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MORTGAGE AND SECURITY AGREEMENT  
WITH ASSIGNMENT OF RENTS

Dated as of

December 18, 2001

FROM

BANCO POPULAR NORTH AMERICA,  
as successor trustee to Pioneer Bank and Trust Company,  
as Trustee under Trust Agreement  
dated March 11, 1986 and known as Trust Number 24426

TO

HARRIS TRUST AND SAVINGS BANK,  
an Illinois banking corporation

This instrument was prepared by and  
when recorded return to:

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2001-12-24 11:23:55  
Cook County Recorder 147.00

R. William Hunter  
Chapman and Cutler  
111 West Monroe Street  
Chicago, Illinois 60603

BOX 333-CT1

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11-01-2011

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## MORTGAGE AND SECURITY AGREEMENT WITH ASSIGNMENT OF RENTS

This Mortgage and Security Agreement with Assignment of Rents (the "*Mortgage*") dated as of December 18, 2001, between Banco Popular North America, as successor trustee to Pioneer Bank and Trust Company, as Trustee under Trust Agreement dated May 26, 1998 and known as Trust Number 24426, (hereinafter referred to as "*Mortgagor*") and Harris Trust and Savings Bank, an Illinois banking corporation with its principal place of business at 111 West Monroe Street, Chicago, Illinois 60603 (hereinafter referred to as "*Mortgagee*");

### WITNESSETH THAT:

WHEREAS, Mortgagee has issued its irrevocable transferable letter of credit in the original stated amount of \$6,957,535 for the account of John F. Hofmeister & Son, Inc., an Illinois corporation (the "*Company*") (such letter of credit, as amended, and any and all letters of credit issued in renewal thereof or in substitution or replacement therefor, being hereinafter referred to as the "*Letter of Credit*") pursuant to that certain Reimbursement Agreement dated as of December 1, 2001 (the "*Reimbursement Agreement*"), between the Company and the Mortgagee, which Letter of Credit has been issued to secure \$6,000,000 aggregate principal amount of the City of Chicago Variable Rate Demand Industrial Development Revenue Bonds (John Hofmeister & Son, Inc. Project), Series 2001 (the "*Bonds*") which Bonds mature on December 1, 2021; and

WHEREAS, the stated expiration date of the Letter of Credit is initially May 15, 2004 and may be extended to December 15, 2021; and

WHEREAS, under the terms of the Reimbursement Agreement, the Company is justly and truly obligated to reimburse Mortgagee for any drawings made under the Letter of Credit and to pay to Mortgagee all other indebtedness, obligations and liabilities of the Company to Mortgagee under the Reimbursement Agreement or under any other Related Document (as defined in the Reimbursement Agreement), together with interest thereon prior to maturity at the rates per annum as set forth in the Reimbursement Agreement and at the times herein and therein provided (hereinafter referred to collectively as the "*Reimbursement Obligations*"); and

WHEREAS, the Reimbursement Obligations not sooner paid or payable, will become due and payable on the Termination Date (as defined in the Reimbursement Agreement).

NOW, THEREFORE, to secure (i) the payment of the Reimbursement Obligations as and when the same become due and payable (whether by lapse of time, acceleration or otherwise), (ii) the payment of all other indebtedness, obligations and liabilities which this Mortgage secures pursuant to any of its terms and (iii) the observance and performance of all covenants and agreements contained herein, in the Reimbursement Agreement and in any other instrument or document at any time evidencing or securing any of the foregoing or setting forth terms and conditions applicable thereto (all of such indebtedness, obligations and liabilities described in clauses (i), (ii) and (iii) above being hereinafter collectively referred to as the "*Secured*

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*Indebtedness*"), Mortgagor does hereby grant, bargain, sell, convey, mortgage, warrant, assign and pledge unto Mortgagee, its successors and assigns, and grant to Mortgagee, its successors and assigns a security interest in, all and singular the properties, rights, interests, titles and privileges of Mortgagor, whether now owned or hereafter acquired, described in Granting Clauses I, II, III, IV, V and VI below, all of the same being collectively referred to herein as the "*Mortgaged Premises*":

## GRANTING CLAUSE I

The real estate in Chicago, Cook County and State of Illinois described in Schedule I hereto (the "*Land*").

## GRANTING CLAUSE II

All buildings and improvements of every kind and description heretofore or hereafter erected or placed on the Land and all materials intended for construction, reconstruction, alteration and repairs of such buildings and improvements, all of which materials shall be deemed to be included within the premises immediately upon the delivery thereof to the Land (collectively, the "*Improvements*").

## GRANTING CLAUSE III

All fixtures, machinery, apparatus, equipment, fittings and articles of personal property now or hereafter attached to or contained in or used or useful in connection with the Land and the Improvements and the operation, maintenance and protection thereof and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Land or Improvements in any manner (collectively, the "*Equipment*").

## GRANTING CLAUSE IV

All present or future leases or subleases, whether written or oral, or any lettings of possession of, or any agreements for the use or occupancy of, the whole or any part of the Land and the Improvements which the Mortgagor or the Company has made or agreed to, or may hereafter make or agree to, or which may be made or agreed to by Mortgagee under the powers granted in this Mortgage, including all amendments and supplements to and renewals thereof at any time made (collectively, the "*Leases*"), together with all and singular the estates, tenements, hereditaments, privileges, easements, licenses, franchises, appurtenances and royalties, mineral, oil, and water rights belonging or in any way appertaining to the Land and the Improvements and all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing (including all deposits of money as advanced rent or for security) under any and all of the foregoing, or under any contracts or options for the sale of all or any part of, such property (including during any period allowed by law for the redemption of such property after any foreclosure or other sale), together with the right, but not the obligation, to collect, receive and receipt for all such rents and other sums and apply them to the Secured Indebtedness and to demand, sue for and recover the same when due or payable.

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## GRANTING CLAUSE V

All judgments, awards of damages, settlements and other compensation heretofore or hereafter made resulting from condemnation proceedings or any taking of the Land or any part thereof or any building or other Improvement or any easement or other appurtenance thereto under the power of eminent domain, or any similar power or right (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for the payment thereof), whether permanent or temporary, or for any damage (whether caused by such taking or otherwise) to such property or any part thereof or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including severance and consequential damage, and any award for change of grade of streets (collectively, "Condemnation Awards") and all proceeds of insurance relating to the properties, rights, interests and privileges described in Granting Clauses I, II, III, IV, VI and VII hereof.

## GRANTING CLAUSE VI

All property and rights which are by the express provisions of this Mortgage required to be subjected to the lien hereof and any additional property and rights that may from time to time hereafter be subjected to the lien hereof.

## GRANTING CLAUSE VII

All rights in and to common areas and access roads on adjacent properties heretofore or hereafter granted to Mortgagor and any after-acquired title or reversion in and to the beds of any ways, roads, streets, avenues and alleys adjoining the Land or any part thereof.

## GRANTING CLAUSE VIII

All proceeds and products of the property described in Granting Clauses I, II, III, IV, V, VI and VII, whether now existing or hereafter arising.

TO HAVE AND TO HOLD the Mortgaged Premises and the properties, rights and privileges hereby granted, bargained, sold, conveyed, mortgaged, pledged and assigned, and in which a security interest is granted, or intended to be granted, unto Mortgagee, its successors and assigns, forever; *provided, however*, that this instrument is upon the express condition that if the Letter of Credit is returned to the Mortgagee for cancellation and the Reimbursement Obligations have been paid in full and all other Secured Indebtedness has been fully paid and performed, then this Mortgage and the estate and rights hereby granted shall cease, determine and be void and this Mortgage shall be released by Mortgagee upon the written request and at the expense of Mortgagor, otherwise to remain in full force and effect.

It is expressly understood and agreed that the Secured Indebtedness will in no event exceed two hundred percent (200%) of (i) the total face amount of the Letter of Credit plus (ii)

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the total interest which may hereafter accrue on the Reimbursement Obligations plus (iii) any fees, costs or expenses which may be payable hereunder.

