

# UNOFFICIAL COPY

THIS INSTRUMENT PREPARED BY AND  
RECORDED COPY SHOULD BE MAILED TO:

Howard Levy, Vice Chairman  
First Bank of Highland Park  
1835 First Street  
Highland Park, IL 60035

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8433/0176 04 001 Page 1 of 21  
1999-10-19 11:42:50  
Cook County Recorder 61.00



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C.T.I.C.

## MORTGAGE AND ASSIGNMENT OF RENTS

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THIS MORTGAGE AND ASSIGNMENT OF RENTS, is between  
BGP Evanston LLC, an Illinois Limited Liability Company  
(hereinafter referred to as "Mortgagor") and BANK OF HIGHLAND  
PARK, an Illinois banking corporation, (hereinafter referred to as  
"Mortgagee"), 21  
ac

## WITNESSETH

WHEREAS, Mortgagor has concurrently executed a Loan Agreement (the "Loan Agreement") and Note dated as of October 12, 1999, the Note being in the principal sum of One Million Two Hundred Twenty-seven Thousand & no/100 (\$ 1,227,000.00), made payable to the order of Mortgagee (the "Note") which Note is due October 11, ~~XX~~ 2000 and bears interest per annum (on the basis of a 360 day year) on outstanding principal until and after maturity at the rate of one-half percent plus Mortgagee's Prime Rate as set forth in the Note; and

WHEREAS, all payments on account of indebtedness evidenced by the Note shall be payable at such place as the holder of the Note may, from time to time, in writing appoint, and in the absence of such appointment, then at the office of Mortgagee.

TO SECURE the payment of the indebtedness evidenced by the Note and Loan Agreement, and the performance of all agreements in said Note and Loan Agreement and any extensions, or renewals thereof which are hereby incorporated herein and made a part hereof, together with any and all other indebtedness secured hereby (collectively the "Indebtedness"), such other indebtedness secured hereby including any and all liabilities, obligations and covenants of Mortgagor to Mortgagee, whether hereafter arising, due or to become due, direct or indirect, absolute or contingent, howsoever created or arising, such aggregate sum secured hereby not to exceed \$ 1,227,000.00, Mortgagor does by these presents GRANT, CONVEY and MORTGAGE unto Mortgagee, its successors and assigns, the real

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estate, situated, lying and being in the County of Cook and State of Illinois, legally described on Exhibit A attached hereto and made part hereof together with the property described in the succeeding two paragraphs (said property described on Exhibit A hereto and the property described in the succeeding two paragraphs is hereinafter collectively referred to as the "Premises");

Included within the term "Premises," as used herein, shall be any and all improvements, tenements, easements, fixtures, privileges, reservations, allowances, hereditaments and appurtenances now or hereafter thereunto belonging or pertaining; any and all rights and estates in reversion or remainder; and any and all rights and interests of every name and nature now or hereafter owned by the Mortgagor, forming a part of and/or used in connection with the Premises, including (by way of enumeration but without limitation) any and all of the following items if any; all machines, machinery, fixtures, apparatus, equipment or articles used to supply heating, gas, electricity, air conditioning, water, light, power, sprinkler protection, waste removal, refrigeration and ventilation, and all floor coverings, screens, storm windows, blinds, awnings, stoves, refrigerators, dishwashers, disposal units, range hoods and blowers; in each case now or hereafter placed in, on or at the Premises (it being understood that the enumeration of any specific articles of property shall in no wise exclude or be held to exclude any items of property not specifically enumerated); and

All of the rents, income, receipts, revenues, issues and profits thereof and therefrom; and all of the land, estate, property and rights hereinabove described and hereby conveyed and intended so to be, whether real, personal or mixed, and whether or not affixed or annexed to the real estate are intended to be as a unit and are hereby understood, agreed and declared to form a part and parcel of the Premises and to be appropriated to the use of the Premises and for the purposes hereof shall be deemed to be part of the Premises conveyed and mortgaged hereby;

TO HAVE AND TO HOLD the Premises unto the said Mortgagee, its successors and assigns, forever, free from all rights and benefits under the Homestead Exemption Laws of the State of Illinois, which rights and benefits are hereby expressly released and waived, for the purposes and upon the uses and trusts herein set forth, together with all right to retain possession of the Premises after any default in the payment of all or any part of the Indebtedness, or the breach of any covenant or agreement herein contained, or upon the occurrence of any Event of Default as hereinafter defined.

