavit, continuation statement, certificate or other document as Lender may request in order to perfect, preserve, maintain, continue and extend

such security instruments. Borrower further agrees to pay to Lender all fees, costs and expenses (including, without limitation, all reasonable attorneys' fees and expenses and court costs) incurred by Lender in connection with the preparation, execution, recording, filing and re-filing of any such document.

3.26 Fixture Financing Statement. From the date of its recording, this Mortgage shall be effective as a fixture financing statement with respect to all goods constituting part of the Mortgaged Property which are or are to become fixtures related to the real estate described herein. For this purpose, the following information is set forth:

(a) Name and Address of Debtor:

BSG Homewood, L.L.C.
c/o Mid-North Equities Management, Ltd.
3160 West Dundee Road
Northbrook, Illinois 60062

(b) Name and Address of Secured Party:

American National Bank and Trust Company of Chicago
120 South LaSalle Street
Chicago, Illinois 60603

(c) This document covers goods which are or are to become fixtures.

3.27 Interest Laws. It being the intention of Lender and Borrower to comply with the laws of the State of Illinois, it is agreed that notwithstanding any provision to the contrary in the Note, the Loan Agreement, this Mortgage or any of the other Loan Documents, no such provision shall require the payment or permit the collection of any amount ("Excess Interest") in excess of the maximum amount of interest permitted by law to be charged for the use or detention, or the forbearance in the collection, of all or any portion of the indebtedness evidenced by the Note. If any Excess Interest is provided for, or is adjudicated to be provided for, in the Note, the Loan Agreement, this Mortgage or any of the other Loan Documents, then in such event: (a) the provisions of this Paragraph 3.27 shall govern and control; (b) neither Borrower nor any other party obligated under the terms of the Note or any of the other Loan Documents shall be obligated to pay any Excess Interest; (c) any Excess Interest that Lender may have received hereunder shall, at the option of Lender, be (i) applied as a credit against the then unpaid principal balance under the Note, accrued and unpaid interest thereon not to exceed the maximum amount permitted by law, or both, (ii) refunded to the payor thereof, or (iii) any combination of the foregoing; (d) the Interest Rate (as that term is defined in the Note) shall be subject to automatic reduction to the maximum lawful contract rate allowed under the applicable usury laws of the aforesaid State, and the Note, the Loan Agreement, this Mortgage and the other Loan Documents shall be deemed to be automatically

reformed and modified to reflect such reduction in the Interest Rate; and (e) neither Borrower nor any other party obligated under the terms of the Note or any of the other Loan Documents shall have any action against Lender for any damages whatsoever arising out of the payment or collection of any Excess Interest.

3.28 Partial Release. Lender agrees that upon not less than five (5) days prior written notice from Borrower, Lender shall release an approximately 5.6 acre vacant portion of the Mortgaged Property legally described on **Exhibit "B"** attached hereto (the "**Jewel Parcel**") from the lien of this Mortgage pursuant to the following terms and provisions:

(i) That at the time of such partial release, there shall be no Default under this Mortgage or any Loan Document which shall not have been cured within any applicable grace or cure period; and

(ii) Borrower shall deliver to Lender a release fee for the release of the Jewel Parcel in an amount equal to either (a) in the event Borrower has entered into the Officemax Lease (as defined in the Loan Agreement) in form and substance acceptable to Lender, One Million Three Hundred Forty Thousand and No/100 Dollars (\$1,340,000.00), and (b) in the event Borrower has not entered into the Officemax Lease in form and substance acceptable to Lender, the greatest of (I) one hundred percent (100%) of the Net Sales Proceeds (as defined in the Note) for the Jewel Parcel, (II) ninety-two percent (92%) of the Gross Sales Proceeds (as defined in the Note) for the Jewel Parcel, and (III) One Million Seven Hundred Forty Thousand and No/100 Dollars (\$1,740,000.00), such amount to be applied to the balance of the Note in accordance with the terms and conditions of the Note.