Mortgagor hereby covenants and agrees with Mortgagee as follows:

1. *Payment of the Indebtedness.* The Secured Indebtedness will be paid promptly when due.
2. *Further Assurances.* Mortgagor will execute and deliver such further instruments and do such further acts as may be necessary or proper to carry out more effectively the purpose of this Mortgage and, without limiting the foregoing, to make subject to the lien hereof any property agreed to be subjected hereto or covered or intended to be covered by the Granting Clauses hereof.
3. *Ownership of Mortgaged Premises.* Mortgagor covenants and represents that it is lawfully seized of and has good and marketable fee simple title to the Land and good title to the remainder of the Mortgaged Premises free and clear of any liens, charges and encumbrances (other than liens, charges and encumbrances described on Schedule II hereto ("*Permitted Encumbrances*")) and Mortgagor has the right, power and authority to convey, transfer and mortgage the same to Mortgagee for the uses and purposes set forth in this Mortgage. Mortgagor will defend the title to the Mortgaged Premises against all claims and demands.
4. *Possession.* While Mortgagor is not in default hereunder, Mortgagor shall be suffered and permitted to remain in full possession, enjoyment and control of the Mortgaged Premises, subject always to the observance and performance of the terms of this Mortgage.
5. *Payment of Property Charges.* Mortgagor shall pay before any penalty attaches, all taxes, assessments and all charges of any kind which may be levied, assessed, imposed or charged on or against the Mortgaged Premises or any part thereof and which, if unpaid, might by law become a lien or charge upon the Mortgaged Premises or any part thereof. Mortgagor shall, upon written request, exhibit to Mortgagee official receipts evidencing such payments. Subject to the provisions of the next sentence, Mortgagor may contest without payment any amount otherwise payable under this Section unless (a) payment of such amount in full or in part is required by law, or (b) foreclosure, distraint, sale or other proceedings have commenced with respect to the Mortgaged Premises or any part thereof. No such contest will be permitted hereunder unless (i) it is conducted in good faith and with due diligence, (ii) Mortgagor has provided Mortgagee with prior notice thereof, (iii) it operates to prevent collection of payment of the amount in question and the sale or foreclosure of the Mortgaged Premises and any part thereof, and (iv) Mortgagor has furnished all security required in the proceedings relating to such contest or as otherwise required by Mortgagee.
6. *Payment of Taxes on Secured Indebtedness, Mortgage or Interest of Mortgagee.* Mortgagor will pay upon demand of Mortgagee (to the extent permitted by law) any tax, assessment or imposition (other than any income tax on interest payments on the principal portion of the Secured Indebtedness imposed by any jurisdiction having control over the Mortgagee) levied, assessed or charged on (a) this Mortgage, (b) the Secured Indebtedness,



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(c) the interest of Mortgagee in the Mortgaged Premises or (d) Mortgagee by reason of any of the foregoing. Mortgagor shall also reimburse Mortgagee on demand (to the extent permitted by applicable law) for any payment of any such taxes, assessments or impositions paid by Mortgagee. Mortgagor agrees to exhibit to Mortgagee, upon request, official receipts showing payment of all taxes, charges or impositions which Mortgagor is required to pay under this Section.

7. *Recordation and Related Expenses.* Mortgagor will cause this Mortgage, all mortgages supplemental hereto and any financing statement or other notice of a security interest required by Mortgagee at all times to be kept, recorded and filed at its own expense in such manner and in such places as may be required by law or reasonably requested by Mortgagee in order fully preserve and protect the rights of Mortgagee under this Mortgage. In addition, Mortgagor will pay or reimburse Mortgagee for the payment of any and all taxes (including documentary stamp and other similar taxes), fees or other charges incurred in connection with any such recordation.

8. *Insurance.* The Mortgagor will insure, or cause to be insured, the Improvements, all property (whether real, personal or mixed) incorporated therein and all materials and supplies delivered to the Mortgaged Premises for use in connection with construction and installation of the Improvements and all equipment to be used for that purpose under insurance policies in builders' risk form with standard non-contributory mortgage clauses providing that any loss is to be adjusted with, and any recovery payable to, Mortgagee as its interest may appear. Following completion of the Improvements, Mortgagor will, at its expense, keep all Improvements, Equipment and other property now or hereafter constituting part of the Mortgaged Premises insured against (i) loss or damage (including loss of rent) by fire, lightning, windstorm, explosion and such other risks as are usually included under extended coverage policies, or which are usually insured against by owners of like property, and (ii) such insurable hazards as Mortgagee from time to time may require, including, without limitation, boiler and machinery insurance, insurance against flood risks, host liquor liability and war risk insurance when and to the extent obtainable from the United States Government or any agency thereof, in amounts sufficient to prevent Mortgagor or Mortgagee from becoming a co-insurer of any partial loss under the applicable insurance policies, but in no event less than the then full insurable value (actual replacement value without deduction for physical depreciation) thereof, as determined from time to time at the request of Mortgagee and at Mortgagor's expense by the insurer or insurers or by an expert approved by Mortgagee. Such insurance shall be maintained under insurance policies acceptable to Mortgagee and payable, in case of loss or damage, to Mortgagee, as evidenced by a non-contributory form of mortgage clause which is acceptable to Mortgagee and attached to each policy. Mortgagor shall not carry separate insurance concurrent in kind or form and contributing in the event of loss, with any insurance required hereby. Mortgagor shall also obtain and maintain public liability, property damage and worker's compensation insurance in each case in form and content approved by Mortgagee and in amounts as are customarily carried by owners of like property and reasonably acceptable to Mortgagee. All insurance required hereby shall (a) be maintained with insurance companies satisfactory to Mortgagee, (b) not provide for any deductible amount in excess of \$25,000 unless approved in writing by Mortgagee, (c) provide that any losses will be payable notwithstanding any act or negligence of Mortgagor or any occupant of the Mortgaged Premises or any occupancy or use of

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the Mortgaged Premises for purposes more hazardous than permitted in such policies, (d) provide that no cancellation thereof shall be effective until at least 30 days after Mortgagee receives written notice thereof, and (e) be satisfactory to Mortgagee in all other respects. Mortgagor shall deliver all policies, including additional and renewal policies, to Mortgagee marked "paid," and, in case of insurance policies about to expire, the Mortgagor shall deliver renewal policies not less than thirty (30) days prior to the respective dates of expiration. In the event of foreclosure, Mortgagor authorizes and empowers Mortgagee to obtain and maintain insurance with respect to the Mortgaged Premises covering such losses and liabilities, and in amounts, as Mortgagee deems necessary, for a period covering the time of redemption from foreclosure sale provided by law, and if necessary therefor to cancel any or all existing insurance policies.

UNLESS MORTGAGOR PROVIDES MORTGAGEE WITH EVIDENCE OF THE INSURANCE COVERAGE REQUIRED BY THIS MORTGAGE, MORTGAGEE MAY PURCHASE INSURANCE AT MORTGAGOR'S EXPENSE TO PROTECT MORTGAGEE'S INTERESTS IN THE MORTGAGED PREMISES. THIS INSURANCE MAY, BUT NEED NOT, PROTECT MORTGAGOR'S INTERESTS IN THE MORTGAGED PREMISES. THE COVERAGE PURCHASED BY MORTGAGEE MAY NOT PAY ANY CLAIMS THAT MORTGAGOR MAKES OR ANY CLAIM THAT IS MADE AGAINST MORTGAGOR IN CONNECTION WITH THE MORTGAGED PREMISES. MORTGAGOR MAY LATER CANCEL ANY SUCH INSURANCE PURCHASED BY MORTGAGEE, BUT ONLY AFTER PROVIDING MORTGAGEE WITH EVIDENCE THAT MORTGAGOR HAS OBTAINED INSURANCE AS REQUIRED BY THIS MORTGAGE. IF MORTGAGEE PURCHASES INSURANCE FOR THE MORTGAGED PREMISES, MORTGAGOR WILL BE RESPONSIBLE FOR THE COSTS OF THAT INSURANCE, INCLUDING INTEREST AND ANY OTHER CHARGES THAT MORTGAGEE MAY IMPOSE IN CONNECTION WITH THE PLACEMENT OF THE INSURANCE, UNTIL THE EFFECTIVE DATE OF THE CANCELLATION OR EXPIRATION OF THE INSURANCE. THE COSTS OF THE INSURANCE MAY BE ADDED TO THE SECURED INDEBTEDNESS. THE COSTS OF THE INSURANCE MAY BE MORE THAN THE COST OF INSURANCE MORTGAGOR MAY BE ABLE TO OBTAIN ON ITS OWN.