PROVIDED, NEVERTHELESS, and these presents are upon the express condition that if all of the Indebtedness shall be duly and punctually paid and all the terms, provisions, conditions, agreements, and covenants herein contained on the part of the

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Mortgagor to be performed or observed shall be strictly performed and observed, then this Mortgage and the estate, right and interest of the Mortgagee in the Premises shall cease and become void and of no effect.

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

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1. PAYMENT OF INDEBTEDNESS: The Mortgagor will duly and promptly pay each and every installment of the principal and interest and premium, if any, on the Note, and all other Indebtedness, as the same become due, and will duly perform and observe all of the covenants, agreements and provisions herein in the Note or in the Loan Agreement or any other Loan Instrument, as defined in the Loan Agreement.

2. MAINTENANCE, REPAIR, RESTORATION LIENS AND ORDINANCES: The Mortgagor will: (a) keep the Premises in good condition and repair, without waste, and free from mechanics', materialmen's or like liens or claims or other liens or claims for lien not expressly subordinated to the lien hereof; (b) pay, when due, any indebtedness which may be secured by a lien or charge on the Premises superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such prior lien to the Mortgagee; (c) complete, within a reasonable time, any work now or at any time in the process of erection upon the Premises; (d) comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof; (e) make no material alterations in the Premises, except as required by law or municipal ordinance; (f) suffer or permit no change in the general nature of the occupancy of the Premises without the Mortgagee's prior written consent; (g) pay all operating costs of the Premises; (h) initiate or acquiesce in no zoning reclassification with respect to the Premises, without the Mortgagee's prior written consent; (i) comply with all statutes, orders, requirements or decrees relating to the Premises by any federal, state or municipal authority and (j) observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits, privileges, franchises and concessions which are applicable to the Premises or which have been granted to or contracted for by Mortgagor in connection with any existing or presently contemplated use of the Premises. Anything in this Section 2 to the contrary notwithstanding, it shall not be a breach of this Section 2 if mechanics' and materialmen's liens or liens for maintenance, assessments or other charges are asserted against the Premises provided Mortgagor is contesting the same by appropriate proceedings and for which it has posted with a title insurer acceptable to Mortgagee consideration sufficient to enable said title insurer to issue, if requested, a title insurance policy insuring Mortgagee's interest in the Premises over said lien.

3. TAXES: The Mortgagor will pay when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "Taxes"), whether or not assessed against the Mortgagor, if applicable to the Premises or any interest therein, or the Indebtedness, or any obligation or agreement secured hereby; and Mortgagor will, upon written request, furnish to the Mortgagee duplicate receipts therefor. To prevent default thereunder, the Mortgagor will pay in full under protest in the manner provided by statute, any Taxes which the Mortgagor may desire to contest; provided, however, that if deferment of payment of any such Taxes is required to conduct any contest or review, the Mortgagor shall deposit the full amount thereof, together with an amount equal to the estimated interest and penalties thereon during the period of contest, with the Mortgagee or any title insurer, satisfactory to Mortgagee. In any event, Mortgagor shall (and if Mortgagor shall fail so to do, the Mortgagee may, but shall not be required to, and for the purpose may use the monies deposited as aforesaid) pay all Taxes, notwithstanding such contest, if in the opinion of the Mortgagee, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed. In the event that any law or court decree has the effect of deducting from the value of land for the purpose of taxation any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the Taxes or liens herein required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the interest of the Mortgagee in the Premises or the manner of collection of Taxes, so as to affect this Mortgage or the Indebtedness or the holder thereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, will pay such Taxes, or reimburse the Mortgagee therefor. Nothing in this Section 3 contained shall require the Mortgagor to pay any income, franchise or excise tax imposed upon the Mortgagee, excepting only such which may be levied against such income expressly as and for a specific substitute for Taxes on the Premises, and then only in an amount computed as if the Mortgagee derived no income from any source other than its interest hereunder.