IV

DEFAULTS AND REMEDIES

4.01 Events Constituting Defaults. Each of the following events shall constitute a default (a "Default") under this Mortgage:

(a) Failure of Borrower to pay when due any sum secured hereby, including, but not limited to, any installment of principal or interest or both thereon and the continuation of such failure for five (5) days following the date such amount was due;

(b) Failure of Borrower to comply with any of the requirements of **Paragraph 3.09**;

(c) Failure of Borrower to perform or observe any other covenant, warranty or other provision contained in this Mortgage and not otherwise covered in any of the other provisions of this **Paragraph 4.01**; provided, if such default is capable of being cured, Borrower shall have a period of thirty (30) days after the date on which notice of the nature of such failure is given by Lender to Borrower to cure such default;

(d) Untruth or material deceptiveness or inaccuracy of any representation or warranty contained in the Note, the Loan Agreement, this Mortgage or any other Loan Document, or any writing pertaining to the foregoing submitted to Lender by or on behalf of Borrower or any Guarantor of payment of the Note;

(e) Admission by Borrower or any Guarantor of payment of the Note in writing, including, without limitation, an answer or other pleading filed in any court, of such Borrower's or any such Guarantor's insolvency or inability to pay its debts generally as they fall due;

(f) Institution by Borrower or any Guarantor of payment of the Note of bankruptcy, insolvency, reorganization or arrangement proceedings of any kind under the Federal Bankruptcy Code, whether as now existing or as hereafter amended, or any similar debtors' or creditors' rights law, whether federal or state, now or hereafter existing, or the making by Borrower or any Guarantor of payment of the Note of a general assignment for the benefit of creditors;

(g) Institution of any proceedings described in Paragraph 4.01(f) against Borrower or any Guarantor of payment of the Note that are consented to by Borrower or any Guarantor of payment of the Note or are not dismissed, vacated, or stayed within thirty (30) days after the filing thereof;

(h) Appointment by any court of a receiver, trustee or liquidator of or for, or assumption by any court of jurisdiction of, all or any part of the Mortgaged Property or all or a major portion of the property of Borrower or any Guarantor of payment of the Note if such appointment or assumption is consented to by Borrower or any Guarantor of payment of the Note or if, within thirty (30) days after such appointment or assumption, such receiver, trustee or liquidator is not discharged or such jurisdiction is not relinquished, vacated or stayed;

(i) Declaration by any court or governmental agency of the bankruptcy or insolvency of Borrower or any Guarantor of payment of the Note;

(j) The occurrence of any default or event of default under the terms of any of the Loan Documents after the expiration of the applicable notice and grace period, if any;

(k) The death of any Guarantor or any other guarantor or payment of the Note or performance of the obligations under the Loan Agreement, this Mortgage or the other Loan Documents, and within sixty (60) days following any such event Borrower fails to provide Lender with either (i) additional collateral for the Loan in form and amount acceptable to Lender in Lender's reasonable discretion, or (ii) a replacement guarantor acceptable to Lender in Lender's reasonable discretion; or

(l) Any material adverse change in the financial condition of Borrower, or any corporation owned or controlled, directly or indirectly by Borrower, or any Guarantor of payment of the Note which causes Lender to reasonably deem itself to be insecure.

4.02 Acceleration of Maturity. Upon the occurrence of any Default, at the election of Lender, the entire principal balance then outstanding under the Note, together with all unpaid interest accrued thereon and all other sums due from Borrower thereunder, under this Mortgage or any other Loan Document shall become immediately due and payable with interest thereon at the Default Interest Rate.

4.03 Foreclosure of Mortgage. Upon the occurrence of any Default, or at any time thereafter, Lender may, at its option, proceed to foreclose the lien of this Mortgage by judicial proceedings in accordance with the laws of the state in which the Premises are located and to exercise any other remedies of Lender provided herein or in the other Loan Documents, or which Lender may have at law or in equity. Any failure by Lender to exercise such option shall not constitute a waiver of its right to exercise the same at any other time.