9. *Damage to or Destruction of Mortgaged Premises.* (a) *Notice.* Mortgagor will promptly notify Mortgagee of any material damage to or destruction of the Mortgaged Premises or any part thereof, describing in reasonable detail the nature and extent of such damage or destruction.

(b) *Restoration.* Mortgagor will, upon any damage or loss to the Mortgaged Premises or any part thereof, promptly restore or repair such Mortgaged Premises in a good and workmanlike manner, to the equivalent of its condition and value immediately prior to such damage or loss, whether or not insurance proceeds received on account thereof are sufficient or made available for such purpose.

(c) *Adjustment of Loss.* Mortgagor hereby authorizes Mortgagee, at Mortgagee's option, to adjust and compromise any losses claimed under any insurance policy covering the Mortgaged Premises. Unless Mortgagee elects to adjust or compromise such losses, such adjustment and/or compromise shall be made by Mortgagor, subject to final approval of Mortgagee in the case of losses exceeding \$25,000.

(d) *Application of Insurance Proceeds.* Net insurance proceeds received by Mortgagee under the provisions of this Mortgage or any instruments supplemental hereto or thereto or under

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any policy or policies of insurance covering the Mortgaged Premises or any part thereof shall first be applied toward the payment of the amount owing on the Secured Indebtedness in such order of application as Mortgagee may elect whether or not the same may then be due or be otherwise adequately secured; *provided, however*, that Mortgagee shall have the right, but not the duty, to release the proceeds thereof for use in restoring the Mortgaged Premises or any part thereof for or on behalf of Mortgagor in lieu of applying said proceeds to the Secured Indebtedness and for such purpose may do all acts necessary to complete such restoration, including advancing additional funds, and any additional funds so advanced shall constitute part of the Secured Indebtedness and shall be payable on demand with interest at the Default Rate.

10. *Eminent Domain.* Mortgagor acknowledges that Condemnation Awards have been assigned to Mortgagee, which awards Mortgagee is hereby irrevocably authorized to collect and receive, and to give appropriate receipts and acquittances therefor, and at Mortgagee's option, to apply the same toward the payment of the amount owing on account of the Secured Indebtedness in such order of application as Mortgagee may elect and whether or not the same may then be due and payable or otherwise adequately secured. Mortgagor covenants and agrees that Mortgagor will give Mortgagee immediate notice of the actual or threatened commencement of any proceedings under condemnation or eminent domain affecting all or any part of the Mortgaged Premises including any easement therein or appurtenance thereof or severance and consequential damage and change in grade of streets, and will deliver to Mortgagee copies of any and all papers served in connection with any such proceedings. Mortgagor further covenants and agrees to make, execute and deliver to Mortgagee, at any time or times upon request, free, clear and discharged of any encumbrances of any kind whatsoever, any and all further assignments and/or instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning all awards and other compensation heretofore and hereafter to be made to Mortgagor for any taking, either permanent or temporary, under any such proceeding.

11. *Construction, Repair, Waste, Etc.* Mortgagor agrees:

(a) that no Improvement will be altered, removed or demolished and that no fixtures or appliances on, in or about any of the Improvements will be severed, removed, sold or mortgaged, without the prior written consent of Mortgagee;

(b) to replace promptly any fixtures, chattels or articles of personal property constituting part of the Mortgaged Premises with similar fixtures, chattels and articles of personal property at least equal in quality and condition to those replaced, free from any security interest therein or encumbrance thereon or reservation of title thereto;

(c) to permit, commit or suffer no waste, impairment or deterioration of the Mortgaged Premises or any part thereof;

(d) to keep and maintain the Mortgaged Premises and every part thereof in good repair and condition and to make such repairs as Mortgagee may reasonably require and make all needful and proper replacements and additions to the Improvements and Equipment so that they will, at all times, be in good condition, fit and proper for their respective purposes;

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(e) to comply with all statutes, orders, requirements or decrees of any governmental authority which relate to the Mortgaged Premises;

(f) to observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including, but not limited to, zoning variances, special exceptions and non-conforming uses), privileges, franchises and concessions which are applicable to the Mortgaged Premises or which have been granted to or contracted for by Mortgagor in connection with any existing or presently contemplated use of the Mortgaged Premises or any part thereof and not to initiate or acquiesce in any changes to or terminations of any of the foregoing or of any zoning classifications affecting the use to which the Mortgaged Premises or any part thereof may be put without the prior written consent of Mortgagee; and

(g) to make no material alterations in or improvements or additions to the Mortgaged Premises, except as required by any governmental authority or as permitted by Mortgagee.

12. *Liens and Encumbrances.* Mortgagor will not, without the prior written consent of Mortgagee, directly or indirectly, create or suffer to be created or to remain, and will discharge or promptly cause to be discharged, any mortgage, lien, encumbrance or charge on, pledge of, or conditional sale or other title retention agreement with respect to, the Mortgaged Premises or any part thereof, whether superior or subordinate to the lien hereof, except for this Mortgage and the Permitted Encumbrances.

13. *Right of Mortgagee to Perform Mortgagor's Covenants, Etc.* If Mortgagor fails to make any payment or perform any act required to be made or performed hereunder, Mortgagee, without waiving or releasing any obligation or default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of Mortgagor, and may enter upon the Mortgaged Premises or any part thereof for such purpose and take all such action thereon as, in the opinion of Mortgagee, may be necessary or appropriate therefor. All sums so paid by Mortgagee and all costs and expenses (including without limitation attorneys' fees and expenses) so incurred, together with interest thereon from the date of payment or incurrence at the Default Rate, shall constitute additional Secured indebtedness in the amount of such sums and shall be paid by Mortgagor to Mortgagee on demand. Mortgagee, in making any payment authorized under this Section relating to taxes or assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim. Mortgagee, in performing any act hereunder, shall be the sole judge of whether Mortgagor is required to perform such act under the terms of this Mortgage.

14. *After-Acquired Property.* Any and all property hereafter acquired by Mortgagor which is the type of property described in the Granting Clauses hereof shall automatically, and without any further conveyance, assignment or act on the part of Mortgagor, be subject to the lien of this Mortgage. Mortgagor shall from time to time, if requested by Mortgagee, execute and deliver any and all such further assurances, conveyances and assignments as Mortgagee may

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reasonably require for the purpose of expressly and specifically subjecting all such property to the lien of this Mortgage.

15. *Inspection by Mortgagee.* Mortgagee and any participant in the Secured Indebtedness shall have the right to inspect the Mortgaged Premises at all reasonable times, and access thereto shall be permitted for that purpose.

16. *Financial Reports.* In addition to any information required to be provided pursuant to the terms of the Reimbursement Agreement, Mortgagor will furnish to Mortgagee such information and data with respect to the financial condition, business affairs and operations of Mortgagor and the Mortgaged Premises as Mortgagee may reasonably request.

17. *Uniform Commercial Code Security Agreement.* This Mortgage shall constitute a security agreement under the Uniform Commercial Code of Illinois (the "Code") for any portion of the Mortgaged Premises which, under applicable law, may be subject to a security interest pursuant to the Code and Mortgagor hereby grants Mortgagee a security interest in such Mortgaged Premises. Any reproduction of this Mortgage or of any other security agreement or financing statement will be sufficient as a financing statement. In addition, Mortgagor agrees to execute and deliver to Mortgagee any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Mortgage in such form as Mortgagee may require to perfect a security interest in such Mortgaged Premises. Mortgagor hereby authorizes and empowers Mortgagee and irrevocably appoints Mortgagee its agent and attorney-in-fact to execute and file, on Mortgagor's behalf, all financing statements and refilings and continuations thereof as Mortgagee deems necessary or advisable to create, preserve and protect such lien. Mortgagor shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Mortgagee may reasonably require. If such costs are paid by Mortgagee, the amount thereof shall constitute additional Secured Indebtedness, will bear interest at the Default Rate and will be payable upon demand.