In case of default therein, Mortgagee may, but need not, make any payment or perform any act hereinbefore required of Mortgagor in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise, or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting said Premises or contest any tax or assessment.

4. INSURANCE COVERAGE: The mortgagor will insure and keep the Premises insured and each and every part and parcel thereof, against such perils and hazards as the Mortgagee may from time to time require, and in any event including:

- (a) Insurance against loss by fire, risks covered by the so-called extended coverage endorsement, and other risks as the Mortgagee may require; and
- (b) Public liability insurance against bodily injury and property damage with such limits as the Mortgagee may require.

All policies of insurance to be maintained and provided as required by this Section shall be in forms, companies and amounts satisfactory to the Mortgagee and all policies of casualty insurance shall have attached thereto mortgagee clauses or endorsements in favor of and with loss payable to and in form satisfactory to the Mortgagee. The Mortgagor will deliver all policies, including additional and renewal policies to the Mortgagee, and in case of insurance policies about to expire, the Mortgagor will deliver renewal policies not less than ten (10) days prior to the respective dates of expiration.

5. APPLICATION OF PROCEEDS OF INSURANCE: The Mortgagor will give the Mortgagee prompt notice of any damage to or destruction of the Premises, and:

- (a) In case of loss covered by policies of insurance, the Mortgagee (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be) is hereby authorized at its option either (i) to settle and adjust any claim under such policies without the consent of the Mortgagor, or (ii) allow the Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss; provided, that the Mortgagor may itself adjust losses aggregating not in excess of Five Thousand Dollars (\$5,000), and provided further that in any case the Mortgagee shall, and is hereby authorized to, collect and receipt for any such insurance proceeds; and the expenses incurred by the Mortgagee in the adjustment and collection of insurance proceeds shall be so much additional Indebtedness, and shall be reimbursed to the Mortgagee upon demand.
- (b) In the event of any insured damage to or destruction of the Premises or any part thereof (herein called an "Insured Casualty"), and if no Event of Default as hereinafter defined shall have occurred and be then continuing and the Mortgagor shall not be in default

hereunder, the proceeds of insurance shall be applied in the event restoration or repair of the Premises is economically feasible and the security of this Mortgage is not thereby impaired, to restoring the Premises. Such proceeds shall be made available, from time to time, upon Mortgagee being furnished with reasonably satisfactory evidence of the estimated cost of such restoration and that sufficient funds are available for such costs and with such architect's certificates, waivers of lien, contractors' sworn statements and other evidence of cost and of payments as Mortgagee may reasonably require and approve, and if the estimated cost of the work exceeds ten percent (10%) of the original principal amount of the indebtedness secured hereby, with all plans and specifications for such rebuilding or restoration as Mortgagee may reasonably require and approve. No payment made prior to the final completion of the work shall exceed ninety percent (90%) of the value of the work performed, from time to time, and at all times the undisbursed balance of said proceeds remaining in the hands of the Mortgagee shall be at least sufficient to pay for the cost of completion of the work, free and clear of any liens.

- (c) Except as provided for in Subsection (b) of this Section 5, the Mortgagee may apply the proceeds of insurance consequent upon any Insured Casualty upon the Indebtedness, in such order or manner as the Mortgagee may elect, with any excess paid to Mortgagor.
- (d) In the event that proceeds of insurance, if any, shall be made available to the Mortgagor for the restoring or repairing of the Premises, the Mortgagor hereby covenants to restore or repair the same, to be of at least equal value, and of substantially the same character as prior to such damage or destruction; all to be effected in accordance with plans and specifications to be first submitted to and reasonably approved by the Mortgagee.