4.04 Lender's Continuing Options. The failure of Lender to declare a Default or exercise any one or more of its options to accelerate the maturity of the indebtedness secured hereby and to foreclose the lien hereof following any Default as aforesaid, or to exercise any other option granted to Lender hereunder in any one or more instances, or the acceptance by Lender of partial payments of such indebtedness, shall neither constitute a waiver of any such Default or of Lender's options hereunder nor establish, extend or affect any grace period for payments due under the Note, but such options shall remain continuously in force. Acceleration of maturity, once claimed hereunder by Lender, may, at Lender's option, be rescinded by written acknowledgment to that effect by Lender and shall not affect Lender's right to accelerate maturity upon or after any future Default.

4.05 Litigation Expenses. In any proceeding to foreclose the lien of this Mortgage or enforce any other remedy of Lender under the Note, this Mortgage, the other Loan Documents or in any other proceeding whatsoever in connection with the Mortgaged Property in which Lender is named as a party, there shall be allowed and included, as additional indebtedness secured hereby in the judgment or decree resulting therefrom, all expenses paid or incurred in connection with such proceeding by or on behalf of Lender, including, without limitation, reasonable attorney's fees and expenses and court costs, appraiser's fees, outlays for documentary evidence and expert advice, stenographers' charges, publication costs, survey costs, and costs (which may be estimated as to items to be expended after entry of such judgment or decree) of procuring all abstracts of title, title searches and examinations, title insurance policies, Torrens certificates and any similar data and assurances with respect to title to the Premises as Lender may deem reasonably necessary, and any other expenses and expenditures which may be paid or incurred by or on behalf of Lender and permitted by the IMF Law (as such term is hereinafter defined in Paragraph 4.09) to be included in the decree of sale, either to prosecute or defend in such proceeding or to evidence to bidders at any sale pursuant to any such decree the true condition of the title to or value of the Premises or the Mortgaged Property. All expenses of the foregoing nature, and such expenses as may be incurred

in the protection of any of the Mortgaged Property and the maintenance of the lien of this Mortgage thereon, including, without limitation, the reasonable fees and expenses of, and court costs incurred by, any attorney employed by Lender in any litigation affecting the Note, this Mortgage or any of the other Loan Documents or any of the Mortgaged Property, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding in connection therewith, shall be immediately due and payable by Borrower with interest thereon at the Default Interest Rate.

4.06 Performance by Lender. In the event of any Default, or in the event any action or proceeding is instituted which materially affects, or threatens to materially affect, Lender's interest in the Mortgaged Property, Lender may, but need not, make any payment or perform any act on Borrower's behalf in any form and manner deemed expedient by Lender, and Lender may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any; purchase, discharge, compromise or settle any tax lien or other prior or junior lien or title or claim thereof; redeem from any tax sale or forfeiture affecting the Mortgaged Property; or contest any tax or assessment thereon. All monies paid for any of the purposes authorized herein and all expenses paid or incurred in connection therewith, including without limitation reasonable attorneys' fees and court costs, and any other monies advanced by Lender to protect the Mortgaged Property and the lien of this Mortgage, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Borrower to Lender without notice and with interest thereon at the Default Interest Rate from the date an advance is made to and including the date the same is paid. The action or inaction of Lender shall never be construed to be waiver of any right accruing to Lender by reason of any default by Borrower. Lender shall not incur any personal liability because of anything it may do or omit to do hereunder, nor shall any acts of Lender act as a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Mortgage or to proceed to foreclose this Mortgage.