18. *Events of Default.* Any one or more of the following shall constitute an "event of default" hereunder:

- (a) the occurrence of an Event of Default (as defined in the Reimbursement Agreement) under the Reimbursement Agreement; or
- (b) default in the observance of any of the covenants set forth in Section 8 or 12 hereof; or
- (c) default in the observance or compliance with any other terms or provisions of this Mortgage or of any other instrument, document or agreement (including any separate assignment of leases and/or rents) securing any of the Secured Indebtedness which has not been remedied within fifteen (15) days after written notice thereof from the Mortgagee to Mortgagor; or



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(d) any representation or warranty made by Mortgagor herein or in any other instrument, document or agreement (including any separate assignment of leases and/or rents) securing any of the Secured Indebtedness or in any statement or certificate furnished by Mortgagor pursuant hereto or thereto proves to be untrue in any material respect as of the date of issuance or making thereof; or

(e) the Mortgaged Premises or any part thereof is sold, transferred, or conveyed, whether voluntarily or involuntarily, by operation of law or otherwise, except for sales of obsolete, worn out or unusable fixtures or personal property which are concurrently replaced with similar fixtures or personal property at least equal in quality and condition to those sold and owned by Mortgagor free of any lien, charge or encumbrance other than the lien of this Mortgage; or

(f) any indebtedness secured by a lien or charge on the Mortgaged Premises or any part thereof is not paid when due (unless such lien or charge is the type described in Section 5 hereof and Mortgagor is at all times in compliance with the requirements of such Section relating to non-payment and contest) or proceedings are commenced to foreclose or otherwise realize upon any such lien or charge or to have a receiver appointed for the property subject thereto or to place the holder of such indebtedness or its representative in possession thereof; or

(g) the Mortgaged Premises is abandoned.

For the purposes of this Mortgage, the Mortgaged Premises shall be deemed to have been sold, transferred or conveyed in the event that more than fifty percent of the equity interest in Mortgagor shall be sold, transferred or conveyed, subsequent to the date hereof, whether voluntarily or involuntarily, whether in one or a series of related or unrelated transactions.

19. *Remedies.* In addition to any other rights and remedies which may be available to the Mortgagee under the Related Documents (as defined in the Reimbursement Agreement) and under applicable law or in equity, when any Event of Default has occurred and is continuing (regardless of the pendency of any proceeding which has or might have the effect of preventing Mortgagor from complying with the terms of this instrument and of the adequacy of the security for the Secured Indebtedness):

(a) *Acceleration.* Mortgagee may, by written notice to Mortgagor, declare the Secured Indebtedness to be immediately due and payable, whereupon the same shall be immediately due and payable, without other notice or demand of any kind.

(b) *Uniform Commercial Code.* Mortgagee shall, with respect to any part of the Mortgaged Premises constituting property of the type in respect of which realization on a lien or security interest granted therein is governed by the Uniform Commercial Code, have all the rights, options and remedies of a secured party under the Uniform Commercial Code of Illinois. Any requirement of such Code for reasonable notification shall be met by mailing written notice to Mortgagor at its address set forth above at least 10 days prior to the sale or other event for which such notice is required. The expenses

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of retaking, selling and otherwise disposing of such property, including reasonable attorney's fees and legal expenses incurred in connection therewith, shall constitute additional Secured Indebtedness in the amount of such expenses and shall be payable upon demand with interest at the Default Rate.

(c) *Foreclosure and Other Sales.* Mortgagee may proceed to protect and enforce the rights of Mortgagee hereunder (i) by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law, or (ii) by the foreclosure of this Mortgage. The foreclosure of this Mortgage and the sale or sales of less than all of the Mortgaged Premises shall not exhaust the right to foreclose hereunder and the lien and security interests granted herein. Mortgagee is specifically empowered to institute successive foreclosures and/or sales hereunder until all of the Mortgaged Premises has been sold. If the proceeds of any such sale of less than all of the Mortgaged Premises is less than the aggregate of the Secured Indebtedness and the expenses of such proceedings, this Mortgage and the lien and security interest hereof shall remain in full force and effect as to the unsold portion of the Mortgaged Premises just as though no sale had been made. Mortgagor shall never have any right to require the sale or sales of less than the whole of the Mortgaged Premises, or to require the marshalling of the Mortgaged Premises. Mortgagee shall have the right, at its sole election, to sell less than the whole of the Mortgaged Premises. Mortgagee has the option to proceed as if under a full foreclosure, conducting the sale as herein provided without declaring the entire Secured Indebtedness due. If the sale is made because of a default in the payment of a portion of the Secured Indebtedness, such sale may be made subject to the unmatured portion of the Secured Indebtedness; and such sale, if so made, shall not in any manner affect the unmatured part of the Secured Indebtedness and as to such unmatured part, this Mortgage shall remain in full force and effect as though no sale had been made under the provisions of this Mortgage. Any number of sales may be made hereunder without exhausting the lien and security interests of this Mortgage for any unmatured part of the Secured Indebtedness.

(d) *Appointment of Receiver.* Mortgagee shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under or through it, and without regard to the solvency or insolvency of Mortgagor or the then value of the Mortgaged Premises, be entitled to have a receiver appointed for all or any part of the Mortgaged Premises and the rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Mortgaged Premises or any part thereof by force, summary proceedings, ejectment or otherwise, and may remove Mortgagor or other persons and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, rents, issues and proceeds accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise.



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(e) *Taking Possession, Collecting Rents, Etc.* Mortgagee may enter and take possession of the Mortgaged Premises or any part thereof and manage, operate, insure, repair and improve the same and take any action which, in Mortgagee's judgment, is necessary or proper to conserve the value of the Mortgaged Premises. Mortgagee may also use any and all personal property that is part of the Mortgaged Premises. Mortgagee shall be entitled to collect and receive all earnings, revenues, rents, issues and profits (collectively, the "Revenues") of the Mortgaged Premises or any part thereof and to apply same to the reduction of the Secured Indebtedness; *provided, however*, Mortgagee agrees, not as a limitation of or condition on its lien on or right to receive the Revenues under this Mortgage, but as a personal covenant available only to Mortgagor, that before an Event of Default has occurred, Mortgagor may collect, receive and enjoy the Revenues (but in no event will Mortgagor collect rents or other Revenues more than 30 days in advance). Mortgagor hereby irrevocably appoints Mortgagee as its true and lawful attorney-in-fact (which appointment is coupled with an interest) and authorizes Mortgagee to receive, collect and receipt for the Revenues in the name and in place of the Mortgagor. Mortgagor also irrevocably acknowledges that any payment made to Mortgagee as described above will be a good receipt and acquittance against Mortgagor of the amount paid. The rights of Mortgagee described in this subsection shall be in addition to all other rights or remedies of Mortgagee under this Mortgage or afforded by law, and may be exercised concurrently therewith or independently thereof. The expenses (including any receiver's fees, counsel fees, costs and agent's compensation) incurred pursuant to the powers set forth in this subsection shall constitute additional Secured Indebtedness in the amount of such expenses which Mortgagor promises to pay upon demand together with interest thereon at the Default Rate. Mortgagee shall not be liable to account to Mortgagor for any action taken pursuant hereto other than to account for any rents actually received by Mortgagee. Without taking possession of the Mortgaged Premises, Mortgagee may, in the event the Mortgaged Premises becomes vacant or is abandoned, take such steps as it deems appropriate to protect and secure the Mortgaged Premises and all costs incurred in so doing shall constitute additional Secured Indebtedness in the amount thereof payable upon demand with interest thereon at the Default Rate.

20. *Waiver of Right to Redeem From Sale - Waiver of Appraisal, Valuation, Etc.* Mortgagor hereby waives the benefit of, and agrees not to apply for or avail itself of, any appraisal, valuation, stay extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted in order to prevent or hinder the enforcement or foreclosure of this Mortgage. 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 Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the sale of the Mortgaged Premises as an entirety. The Mortgaged Premises may be sold pursuant to this Mortgage in one parcel as an entirety or in separate lots or parcels at the same or different times, all as the Mortgagee may determine. Mortgagee may be the purchaser at any sale made pursuant to this Mortgage and shall have the right to be credited upon the amount of bid it makes therefor with the amount payable to Mortgagee out of the net proceeds of such sale. In the event of any such sale, the Secured Indebtedness, if not previously due, shall be and become immediately due and payable without

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demand or notice of any kind. To the extent permitted by applicable law, Mortgagor hereby waives any and all rights of redemption from sale under any order or decree of foreclosure pursuant to rights herein granted, on behalf of Mortgagor and all other persons (including each person acquiring any interest in, or title to any of the Mortgaged Premises after the date hereof).