6. CONDEMNATION: The Mortgagor hereby assigns, transfers and sets over unto the Mortgagee the entire proceeds of any award or claim for damages for any of the Premises taken or damaged under the power of eminent domain, or by condemnation. The Mortgagee may elect to apply the proceeds of the award upon or in

reduction of the Indebtedness then most remotely to be paid, whether due or not, and the excess if any, paid to Mortgagor.

7. STAMP TAX: If, by the laws of the United States of America, or of any state or subdivision having jurisdiction over the Mortgagor, any tax is levied or becomes due in respect of the issuance of the Note, this Mortgage, or the Indebtedness, Mortgagor shall pay such tax in the manner required by such law, provided that nothing herein contained shall require Mortgagor to pay any income, franchise or excise tax imposed upon Mortgagee.

8. PREPAYMENT PRIVILEGE: The Mortgagor shall have the privilege of making prepayments on the principal of the Note (in addition to the required payments thereunder) in accordance with the terms and conditions set forth in the Loan Agreement and Note, but not otherwise.

9. EFFECT OF EXTENSIONS OF TIME, AMENDMENTS ON JUNIOR LIENS AND OTHERS: If the payment of the Indebtedness, or any part thereof, be extended or varied, or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability, and the lien and all provisions hereof, shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding any such extension, variation or release.

10. MORTGAGEE'S PERFORMANCE OF MORTGAGOR'S OBLIGATIONS: In case of default therein, the Mortgagee may, upon notice to Mortgagor, but shall not be required to, make any payment or perform any act herein required of the Mortgagor (whether or not the Mortgagor is personally liable therefor) in any form and manner deemed expedient by the Mortgagee; and the Mortgagee may, but shall not be required to, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises, or contest any tax or assessment. All monies paid for any of the purposes herein authorized, and all expenses paid or incurred in connection therewith, including attorneys' fees and any other monies advanced by the Mortgagee to protect the Premises and the lien hereof, shall be so much additional Indebtedness, and shall become immediately due and payable without notice, and with interest thereon at the interest rate specified in the Note. Inaction of the Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of the Mortgagor. The Mortgagee, in making any payment hereby authorized (a) relating to taxes and assessments, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or

title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

11. INSPECTION OF PREMISES: The Mortgagee shall, subject to the rights of any lessee of the Premise or any part thereof, have the right to inspect the Premises at all reasonable times, and access thereto shall be permitted for that purpose.

12. RESTRICTIONS ON TRANSFER: It shall be an immediate Event of Default hereunder if without the prior written consent of the Mortgagee:

- (a) Mortgagor shall create, effect or consent to or shall suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of the Premises or any part thereof, or interest therein, excepting only sale or other dispositions of Collateral (herein called "Obsolete Collateral") no longer useful in connection with the operation of the Premises, provided that with respect to Obsolete Collateral prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by Collateral, subject to the first and prior lien hereof, of at least equal value and utility if such new Collateral is necessary to the operation of the Premises.
- (b) Any beneficiary of the Mortgagor shall create, effect or consent to, or shall suffer or permit, any sale, assignment, transfer, lien or other encumbrance or alienation of such beneficiary's beneficial interest in the Mortgagor;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided, that the foregoing provisions of this Section 12 shall not apply (i) to liens securing the Indebtedness, (ii) to the lien of current taxes and assessments not in default or (iii) to any transfer of any beneficial interest in the Mortgagor, by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate, personal representatives and/or committee. The provisions of this Section 12 shall be operative with respect to, and shall be binding upon, any persons who, in accordance with the terms hereof



or otherwise, shall acquire any part of or interest in or encumbrance upon the Premises, or such beneficial interest in the Mortgagor.