4.07 Right of Possession. In any case in which, under the provisions of this Mortgage, Lender has a right to institute foreclosure proceedings, whether or not the entire principal sum secured hereby becomes immediately due and payable as aforesaid, or whether before or after the institution of proceedings to foreclose the lien hereof or before or after sale thereunder, Borrower shall, forthwith upon demand of Lender, surrender to Lender, and Lender shall be entitled to take actual possession of, the Mortgaged Property or any part thereof, personally or by its agent or attorneys, and Lender, in its discretion, may enter upon and take and maintain possession of all or any part of the Mortgaged Property, together with all documents, books, records, papers and accounts of Borrower or the then owner of the Mortgaged Property relating thereto, and may exclude Borrower, such owner and any agents and servants thereof wholly therefrom and may, as attorney-in-fact or agent of Borrower or such owner, or in its own name as Lender and under the powers herein granted:

(a) hold, operate, manage and control all or any part of the Mortgaged Property and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, whether legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits and

avails of the Mortgaged Property, including, without limitation, actions for recovery of rent, and actions in forcible detainer, all without notice to Borrower;

(b) cancel or terminate any lease or sublease of all or any part of the Mortgaged Property for any cause or on any ground that would entitle Borrower to cancel the same;

(c) elect to disaffirm any lease or sublease of all or any part of the Mortgaged Property made subsequent to this Mortgage or subordinated to the lien hereof;

(d) extend or modify any then existing leases and make new leases of all or any part of the Mortgaged Property, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Loan and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Borrower, all persons whose interests in the Mortgaged Property are subject to the lien hereof and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the indebtedness secured hereby, satisfaction of any foreclosure decree or issuance of any certificate of sale or deed to any such purchaser; and

(e) make all necessary or proper repairs, decoration, renewals, replacements, alterations, additions, betterments and improvements in connection with the Mortgaged Property as may seem judicious to Lender, to insure and reinsure the Mortgaged Property and all risks incidental to Lender's possession, operation and management thereof, and to receive all rents, issues, deposits, profits and avails therefrom.

Without limiting the generality of the foregoing, Lender shall have all right, power, authority and duties as provided in the IMF Law. Nothing herein contained shall be construed as constituting Lender as Mortgagee in possession in the absence of the actual taking of possession of the Premises.

4.08 Priority of Payments. Any rents, issues, deposits, profits and avails of the Property received by Lender after taking possession of all or any part of the Mortgaged Property, or pursuant to any assignment thereof to Lender under the provisions of this Mortgage shall be applied in payment of or on account of the following, in such order as Lender or, in case of a receivership, as the court, may in its sole and absolute discretion determine:

(a) operating expenses of the Mortgaged Property (including, without limitation, reasonable compensation to Lender, any receiver of the Mortgaged Property, any agent or agents to whom management of the Mortgaged Property has been delegated, and also including lease commissions and other compensation for and expenses of seeking and procuring tenants and entering into leases, establishing claims for damages, if any, and paying premiums on insurance hereinabove authorized);

(b) taxes, special assessments, water and sewer charges now due or that may hereafter become due on the Mortgaged Property, or that may become a lien thereon prior to the lien of this Mortgage;

(c) any and all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Mortgaged Property (including, without limitation, the cost, from time to time, of installing or replacing any personal property therein, and of placing the Mortgaged Property in such condition as will, in the judgment of Lender or any receiver thereof, make it readily rentable or salable);

(d) any indebtedness secured by this Mortgage or any deficiency that may result from any foreclosure sale pursuant hereto; and

(e) any remaining funds to Borrower or its successors or assigns, as their interests and rights may appear.