21. *Costs and Expenses of Foreclosure.* 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 reasonable attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographic charges, publication costs and costs (which may be estimated as the items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and examination, guarantee policies, Torrens certificates and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute any foreclosure action or to evidence to the bidder at any sale pursuant thereto the true condition of the title to or the value of the Mortgaged Premises. All of such expenditures shall become additional Secured Indebtedness which Mortgagor agrees to pay and which shall be immediately due and payable with interest thereon from the date of expenditure until paid at the Default Rate.

22. *Application of Proceeds.* The proceeds of any foreclosure sale of the Mortgaged Premises or of any sale of Mortgaged Premises pursuant to Section 19(b) hereof shall be distributed in the following order of priority: First, on account of all costs and expenses incident to the foreclosure or other proceedings, including all such items as are mentioned in Sections 19(b) and 21 hereof; Second, to the Secured Indebtedness (other than the principal portion of the Secured Indebtedness) with interest thereon as herein provided and Third, to the payment of the principal portion of the Secured Indebtedness; *provided, however,* that if any or all of the Secured Indebtedness is not then due and payable, all such proceeds shall be held by Mortgagee as cash collateral and will be applied, in the manner described above, to the payment of the Secured Indebtedness as and when the Secured Indebtedness becomes due and payable. If the Letter of Credit has been returned to Mortgagee for cancellation and the Secured Indebtedness has been fully paid and performed, then any remaining proceeds will be paid to the persons lawfully entitled thereto.

23. *Deficiency Decree.* If at any foreclosure proceeding the Mortgaged Premises shall be sold for a sum less than the total amount of indebtedness for which judgment is therein given, the judgment creditor shall be entitled to the entry of a deficiency decree against Mortgagor and against the property of Mortgagor for the amount of such deficiency. Mortgagor hereby irrevocably consents to the appointment of a receiver for the Mortgaged Premises and the property of Mortgagor and of the rents, issues and profits thereof after such sale and until such deficiency decree is satisfied in full.

24. *Mortgagee's Remedies Cumulative - No Waiver.* The rights of Mortgagee under this Mortgage are cumulative and not exclusive of any rights or remedies which Mortgagee would otherwise have. No delay in the exercise or omission to exercise any remedy or right accruing on any default shall impair any such remedy or right or be construed to be a waiver of any such default or acquiescence therein, nor shall it affect any subsequent default of the same or

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a different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as deemed expedient by Mortgagee.

25. *Mortgagee Party to Suits.* Mortgagor agrees to pay to Mortgagee, immediately, and without demand, all costs, charges, expenses and reasonable attorneys' fees incurred by Mortgagee if Mortgagee (a) is made a party to or intervenes in any action or proceeding affecting the Mortgaged Premises or the title thereto or the interest of Mortgagee under this Mortgage (including probate and bankruptcy proceedings), (b) employs an attorney to collect any or all of the Secured Indebtedness or to enforce any of the terms hereof or realize or protect the liens and security interests granted hereunder, or (c) incurs any costs or expenses in preparation for the commencement of any foreclosure proceedings or for the defense of any threatened suit or proceeding which might affect the Mortgaged Premises or the security hereof, whether or not any such foreclosure or other suit or proceeding is actually commenced. Amounts payable under this Section shall constitute additional Secured Indebtedness payable upon demand with interest at the Default Rate.

26. *No Liability on Mortgagee.* Notwithstanding anything contained herein, this Mortgage is only intended as security for the Secured Indebtedness, and Mortgagee shall not be obligated to perform or discharge, and does not hereby undertake to perform or discharge, any obligation, duty or liability of Mortgagor with respect to any of the Mortgaged Premises. No liability shall be enforced or asserted against Mortgagee in its exercise of the powers granted to it in this Mortgage, and Mortgagor expressly waives and releases Mortgagee from any such liability. Mortgagor hereby agrees to indemnify and hold Mortgagee harmless from and against (i) any and all liability, loss or damage which Mortgagee incurs under or by reason of the exercise of its rights under this Mortgage and (ii) any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements of Mortgagor contained herein or with respect to any of the Mortgaged Premises, except in the case of liability or loss resulting solely and directly from Mortgagee's gross negligence or willful misconduct. Mortgagee shall not have responsibility for the control, care, management or repair of the Mortgaged Premises, nor shall Mortgagee be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Mortgaged Premises resulting in loss or injury or death to any licensee, employee, tenant or stranger. Without limiting the foregoing, Mortgagee shall not be responsible for any recitals herein or for insuring the Mortgaged Premises, or for the recording, filing or refiling of this Mortgage; nor shall the Mortgagee be bound to ascertain or inquire as to the performance or observance of any covenants, conditions or agreements on the part of the Mortgagor contained herein.

27. *Modifications Not to Affect Lien.* Mortgagee, without notice to anyone, and without regard to the consideration, if any, paid therefor, or the presence of other liens on the Mortgaged Premises, may (a) in its discretion release any part of the Mortgaged Premises or any person liable for any of the Secured Indebtedness, (b) extend the time of payment of any of the Secured Indebtedness and may grant waivers or other indulgences with respect hereto and thereto, and (c) agree with Mortgagor to modifications to the terms and conditions contained herein or otherwise applicable to any of the Secured Indebtedness (including modifications in the rates of interest applicable thereto), in each case, without in any way affecting or impairing the liability

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of any party liable upon any of the Secured Indebtedness or the priority of the lien of this Mortgage upon all of the Mortgaged Premises not expressly released. Any party acquiring any direct or indirect interest in the Mortgaged Premises shall take such interest subject to all of the provisions of this Mortgage.

28. *Notices.* All communications provided for herein shall be in writing and shall be deemed to have been given when delivered (i) personally or mailed by certified mail, return receipt requested, postage prepaid, addressed to the parties hereto at their addresses as shown at the beginning of this Mortgage or to such other and different address as Mortgagor or Mortgagee may designate pursuant to a written notice sent in accordance with the provisions of this Section or (ii) in accordance with the terms of Section 7.12 of the Reimbursement Agreement. All notices hereunder shall be deemed effective at the times specified in such Section of the Reimbursement Agreement.

29. *Environmental Representations and Warranties; Covenants; Definitions.* (a) Except as set forth in the Phase I Environmental Site Assessment dated May 18, 2001, prepared by Benchmark Environmental Services, Inc., none of which disclosures individually or in the aggregate could be expected to cause a Material Adverse Effect, the Mortgagor represents and warrants that: (i) the Mortgagor and the Mortgaged Premises comply with all applicable Environmental Laws; (ii) the Mortgagor has obtained all governmental approvals required for its operations and the Mortgaged Premises by any applicable Environmental Law; (iii) the Mortgagor has not, and has no knowledge of any other person who has, caused any Release, threatened Release or disposal of any Hazardous Material at, on, about, or off the Mortgaged Premises and, to the knowledge of the Mortgagor, the Mortgaged Premises is not adversely affected by any Release, threatened Release or disposal of a Hazardous Material originating or emanating from any other property; (iv) the Mortgaged Premises does not contain and has not contained any: (1) underground storage tank, (2) asbestos containing building material, (3) landfills or dumps, (4) hazardous waste management facility as defined pursuant to RCRA or any comparable state law, or (5) site on or nominated for the National Priority List promulgated pursuant to CERCLA or any state remedial priority list promulgated or published pursuant to any comparable state law; (v) the Mortgagor has not used a material quantity of any Hazardous Material and has conducted no Hazardous Material Activity at the Mortgaged Premises; (vi) the Mortgagor has no liability for response or corrective action, natural resource damage or other harm pursuant to CERCLA, RCRA or any comparable state law; (vii) the Mortgagor is not subject to, has no notice or knowledge of and is not required to give any notice of any Environmental Claim involving the Mortgagor or the Mortgaged Premises, and there are no conditions or occurrences at the Mortgaged Premises which could reasonably be anticipated to form the basis for an Environmental Claim against the Mortgagor or the Mortgaged Premises; (viii) the Mortgaged Premises is not subject to any, and the Mortgagor has no knowledge of any imminent, restriction on the ownership, occupancy, use or transferability of the Mortgaged Premises in connection with any (1) Environmental Law or (2) Release, threatened Release or disposal of a Hazardous Material; and (ix) there are no conditions or circumstances at the Mortgaged Premises which pose a risk to the environment or the health or safety of persons.