13. UNIFORM COMMERCIAL CODE. This Mortgage constitutes a Security Agreement under the Uniform Commercial Code of the State of Illinois (herein called the "Code") with respect to any part of the Premises which may or might now or hereafter be or be deemed to be personal property, fixtures or property other than real estate (all for the purposes of this Section 13 called "Collateral"); all of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this Section 13 shall not limit the generality or applicability of any other provision of this Mortgage but shall be in addition thereto:

- (a) The Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof.
- (b) The Collateral is to be used by the Mortgagor solely for business purposes, being installed upon the Premises for Mortgagor's own use or as the equipment and furnishings furnished by Mortgagor, as landlord, to tenants of the Premises.
- (c) The Collateral will be kept at the real estate comprised in the Premises, and will not be removed therefrom without the consent of the Mortgagee (being the Secured Party as that term is used in the Code) or any other person; and the Collateral may be affixed to such real estate but will not be affixed to any other real estate.
- (d) No Financing Statement covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor will at its own cost and expense, upon demand, furnish to the Mortgagee such further information and will execute and deliver to the Mortgagee such financing statements and other documents in from satisfactory to the Mortgagee and will do all such acts and things as the Mortgagee may at any time or from time to time reasonably request or as may be necessary or appropriate to establish and



maintain a perfected security interest in the Collateral as security for the Indebtedness, subject to no adverse liens or encumbrances; and the Mortgagor will pay the cost of filing the same or filing or recording such filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by the Mortgagee to be necessary or desirable.

- (e) Upon any default or Event of Default as defined hereunder (regardless of whether the Code has been enacted in the jurisdiction where rights or remedies are asserted) and at any time thereafter (such default not having previously been cured), the Mortgagee at its option may declare the Indebtedness immediately due and payable, and thereupon Mortgagee shall have the remedies of a secured party under the Code, including without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as the Mortgagor can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace), upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and the Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of the Mortgagor's obligations, as provided in the Code. The Mortgagee may require the Mortgagor to assemble the Collateral and make it available to the Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. The Mortgagee will give Mortgagor at least five (5) days' notice of the time and place of any public sale thereof or for the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified mail or equivalent, postage prepaid, to the address of

Mortgagor shown in this Mortgage at least five (5) days before the time of the sale or disposition. The Mortgagee may buy at any public sale and if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Mortgagee may buy at private sale. Any such sale may be held as part of and in conjunction with any foreclosure sale of the real estate comprised within the Premises, the Collateral and real estate to be sold as one lot if Mortgagee so elects. The net proceeds realized upon any such reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied in satisfaction of the Indebtedness. The Mortgagee will account to the Mortgagor for any surplus realized on such disposition.

- (f) The remedies of the Mortgagee hereunder are cumulative and the construed as a waiver of any of the other remedies of the Mortgagee, including having the Collateral deemed part of the realty upon any foreclosure thereof so long as any part of the Indebtedness remains unsatisfied.
- (g) The terms and provisions contained in this Section 13 shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

14. EVENTS OF DEFAULT: The occurrence of an Event of Default under the Loan Agreement shall constitute an Event of Default hereunder. In addition the following shall constitute Events of Default hereunder:

- (a) If default be made in the due and punctual payment of the Note or any installment thereof, either principal or interest, as and when the same is due and payable, or if default be made in the making of any payment of monies required to be paid hereunder or under the Note and if any such defaults are not cured within fifteen (15) days following the date payment was due and payable; or
- (b) If an Event of Default pursuant to Paragraph 12 hereof shall occur and be continuing, without period of grace of any kind; or



- (c) If a breach shall occur in the due and punctual performance or observance of any covenant, agreement or condition herein or in the Note contained; or
- (d) If the Premises shall be abandoned.

15. LITIGATION AND FORECLOSURE: Upon the occurrence of an Event of Default, Mortgagee shall have the right to foreclose the lien hereof for then Indebtedness or any part thereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this paragraph mentioned, and such expenses and fees as may be incurred in the protection of said premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or said Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at rate of interest set forth in the Note and shall be secured by this Mortgage, and shall also include:

- (a) Any proceeding, including probate and bankruptcy proceedings, to which it shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any Indebtedness; and
- (b) Preparations for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose whether or not actually commenced; and
- (c) Preparations for the defense of any threatened suit or proceeding which might effect the Premises or the security hereof, whether or not actually commenced.

16. APPLICATION OF PROCEEDS: The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding paragraph hereof; Second, all other items which under the terms hereof constitute Indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; Third, all principal and interest remaining unpaid on the Indebtedness; Fourth, any overplus to Mortgagor, its successors or assigns, as their right may appear.