4.09 Appointment of Receiver. Upon or at any time after the filing of any complaint to foreclose the lien of this Mortgage, the court may appoint upon petition of Lender, and at Lender's sole option, a receiver of the Mortgaged Property pursuant to the Illinois Mortgage Foreclosure Law, as amended (Illinois Code Ann. 735 ILCS 5/15-1001, et. seq.) (the "IMF Law"). Such appointment may be made either before or after sale, without notice; without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the indebtedness secured hereby; without regard to the value of the Mortgaged Property at such time and whether or not the same is then occupied as a homestead; without bond being required of the applicant; and Lender hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have all powers and duties prescribed by the IMF Law, including the power to take possession, control and care of the Mortgaged Property and to collect all rents, issues, deposits, profits and avails thereof during the pendency of such foreclosure suit and apply all funds received toward the indebtedness secured by this Mortgage, and in the event of a sale and a deficiency where Borrower has not waived its statutory rights of redemption, during the full statutory period of redemption, as well as during any further times when Borrower or its devisees, legatees, administrators, legal representatives, successors or assigns, except for the intervention of such receiver, would be entitled to collect such rents, issues, deposits, profits and avails, and shall have all other powers that may be necessary or useful in such cases for the protection, possession, control, management and operation of the Mortgaged Property during the whole of any such period. To the extent permitted by law, such receiver may extend or modify any then existing leases and make new leases of the Mortgaged Property or any part thereof, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Loan, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Borrower and all persons whose interests in the Mortgaged Property are subject to the lien hereof, and upon the purchaser or purchasers at any such foreclosure sale, notwithstanding any redemption from sale, discharge of indebtedness, satisfaction of foreclosure decree or issuance of certificate of sale or deed to any purchaser.

4.10 Foreclosure Sale. In the event of any foreclosure sale of the Mortgaged Property, the same may be sold in one or more parcels. Lender may be the purchaser at any foreclosure sale of the Mortgaged Property or any part thereof.

4.11 Application of Proceeds. The proceeds of any foreclosure sale of the Mortgaged Property, or any part thereof, shall be distributed and applied in the following order of priority: (a) on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in **Paragraphs 4.05 and 4.06** hereof; (b) all other items that, under the terms of this Mortgage, constitute secured indebtedness additional to that evidenced by the Note, with interest thereon at the Default Interest Rate; (c) all principal and interest, together with any prepayment charge, remaining unpaid under the Note, in the order of priority specified by Lender in its sole and absolute discretion; and (d) the balance, if any, to Borrower or its successors or assigns, as their interests and rights may appear.

4.12 Application of Deposits. In the event of any Default, Lender may, at its option, without being required to do so, apply any monies or securities that constitute deposits made to or held by Lender or any depository pursuant to any of the provisions of this Mortgage toward payment of any of Borrower's obligations under the Note, this Mortgage or any of the other Loan Documents in such order and manner as Lender may elect in its sole and absolute discretion. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Borrower or to the then owner or owners of the Mortgaged Property. Such deposits are hereby pledged as additional security for the prompt payment of the indebtedness evidenced by the Note and any other indebtedness secured hereby and shall be held to be applied irrevocably by such depository for the purposes for which made hereunder and shall not be subject to the direction or control of Borrower.

4.13 Indemnification. Borrower will indemnify and hold Lender harmless from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees, expenses and court costs) incurred by or asserted against Lender by reason of (a) the ownership of the Mortgaged Property or any interest therein or receipt of any rents, issues, proceeds or profits therefrom; (b) any accident, injury to or death of persons, or loss of or damage to property occurring in, on or about the Premises or any part thereof or on the adjoining sidewalks, curbs, adjacent parking areas or streets; (c) any use, nonuse or condition in, on or about the Premises or any part thereof or on the adjoining sidewalks, curbs, adjacent parking areas or streets; (d) any failure on the part of Borrower to perform or comply with any of the terms of this Mortgage; or (e) 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 owed to Lender by reason of this **Paragraph 4.13** shall constitute additional indebtedness which is secured by this Mortgage and shall become immediately due and payable upon demand therefor, and shall bear interest at the Default Interest Rate from the date such loss or damage is sustained by Lender until paid. The obligations of Borrower under this **Paragraph 4.13** shall survive any termination or satisfaction of this Mortgage.