(b) *Covenants.* The Mortgagor shall at all times do the following: (i) comply with, and maintain the Mortgaged Premises in compliance with, all applicable Environmental Laws;



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(ii) require that each tenant and subtenant, if any, of the Mortgaged Premises or any part thereof comply with all applicable Environmental Laws; (iii) obtain and maintain in full force and effect all governmental approvals required by any applicable Environmental Law for operations at the Mortgaged Premises; (iv) cure any violation by it or at the Mortgaged Premises of applicable Environmental Laws; (v) not allow the presence or operation at the Mortgaged Premises of any (1) landfill or dump or (2) hazardous waste management facility or solid waste disposal facility as defined pursuant to RCRA or any comparable state law; (vi) not manufacture, use, generate, transport, treat, store, release, dispose or handle any Hazardous Material at the Mortgaged Premises; (vii) within 10 business days notify the Mortgagee in writing of and provide any requested documents upon learning of any of the following in connection with the Mortgagor or the Mortgaged Premises: (1) any liability for response or corrective action, natural resource damage or other harm pursuant to CERCLA, RCRA or any comparable state law; (2) any Environmental Claim; (3) any violation of an Environmental Law or Release, threatened Release or disposal of a Hazardous Material; (4) any restriction on the ownership, occupancy, use or transferability arising pursuant to any (x) Release, threatened Release or disposal of a Hazardous Substance or (y) Environmental Law; or (5) any environmental, natural resource, health or safety condition; (viii) conduct at its expense any investigation, study, sampling, testing, abatement, cleanup, removal, remediation or other response action necessary to remove, remediate, clean up or abate any Release, threatened Release or disposal of a Hazardous Material as required by any applicable Environmental Law, (ix) abide by and observe any restrictions on the use of Mortgaged Premises imposed by any governmental authority as set forth in a deed or other instrument affecting the Mortgagor's interest therein; (x) promptly provide or otherwise make available to the Mortgagee any requested environmental record concerning the Mortgaged Premises which the Mortgagor possesses or can reasonably obtain; (xi) perform, satisfy, and implement any operation or maintenance actions required by any governmental authority or Environmental Law, or included in any no further action letter or covenant not to sue issued by any governmental authority under any Environmental Law; and (xii) from time to time upon the reasonable written request of the Mortgagee, timely provide at the Mortgagor's expense a report of an environmental assessment of scope, form and depth (including, where appropriate, invasive soil or groundwater sampling) by a consultant acceptable to the Mortgagee as to any matter for which notice is provided pursuant to the above requirements or which may be believed by the Mortgagee to form the basis of an Environmental Claim in connection with the Mortgaged Premises. If such a requested environmental report is not delivered within 75 days after receipt of the Mortgagee's request, then the Mortgagee may arrange for the same, and the Mortgagor hereby grants to the Mortgagee and its representatives access to the Mortgaged Premises and a license to undertake such an assessment (including, where appropriate, invasive soil or groundwater sampling). The reasonable costs of any assessment arranged for by the Mortgagee will constitute additional Secured Indebtedness, will be payable by the Mortgagor on demand and will bear interest at the Default Rate.

(c) *Indemnification and Waiver.* The Mortgagor unconditionally agrees to forever indemnify, defend and hold harmless, and covenants not to sue for any claim for contribution against, the Mortgagee and its directors, officers, employees, agents, and collateral trustees, and their respective successors and assigns (each, an "*Indemnified Party*") from and against any and all Damages with respect to, as a direct or indirect result of, or arising out of any of the following: (a) any presence, Release, threatened Release or disposal of any Hazardous Material

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by the Mortgagor or otherwise occurring on or with respect to the Mortgaged Premises; (b) the operation or violation of any Environmental Law by the Mortgagor or otherwise occurring on or with respect to the Mortgaged Premises; (c) any Environmental Claim in connection with the Mortgagor or otherwise with respect to the Mortgaged Premises; and (d) the inaccuracy or breach of any environmental representation, warranty or covenant by the Mortgagor made in any loan agreement, promissory note, mortgage, deed of trust, security agreement or any other instrument or document evidencing or securing any indebtedness, obligations or liabilities of the Mortgagor owing to the Mortgagee or setting forth terms and conditions applicable thereto or otherwise relating thereto, except for (x) Damages arising from the Indemnified Party's willful misconduct or gross negligence and (y) Damages arising from contamination relating to any Hazardous Material present on the Mortgaged Premises during the time the Mortgagee owns fee title to the Mortgaged Premises which was not present at the time the Mortgagee acquired fee title to the Mortgaged Premises.

(d) *Definitions.*

"*CERCLA*" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§9601 *et seq.*, and any future amendments.

"*Damages*" means all damages including, without limitation, punitive damages, liabilities, costs, expenses, losses, diminutions in value, fines, penalties, demands, claims, cost recovery actions, lawsuits, administrative proceedings, orders, response action, removal and remedial costs, compliance costs, investigation expenses, consultant fees, reasonable attorneys' and reasonable paralegals' fees and litigation expenses.

"*Environmental Claim*" means any investigation, notice, violation, demand, allegation, action, suit, injunction, judgment, order, consent decree, penalty, fine, lien, proceeding or claim (whether administrative, judicial or private in nature) arising (a) pursuant to, or in connection with an actual or alleged violation of, any Environmental Law, (b) in connection with any Hazardous Material, (c) from any abatement, removal, remedial, corrective or response action in connection with a Hazardous Material, Environmental Law or order of a governmental authority, or (d) from any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

"*Environmental Law*" means any current or future Legal Requirement pertaining to (a) the protection of health, safety and the indoor or outdoor environment, (b) the conservation, management or use of natural resources and wildlife, (c) the protection or use of surface water or groundwater, (d) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, Release, threatened Release, abatement, removal, remediation or handling of, or exposure to, any Hazardous Material, or (e) pollution (including any Release to air, land, surface water or groundwater), and any amendment, rule, regulation, order or directive issued thereunder.



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“*Hazardous Material*” means any substance, chemical, compound, product, solid, gas, liquid, waste, byproduct, pollutant, contaminant or material which is hazardous or toxic, and includes, without limitation, (a) asbestos, polychlorinated biphenyls and petroleum (including crude oil or any fraction thereof) and (b) any material classified or regulated as “hazardous” or “toxic” or words of like import pursuant to an Environmental Law.

“*Hazardous Material Activity*” means any activity, event or occurrence involving a Hazardous Material, including, without limitation, the manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, Release, threatened Release, abatement, removal, remediation, handling of or corrective or response action to any Hazardous Material.

“*Legal Requirement*” means any treaty, convention, statute, law, regulation, ordinance, license, permit, governmental approval, injunction, judgment, order, consent decree or other requirement of any governmental authority, whether federal, state, or local.

“*Material Adverse Effect*” means any change or effect that individually or in the aggregate is or is reasonably likely to be materially adverse to (a) the assets, operations, income, condition (financial or otherwise) or business prospects of the Mortgagor, (b) the lien of any mortgage, deed of trust or other security agreement covering the Mortgaged Premises or any part thereof, (c) the ability of the Mortgagor to perform its obligations under any loan agreement, promissory note, mortgage, deed of trust, security agreement or any other instrument or document evidencing or securing any indebtedness, obligations or liabilities of the Mortgagor owing to the Mortgagor or setting forth terms and conditions applicable thereto or otherwise relating thereto, or (d) the condition or fair market value of the Mortgaged Premises.

“*RCRA*” means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§6901 *et seq.*, and any future amendments.

“*Release*” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migration, dumping, or disposing into the indoor or outdoor environment, including, without limitation, the abandonment or discarding of barrels, drums, containers, tanks or other receptacles containing or previously containing any Hazardous Material.