17. APPOINTMENT OF RECEIVER: Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of said Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not and the Mortgagee hereunder or any holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of said Premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (a) the Indebtedness, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; (b) the deficiency in case of a sale and deficiency.

18. ASSIGNMENT OF RENTS AND LEASES: To further secure the Indebtedness, Mortgagor does hereby sell, assign and transfer unto the Mortgagee all the rents, issues and profits now due and which may hereafter become due under or by virtue of any lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the Premises or any part thereof, which may have been heretofore or may be hereafter made or agreed or which may be made or agreed to by the Mortgagee under the powers herein granted, it being the intention hereby to establish an absolute transfer and assignment of all of such leases and agreements, and all the avails thereunder, unto the Mortgagee, and Mortgagor does hereby appoint irrevocably the Mortgagee its true and lawful attorney in its name and stead (with or without taking possession of the Premises as provided in Paragraph 22 hereof) to

rent, lease or tenancy on any portion of said Premises to any party or parties at such rental and upon such terms as said Mortgagee shall, in its discretion, determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due or that may hereafter become due under each and every of the leases and agreements, written or verbal, or other tenancy existing, or which may hereafter exist on said Premises, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as the Mortgagee would have upon taking possession pursuant to the provisions of Paragraph 19 hereof.

Nothing herein contained shall be construed as constituting the Mortgagee a mortgagee in possession in the absence of the taking of actual possession of the premises by the Mortgagee pursuant to Paragraph 19 hereof. In the exercise of the powers herein granted the Mortgagee, no liability shall be asserted or enforced against the Mortgagee, all such liability being expressly waived and released by Mortgagee.

Although it is the intention of the parties that the Assignment contained in this Paragraph 18 shall be a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that the Mortgagee shall not exercise any of the rights or powers conferred upon it by this Paragraph until a default shall exist hereunder.

19. MORTGAGEE'S RIGHT OF POSSESSION: In any case in which under the provisions of this Mortgage the Mortgagee has a right to institute foreclosure proceedings, whether before or after the whole principal sum secured hereby is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, forthwith, upon demand of Mortgagee, Mortgagor shall surrender to Mortgagee and Mortgagee shall be entitled to take actual possession of the Premises or any part thereof personally, or by its agents or attorneys, as for condition broken, and Mortgagee in its discretion may, enter upon and take and maintain possession of all or any part of said Premises, together with all documents, books, records, papers and accounts of the Mortgagor or then owner of the Premises relating thereto, and may exclude the Mortgagor, its agents or servants, wholly therefrom and may as attorney in fact or agent of the Mortgagor, or in its own name as Mortgagee and under the powers herein granted, hold, operate, manage and control the Premises and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment of security of the avails, rents, issues, and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to the Mortgagor, and with full

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power to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same, to elect to disaffirm any lease or sublease made subsequent to this Mortgage or subordinated to the lien hereof, to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Premises as to it may seem judicious, insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof and to receive all of such avails, rents, issues and profits.

The Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases, and the Mortgagor shall and does hereby agree to indemnify and hold the Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under said leases or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases. Should the Mortgagee incur any such liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby and the Mortgagor shall reimburse the Mortgagee therefor immediately upon demand.

20. PROHIBITION AGAINST PARTITION OR SUBDIVISION: Mortgagor shall not, except after notice to Mortgagee and with Mortgagee's prior written consent, partition or subdivide the Premises. Mortgagor shall have the right without prior consent to partition internal wall locations within the building on the Premises for the purpose of accommodating building lessees provided such partition involves an aggregate cost including but not limited to materials and labor of less than \$10,000.

21. PRIOR MORTGAGES: Mortgagee's lien hereunder is subject to the rights of no prior mortgagees, excepting a Mortgage granted to the Mortgagee by the Mortgagor dated October 16, 1998.

22. RELEASE UPON PAYMENT AND DISCHARGE OF MORTGAGOR'S OBLIGATIONS: Mortgagee shall, release this Mortgage and the lien thereof by proper instrument upon payment and discharge of all the Indebtedness which release shall be prepared by Mortgagor.