4.14 Waiver of Right of Redemption and Other Rights. To the full extent permitted by law, Borrower agrees that it will not at any time or in any manner whatsoever take any advantage

of any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Borrower hereby expressly waives any and all rights it may have to require that the Premises be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Borrower hereby expressly waives any and all rights of redemption under the IMF Law, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Borrower and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Borrower and such other persons, are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Borrower 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 Lender, but will 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, Borrower 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 Note. Borrower acknowledges that the Premises do not constitute agricultural real estate as defined in Section 5/15-1201 of the IMF Law or residential real estate as defined in Section 5/15-1219 of the IMF Law.

V

MISCELLANEOUS

5.01 Notices. Any notices to be served pursuant hereto shall be deemed properly delivered if delivered in accordance with the terms of the Loan Agreement. Except as otherwise specifically required herein, notice of the exercise of any right or option granted to Lender by this Mortgage is not required to be given.

5.02 Time of Essence. It is specifically agreed that time is of the essence of this Mortgage.

5.03 Covenants Run with Land. All of the covenants of this Mortgage shall run with the land constituting the Premises.

5.04 Governing Law; Litigation. The place of the location of the Mortgaged Property being the State of Illinois, this Mortgage shall be construed and enforced according to the laws of that State. To the extent that this Mortgage may operate as a security agreement under the Uniform Commercial Code, Lender shall have all rights and remedies conferred therein for the benefit of a

secured party, as such term is defined therein. TO THE MAXIMUM EXTENT PERMITTED BY LAW, BORROWER HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS MORTGAGE SHALL BE TRIED AND DETERMINED ONLY IN THE STATE OR FEDERAL COURT LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS, OR, AT THE SOLE OPTION OF LENDER, IN ANY OTHER COURT IN WHICH LENDER SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, BORROWER HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH 5.04.

5.05 Rights and Remedies Cumulative. All rights and remedies set forth in this Mortgage are cumulative, and the holder of the Note and of every other obligation secured hereby may recover judgment thereon, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security of any right or remedy afforded hereby.

5.06 Severability. If any provision of this Mortgage or any paragraph, sentence, clause, phrase or word, or the application thereof, is held invalid in any circumstance, the validity of the remainder of this Mortgage shall be construed as if such invalid part were never included herein.

5.07 Non-Waiver. Unless expressly provided in this Mortgage to the contrary, no consent or waiver, whether express or implied, by any interested party referred to herein to or of any breach or default by any other interested party referred to herein regarding the performance by such party of any obligations contained herein shall be deemed a consent to or waiver of the party of any obligations contained herein or shall be deemed a consent to or waiver of the performance by such party of any other obligations hereunder or the performance by any other interested party referred to herein of the same, or of any other, obligations hereunder.

5.08 Headings. The headings of sections and paragraphs in this Mortgage are for convenience of reference only and shall not be construed in any way to limit or define the content, scope or intent of the provisions hereof.

5.09 Grammar. As used in this Mortgage, the singular shall include the plural, and masculine, feminine and neuter pronouns shall be fully interchangeable, where the context so requires. Whenever the words "including", "include" or "includes" are used in this Mortgage, they should be interpreted in a non-exclusive manner as though the words " , without limitation," immediately followed the same.

5.10 Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon Borrower, its successors, assigns, legal representatives and all other persons or entities claiming under or through Borrower, and the word "Borrower," when used herein, shall include all such persons and entities and any others liable for the payment of the indebtedness secured hereby

or any part thereof, whether or not they have executed either of the Note or this Mortgage. The word "Lender," when used herein, shall include Lender's successors, assigns and legal representatives, including all other holders, from time to time, of the Note.

5.11 No Joint Venture. Borrower and Lender acknowledge and agree that under no circumstances shall Lender be deemed to be a partner or joint venturer with Borrower or any beneficiary of Borrower, including, without limitation, by virtue of its becoming a mortgagee in possession or exercising any of its rights pursuant to this Mortgage or pursuant to any of the other Loan Documents, or otherwise.