30. *Future Advances.* This Mortgage is given, in part, to secure amounts advanced by Mortgagee pursuant to drawings under the Letter of Credit and shall secure not only existing Secured Indebtedness but also such future advances, as are made within twenty (20) years from the date hereof, to the same extent as if such future advances were made on the date of the execution of this Mortgage, although there may be no advance made at the time of execution of this Mortgage and although there may be no Secured Indebtedness outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to all Secured Indebtedness,

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including future advances, from the time of its filing for record in the recorder's or registrar's office of the county in which the Mortgaged Premises is located. The total amount of Secured Indebtedness may increase or decrease from time to time, but the total unpaid principal balance of Secured Indebtedness (including disbursements which the Mortgagee may make under this Mortgage, or under any of the Related Documents at any time outstanding shall not exceed a maximum principal amount of \$12,100,000 plus interest thereon, any reasonable fees, costs and expenses payable hereunder, including, without limitation, any disbursements made for payment of taxes, special assessments or insurance on the Mortgaged Premises and interest on such disbursements (all such indebtedness being hereinafter referred to as the "*maximum amount secured hereby*"). This Mortgage shall be valid and have priority over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Mortgaged Premises, to the extent of the maximum amount secured hereby.

31. *Partial Invalidity.* All rights, powers and remedies provided herein are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Mortgage shall be held to be invalid, illegal or unenforceable, the validity and enforceability of the other terms of this Mortgage shall in no way be affected thereby.

32. *Successors and Assigns.* Whenever any party hereto is referred to, such reference shall be deemed to include the successors and assigns of such party. All the covenants, promises and agreements made by or on behalf of Mortgagor or Mortgagee in this Mortgage, shall bind and inure to the benefit of their respective successors and assigns.

33. *Default Rate.* The term, "*Default Rate*" shall mean the rate per annum determined by adding 3% to the Prime Rate (with any change in the Default Rate resulting from a change in such Prime Rate to be and become effective as of and on the date of such change in such Prime Rate). The term "*Prime Rate*" shall mean for any day the greater of:

(i) the rate of interest announced by the Mortgagee from time to time as its prime commercial rate for U.S. dollar loans, or equivalent, as in effect on such day, with any change in the Prime Rate resulting from a change in said prime commercial rate to be effective as of the date of the relevant change in said prime commercial rate; or

(ii) the sum of (x) the rate determined by the Mortgagee to be the average (rounded upwards, if necessary, to the next higher 1/100 of 1%) of the rates per annum quoted to the Mortgagee at approximately 10:00 a.m. (Chicago time) (or as soon thereafter as is practicable) on such day (or, if such day is not a Business Day, on the immediately preceding Business Day) by two or more Federal funds brokers selected by the Mortgagee for the sale to the Mortgagee at face value of Federal funds in an amount equal or comparable to the principal amount owed to the Mortgagee for which such rate is being determined, plus (y) 1/2 of 1% (0.50%).

34. *Direct and Primary Security - No Subrogation.* The lien and security herein created and provided for stand as direct and primary security for the Secured Indebtedness. No application of any sums received by Mortgagee in respect of the Mortgaged Premises or any

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disposition thereof to the reduction of the Secured Indebtedness or any part thereof shall in any manner entitle Mortgagor to any right, title of interest in or to the Secured Indebtedness or any of the Mortgaged Premises or other collateral security therefor, whether by subrogation or otherwise, unless and until all Secured Indebtedness has been fully paid and satisfied and the Letter of Credit has been returned to the Mortgagee for cancellation. Mortgagor acknowledges and agrees that the lien and security interest hereby created and provided for are absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Mortgagee or any other holder of any of the indebtedness hereby secured, and without limiting the generality of the foregoing, the lien and security hereof shall not be impaired by any acceptance by Mortgagee or any other holder of any of the indebtedness hereby secured of any other security for or guarantors upon any of the indebtedness hereby secured or by any failure, neglect or omission on the part of Mortgagee or any other holder of any of the indebtedness hereby secured to realize upon or protect any of the indebtedness hereby secured or any collateral or security therefor. The lien and security interest hereof shall not in any manner be impaired or affected by (and Mortgagee, without notice to anyone, is hereby authorized to make from time to time) any sale, pledge, surrender, compromise, settlement, release, renewal, extension, indulgence, alteration, substitution, exchange, change in, modification or disposition of any of the indebtedness hereby secured, or of any collateral or security therefor, or of any guaranty thereof, or of any instrument or agreement setting forth the terms and conditions pertaining to any of the foregoing. Mortgagee may at its discretion at any time grant credit to the Company without notice to Mortgagor in such amounts and on such terms as Mortgagee may elect (all of such to constitute additional indebtedness hereby secured) without in any manner impairing the lien and security interest created and provided for herein. In order to realize hereon and to exercise the rights granted Mortgagee hereby and under applicable law, there shall be no obligation on the part of Mortgagee or any other holder of any of the indebtedness hereby secured at any time to first resort for payment to Mortgagor or the Company or to any guaranty of any of the indebtedness hereby secured or any portion thereof or to resort to any other collateral, security, property, liens or any other rights or remedies whatsoever, and Mortgagee shall have the right to enforce this Mortgage irrespective of whether or not other proceedings or steps seeking resort to or realization upon or from any of the foregoing are pending.

35. *Headings.* The headings in this instrument are for convenience of reference only and shall not limit or otherwise affect the meaning of any provision hereof.

36. *Governing Law.* This Mortgage shall be governed by and construed in accordance with the internal laws of the State of Illinois, without giving effect to conflict of law principles.

37. *Entire Agreement.* This Mortgage and the Security Documents (as defined in the Reimbursement Agreement) constitute the entire understanding of the parties with respect to the subject matter thereof and any prior agreements, whether written or oral, with respect thereto are superseded hereby.

38. *Terms of Reimbursement Agreement Not Superseded.* Nothing contained herein shall be deemed or construed to permit any act or omission which is prohibited by the terms of the Reimbursement Agreement or any other Related Document (as defined in the Reimbursement Agreement) and the covenants and agreements contained herein are in addition

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to and not in substitution for the covenants and agreements contained in the Reimbursement Agreement and the Related Documents.

39. *Changes, Etc.* This Mortgage and the provisions hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the Mortgagor and Mortgagee.

40. *Exculpation.* This Mortgage is executed by Banco Popular North America, not personally but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said Trustee hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein or in said Reimbursement Agreement contained shall be construed as creating any liability on said Trustee personally to pay the said Secured Indebtedness or any interest that may accrue thereon, or any other indebtedness accruing hereunder, or to perform any covenant, either express or implied, herein contained, all such liability, if any, being expressly waived by Mortgagee and by every person now or hereafter claiming any right or security hereunder, and that so far as said Trustee personally is concerned, the legal holder or holders of said Secured Indebtedness and the owner or owners of any other indebtedness accruing hereunder shall look solely to the premises hereby conveyed for the payment thereof, by the enforcement of the lien hereby created, in the manner herein and in said Reimbursement Agreement provided or by action to enforce the personal liability of any guarantors of the Secured Indebtedness or by proceeding against any other collateral security therefor.

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

BANCO POPULAR NORTH AMERICA,  
as successor trustee to Pioneer Bank and  
Trust Company, as Trustee under Trust  
Agreement dated March 11, 1986 and known  
as Trust Number 24426

By: *Shyllis J. Johnson*  
Its: Vice President

## JOINDER OF BENEFICIARY

The undersigned, being the owner of 100 percent of the beneficial interest in and being the sole beneficiary of the Mortgage under the foregoing Mortgage and Security Agreement with Assignment of Rents, hereby consents to and joins in the terms and conditions of the foregoing Mortgage and Security Agreement with Assignment of Rents, intending hereby to bind any interest it or its successors or assigns may have in the premises described in the foregoing Mortgage and Security Agreement with Assignment of Rents, as fully and with the same effect as if the undersigned was named as the Mortgagor in the said Mortgage and Security Agreement with Assignment of Rents solely for the purposes therein set forth.

Dated as of the date first above written.

EDGAR J. HOFMEISTER

By: *EJH*  
Its: President

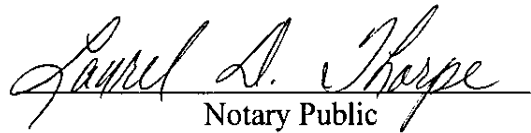
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STATE OF ILLINOIS            )  
  ) SS  
COUNTY OF   COOK          )

I,   Laurel D. Thorpe   a Notary Public in and for said County, in the State aforesaid, do hereby certify that   Phyllis J. Robinson  , the   Vice President   of Banco Popular North America, as successor trustee to Pioneer Bank and Trust Company, as Trustee under Trust Agreement dated March 11, 1986 and known as Trust Number 24426, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such   Vice President   appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said land trust, as Trustee as aforesaid, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 18th day of December, 2001.