The lien of this instrument shall remain in full force and effect during any postponement or extension of the time of payment of the indebtedness or any part thereof hereby secured; and no extension of the time of payment of the debt hereby secured given by the Mortgagee to any successor in interest of the

Mortgagor shall operate to release, in any manner, the original liability of the Mortgagor.

23. NOTICES: Any notice which either party hereto may desire or to be required to give to the other party shall be in writing and the mailing thereof by certified mail addressed to the Mortgagor, ~~Trust~~ at its main ~~banking~~ office ~~with a copy to~~ Suite 303, 8707 Skokie Blvd., Skokie, IL 60077 and to the Mortgagee at 1835 First Street Highland Park 60035, Illinois, Attn: Mr. Howard Levy, or at such other place as any party hereto may by notice in writing designate as a place for service of notice, shall constitute service of notice hereunder.

24. WAIVER OF STATUTORY RIGHTS: Mortgagor shall not and will not apply for or avail itself of any appraisement, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement of foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the mortgaged property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the mortgaged property sold as an entirety.

25. SALE OF PREMISES. Upon any sale by virtue of any judicial proceedings or otherwise for the enforcement of this Mortgage, the mortgaged property may be sold in one parcel as an entirety, and the Mortgagor, to the full extent that it may lawfully do so, for itself and for all who may claim through or under them hereby expressly waives and releases all right to have the mortgaged property or any part thereof marshalled upon any foreclosure sale, or other enforcement hereof, and any court at the time foreclosure of this Mortgage is sought shall have the right and is hereby authorized and directed to sell the entire mortgaged property as a whole in a single parcel.

26. WAIVER OF REDEMPTION: Mortgagor on behalf of itself, the trust estate, all persons beneficially interested therein, and each and every person (except judgment creditors) acquiring any interest in or title to the Premises subsequent to the date of this Mortgage waives any and all rights of redemption, statutory or otherwise, from sale under any order of foreclosure of this mortgage.

27. OTHER REMEDIES: Any failure by the Mortgagee to insist upon the strict performance by the Mortgagor of any of the terms and provisions hereof shall not be deemed to be a waiver of any of the terms and provisions hereof, and the Mortgagee,



notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by the Mortgagor of any and all of the terms and provisions of this Mortgage to be performed by the Mortgago; that neither the Mortgagor nor any other person now or hereafter obligated for the payment of the whole or any part of the sum now or hereafter secured by this Mortgagee shall be relieved of such obligation by reason of the failure of the Mortgagee so obligated to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage, or of any obligations secured by this Mortgage, or by reason of the release, regardless of consideration, of the whole or any part of the security held for the Indebtedness secured by this Mortgage, or by reason of any agreement or stipulation between any subsequent owner or owners of the mortgaged property and the Mortgagee extending the time of payment or modifying the terms of the Note or Mortgage without first having obtained the consent of the Mortgagor or such other person and in the latter event, the Mortgagor and all such other persons shall continue to be liable to make such payments according to the terms of any such agreement or extension or modification unless expressly released and discharged in writing by the Mortgagee; that the Mortgagee may partially release, regardless of consideration, this Mortgage without, as to the remainder of the security, in any ways impairing or affecting the lien of this Mortgage or the priority of such lien over any subordinate lien; and that the Mortgagee may resort for the payment of the Indebtedness to any other security therefor held by the Mortgagee in such order and manner as the Mortgagee may elect.

28. CUMULATIVE REMEDIES: The rights of the Mortgagee arising under the clauses and covenants contained in this Mortgage shall be separate, distinct and cumulative and none of them shall be in exclusion of the others; and no act of the Mortgagee shall be construed as an election to proceed under any one provision thereof to the exclusion of any other provision, anything herein or otherwise to the contrary notwithstanding.