5.12 Additional Fees.

(a) Borrower agrees to pay on demand all of the out-of-pocket costs and expenses of Lender (including, without limitation, the reasonable fees and out-of-pocket expenses of Lender's counsel) in connection with the preparation, negotiation, execution and delivery of the Note, this Mortgage, any of the other Loan Documents and all other instruments or documents provided for herein or delivered or to be delivered hereunder or in connection herewith.

(b) The reasonable costs and expenses which Lender incurs in any manner or way with respect to the following shall be part of the indebtedness secured hereby, payable by Borrower on demand if at any time after the date of this Mortgage Lender: (i) employs counsel for advice or other representation (A) with respect to the amendment or enforcement of the Note, the Loan Agreement, this Mortgage or any of the other Loan Documents, (B) to represent Lender in any work-out or any type of restructuring of the Loan, or any litigation, contest, dispute, suit or proceeding or to commence, defend or intervene or to take any other action in or with respect to any litigation, contest, dispute, suit or proceeding (whether instituted by the Lender, Borrower or any other person or entity) in any way or respect relating to the Note, the Loan Agreement, this Mortgage, any of the other Loan Documents, Borrower's affairs or any collateral securing the indebtedness secured hereby or (C) to enforce any of the rights of Lender with respect to Borrower, and/or (ii) seeks to enforce or enforces any of the rights and remedies of Lender with respect to Borrower. Without limiting the generality of the foregoing, such expenses, costs, charges and fees include reasonable fees, costs and expenses of attorneys, accountants and consultants; court costs and expenses; court reporter fees, costs and expenses; long distance telephone charges; telegram and telecopier charges; and expenses for travel, lodging and food.

5.13 Compliance with the Illinois Mortgage Foreclosure Law.

(a) In the event that any provision in this Mortgage shall be inconsistent with any provisions of the IMF Law, the provision of the IMF Law shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the IMF Law.

(b) Borrower and Lender shall have the benefit of all of the provisions of the IMF Law, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the IMF Law which is specifically referred to herein may be repealed, Lender 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.

(c) If any provision of this Mortgage shall grant to Lender any rights or remedies upon default of Borrower which are more limited than the rights that would otherwise be vested in Lender under the IMF Law in the absence of said provision, Lender shall be vested with the rights granted in the IMF Law to the full extent permitted by law.

(d) Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under any provisions of the IMF Law, whether incurred before or after any decree or judgment of foreclosure shall be added to the indebtedness hereby secured or by the judgment of foreclosure.

5.14 Construction Mortgage. This is a "Construction Loan Mortgage" within the purview and operation of the Uniform Commercial Code of the State of Illinois, as amended. The proceeds of the Loan secured by this Mortgage shall be disbursed to or upon the direction of Borrower solely for the purpose of paying the cost of construction of improvements upon the Premises and related costs, pursuant to and in accordance with the Loan Agreement and any other agreements executed and delivered concurrently herewith. Borrower covenants and agrees that all of such loan proceeds will be used solely for such purpose. Accordingly, the lien created by this Mortgage shall be a first lien against all fixtures, equipment and other personal property of every kind incorporated as aforesaid, and such lien shall take precedence and be paramount and superior to any other lien, charge or security interest that any person may claim against such fixtures or personal property.

5.15 Loan Agreement. The proceeds of the Loan are to be disbursed by Lender to Borrower in accordance with the provisions contained in the Loan Agreement. All advances and indebtedness arising and accruing under the Loan Agreement from time to time shall be secured hereby to the same extent as though the Loan Agreement were fully incorporated in this Mortgage, and the occurrence of any event of default under the Loan Agreement shall constitute a default under this Mortgage entitling the Lender to all of the rights and remedies conferred upon the Lender by the terms of this Mortgage or by law, as in the case of any other default.

5.16 Recapture. To the extent Lender receives any payment by or on behalf of Borrower, which payment or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to Borrower or its respective estate, trustee, receiver, custodian or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such payment or repayment, the obligation or part thereof

which has been paid, reduced or satisfied by the amount so repaid shall be reinstated by the amount so repaid and shall be included within the indebtedness hereby secured as of the date such initial payment, reduction or satisfaction occurred.

5.17 No Lien Management Agreements. Borrower shall include a "no lien" provision in any property management agreement hereafter entered into by Borrower with a property manager for the Mortgaged Property, whereby the property manager waives and releases any and all mechanics' lien rights that the property manager, or anyone claiming through or under the property manager, may have pursuant to 770 ILCS 60/1. Such property management agreement containing such "no lien" provision or a short form thereof shall, at Lender's request, be recorded with the Recorder of Deeds of Cook County, Illinois, as appropriate.

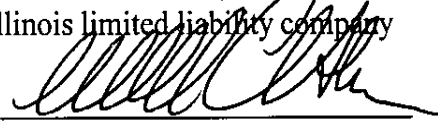
5.18 Deed in Trust. If title to the Mortgaged Property or any part thereof is now or hereafter becomes vested in a trustee, any prohibition or restriction contained herein against the creation of any lien on the Mortgaged Property shall be construed as a similar prohibition or restriction against the creation of any lien on or security interest in the beneficial interest of such trust.

5.19 JURY WAIVER. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF BORROWER AND LENDER HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS MORTGAGE, OR IN ANY WAY CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE DEALINGS OF BORROWER AND LENDER WITH RESPECT TO THIS MORTGAGE OR THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF BORROWER AND LENDER HEREBY AGREES THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT BORROWER OR LENDER MAY FILE A COPY OF THIS MORTGAGE WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF EACH OF BORROWER AND LENDER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

IN WITNESS WHEREOF, Borrower has executed this Mortgage as of the date and year first above written.

BORROWER:

BSG HOMEWOOD, L.L.C.
an Illinois limited liability company

By: 

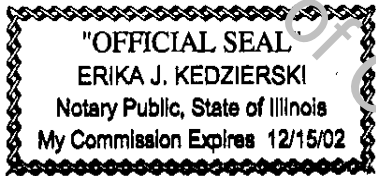
Its: MANAGER

Property of Cook County Clerk's Office

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Erika J. Kedzierski, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that William A. Shiner, personally known to me to be the manager of **BSG HOMEWOOD, L.L.C.**, are the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he has signed and delivered the said instrument as his free and voluntary act as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 31st day of August, 1999.



Erika J. Kedzierski
Notary Public

My commission expires: 12/15/02

EXHIBIT "A"

LEGAL DESCRIPTION

P.I.N. No.: 29-33-100-021, 022, AND 023
AND A PORTION OF 29-33-100-020-0000

Common Address: NE CORNER OF HALSTED AND RIDGE Rd.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STREET ADDRESS:

CITY:

TAX NUMBER: 29-33-100-020-0000

COUNTY: COOK

99845040

LEGAL DESCRIPTION:

PARCEL 1:

LOTS 2 THROUGH 5 IN HOMEWOOD HOME DEPOT SUBDIVISION RECORDED SEPTEMBER ~, 1999 AS DOCUMENT NUMBER ~, BEING A RESUBDIVISION OF THE NORTH 20 FEET OF THE WEST 870 FEET (EXCEPT THAT PART TAKEN FOR SOUTH HALSTED STREET) OF THE SOUTHWEST QUARTER OF SECTION 33, TOWNSHIP 36 NORTH RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALSO THE SOUTH 1350.00 FEET OF THE EAST 800 FEET OF THE WEST 870 FEET OF THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 36 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL 2:

EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR INGRESS AND EGRESS, UTILITIES, ETC. AS CONTAINED IN RECIPROCAL EASEMENT AND OPERATION DECLARATION RECORDED ~ AS DOCUMENT NUMBER ~

99845037

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