29. OBLIGATION ABSOLUTE: This Mortgage, Mortgagee's rights hereunder and Mortgagor's liability hereunder shall in no way be affected or impaired by (and the Mortgagee is hereby expressly authorized to make from time to time, without notice to anyone), any sale, pledge, surrender, compromise, settlement, release, renewal, extension, indulgence, alteration, substitution, exchange, change in, modification or other disposition of any of the Indebtedness, or of any contract or contracts expressed or implied evidencing any Indebtedness or of any security or Collateral therefor. This Mortgage, Mortgagee's rights hereunder and Mortgagor's liability hereunder shall in no way be affected or impaired by any acceptance or release by Mortgagee of any security for or guarantors upon any of the Indebtedness, or by any failure, neglect or omission on the part of the Mortgagee to realize upon or protect any Indebtedness, or any

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Collateral or security therefor.

30. DEFINITIONS: Wherever used in this Mortgage, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word "Mortgagor" shall mean and include "the undersigned and/or any subsequent owner or owners of the Premises," and the word "Mortgagee" shall mean "Mortgagee or any subsequent holder or holders of this Mortgage," the word "person" shall mean "an individual, corporation, partnership or unincorporated association," and the word "Premises" shall include the real estate hereinbefore described, together with all equipment, condemnation awards and any other rights or property interests at any time made subject to the lien of this Mortgage by the terms hereof and pronouns of any gender shall include the other gender, and either the singular or plural shall include the other.

31. AMENDMENTS: This Mortgage cannot be changed except by an agreement in writing, signed by the party against whom enforcement of the change is sought.

32. SUCCESSORS AND ASSIGNS: This mortgage and all provisions hereof, shall extend to and be binding upon Mortgagor and all persons claiming under or through Mortgagor, and the word "Mortgagor" when used herein shall include all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage. The word "Mortgagee" when used herein shall include the successors and assigns of the Mortgagee named herein, and the holder or holders, from time to time, of the Note secured hereby.

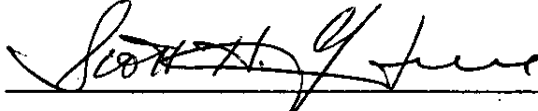
33. CAPTIONS: The captions and headings of various paragraphs of this Mortgage are for convenience only and are not to be construed as defining or limiting in any way, the scope or intent of the provisions hereof.

34. GOVERNING LAW: This Mortgage has been made, executed and delivered to the Mortgagee in Highland Park, Illinois and shall be construed in accordance with the laws of the State of Illinois. Wherever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law. If any provisions of this Mortgage are prohibited by or determined to be invalid under applicable law, such provisions shall be ineffective to the extent of such provisions or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Mortgage.

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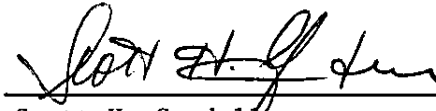
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IN WITNESS WHEREOF, this Mortgage has been duly  
executed this 12th day of October, 1999.



BGP Evanston LLC, an Illinois Limited  
Liability Company

By:



Scott H. Gendel  
Its Manager/Member

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Legal description for the  
Property commonly known as  
Lot 4 Home Depot Subdivision  
North Side of Oakton Street 460 Feet  
West of Hartrey Avenue  
Evanston, Illinois

99979969

Lot 4 in the Home Depot Subdivision Evanston, being a subdivision of part of the Southwest Quarter of the Southwest Quarter of Section 24, Township 41 North, range 13 East of the Third Principal Meridian, in Cook County, Illinois, according to the plat thereof Recorded December 24, 1997, as Document # 97969559.

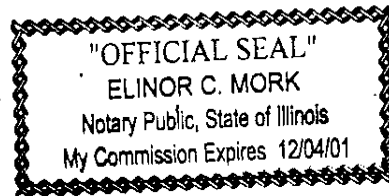
PIN: 10-24-310-048-0000

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STATE OF ILLINOIS )  
COUNTY OF COOK )

SS.



I, ELINOR C. MORK, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that SCOTT H. GENDELL

personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and official seal this 12th day of OCTOBER, 1999.

SEAL

Elinor C. Mork  
Notary Public

My Commission Expires: \_\_\_\_\_

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