  
Notary Public



  Laurel D. Thorpe    
(TYPE OR PRINT NAME)

(Seal)

My Commission Expires:

  08/17/04  

11223046

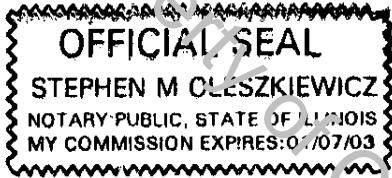


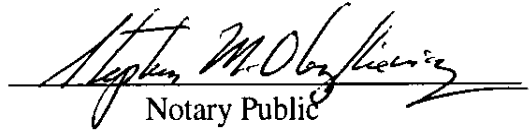
# UNOFFICIAL COPY

STATE OF ILLINOIS            )  
  ) SS  
COUNTY OF Cook            )

I, Stephen M. Oleszkiewicz, a Notary Public in and for said County and State aforesaid, DO HEREBY CERTIFY that Edgar J. Hofmeister is the sole beneficiary of the land trust which is the Mortgagor under the Mortgage and Security Agreement with Assignment of Rents attached hereto, 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 and sealed the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 18th day of December, 2001.



  
Notary Public

My Commission Expires:

Jan 7, 2003

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## SCHEDULE I

### LEGAL DESCRIPTION

#### PARCEL 2:

LOTS 42, 43, 44, 45 AND 46 AND LOTS 75, 76, 77, 78, 79, 80 AND 81 IN WALKER'S SUBDIVISION OF BLOCK 5 IN S. J. WALKER'S DOCK ADDITION TO CHICAGO, BEING A SUBDIVISION OF THE EAST 1/2, NORTH OF THE RIVER, IN SECTION 30, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 3:

THE 16 FOOT VACATED PUBLIC ALLEY LYING SOUTHEASTERLY OF THE SOUTHEASTERLY LINE OF LOTS 75 AND 76, LYING NORTHWESTERLY OF THE NORTHWESTERLY LINE OF LOTS 42 TO 46, BOTH INCLUSIVE, LYING EASTERLY OF THE SOUTHERLY EXTENSION OF THE WEST LINE OF LOT 75 AND LYING WESTERLY OF THE SOUTHERLY EXTENSION OF THE EAST LINE OF LOT 76 ALL IN WALKER'S SUBDIVISION OF BLOCK 5 IN S. J. WALKER'S DOCK ADDITION TO CHICAGO, AFORESAID.

ALSO: AS TO PARCEL 2 AFORESAID, THAT PART OF THE FOLLOWING DESCRIBED REAL ESTATE LYING WITHIN THE WEST 1/2 OF VACATED WINCHESTER AVENUE ACCRUING TO SAID PARCEL 2:

ALL THAT PART OF VACATED SOUTH WINCHESTER AVENUE LYING WEST OF THE WEST LINE OF LOTS 72, 73 AND 74, LYING WEST AND WESTERLY OF THE SOUTHERLY EXTENSION OF THE WEST LINE OF LOT 74, LYING EAST OF THE EAST LINE OF LOTS 76 TO 80, BOTH INCLUSIVE, LYING EAST AND EASTERLY OF THE EASTERLY LINE OF THE NORTHEASTERLY/SOUTHWESTERLY 16-FOOT VACATED ALLEY, VACATED BY ORDINANCE APPROVED BY THE CITY COUNCIL, FEBRUARY 7, 1997 AND RECORDED JUNE 6, 1997 IN THE OFFICE OF THE RECORDER OF DEEDS OF COOK COUNTY, ILLINOIS AS DOCUMENT NUMBER 97465682, SAID LINE BEING DESCRIBED IN THE LAST RECORDED ORDINANCE AS THE "SOUTHERLY EXTENSION OF THE EAST LINE OF LOT 76," LYING NORTHWESTERLY OF THE NORTHWESTERLY LINE OF LOTS 46, 47 AND 48, LYING SOUTH OF A LINE DRAWN FROM THE NORTHWEST CORNER OF LOT 72 TO THE NORTHEAST CORNER OF LOT 80 ALL IN WALKER'S SUBDIVISION OF BLOCK 5 IN S. J. WALKER'S DOCK ADDITION TO CHICAGO BEING A SUBDIVISION OF THE EAST HALF NORTH OF THE CHICAGO RIVER OF SECTION 30, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ALL THAT PART OF THAT NORTHEASTERLY/SOUTHWESTERLY 16-FOOT PUBLIC ALLEY LYING SOUTHEASTERLY OF THE SOUTHEASTERLY LINE OF LOT 74, LYING NORTHWESTERLY OF THE NORTHWESTERLY LINE OF LOTS 48 TO 51, BOTH INCLUSIVE, LYING EAST AND EASTERLY OF THE SOUTHERLY EXTENSION OF THE WEST LINE OF LOT 74 AND LYING NORTHWESTERLY OF THE NORTHWESTERLY EXTENSION OF THE NORTHWESTERLY LINE OF LOT 51 IN WALKER'S SUBDIVISION OF BLOCK 5 IN S. J. WALKER'S DOCK ADDITION TO CHICAGO AFORESAID, SAID PART OF STREET AND PART OF PUBLIC ALLEY HEREIN VACATED BEING FURTHER DESCRIBED AS THAT PART OF SOUTH WINCHESTER AVENUE LYING SOUTH OF A LINE 212 FEET, MORE OR LESS, SOUTH OF AND PARALLEL WITH THE SOUTH

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LINE OF WEST 23<sup>RD</sup> STREET, ALSO VACATING THE NORTHEASTERLY/SOUTHWESTERLY 16-FOOT PUBLIC ALLEY LYING EAST AND NORTHEASTERLY OF THE EAST LINE OF SOUTH WINCHESTER AVENUE EXTENDED SOUTH AND LYING NORTHWESTERLY OF THE NORTHWESTERLY EXTENSION OF THE NORTHEASTERLY LINE OF LOT 51 IN WALKER'S SUBDIVISION OF BLOCK 5 IN S. J. WALKER'S DOCK ADDITION TO CHICAGO AFORESAID, SAID ALLEY LYING EAST OF SOUTH WINCHESTER AVENUE ALL IN THE BLOCK BOUNDED BY WEST 23<sup>RD</sup> STREET, SOUTH WOLCOTT AVENUE, SOUTH BLUE ISLAND AVENUE AND SOUTH DAMEN AVENUE, AS VACATED BY ORDINANCE RECORDED OCTOBER 29, 1999 AS DOCUMENT 09022204, IN COOK COUNTY, ILLINOIS.

Parcels 2 and 3

Property Address: 2318-32 S. Winchester  
Chicago, Illinois

Property Address: 2384-92 S. Blue Island  
Chicago, Illinois

P.I.N. No.: 17-30-206-034  
17-30-206-033  
17-30-206-032  
17-30-206-069  
17-30-206-054

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## SCHEDULE II

### PERMITTED ENCUMBRANCES

1. General real estate taxes for the year 2001 and subsequent years.
2. EASEMENT FOR AN EXISTING WATER MAIN AND APPURTENANCES THERETO AND FOR THE INSTALLATION OF ANY ADDITIONAL WATER MAINS OR OTHER MUNICIPALLY-OWNED SERVICES FACILITIES NOW LOCATED OR WHICH IN THE FUTURE MAY BE LOCATED IN THAT PART OF THE PUBLIC STREET AS HEREIN VACATED, TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS, SUBJECT TO THE TERMS AND PROVISIONS THEREIN CONTAINED, AS RESERVED IN THE ORDINANCE VACATING A PORTION OF SOUTH WINCHESTER AVENUE AND PUBLIC ALLEY IN BLOCK BOUNDED BY WEST 23RD STREET, SOUTH WOLCOTT STREET, SOUTH BLUE ISLAND AVENUE AND SOUTH DAMEN AVENUE, A COPY OF WHICH WAS RECORDED OCTOBER 29, 1999 AS DOCUMENT 09022204.  
  
(AFFECTS A PORTION OF PARCEL 8)
3. EASEMENT FOR AN EXISTING SEWER AND FOR THE INSTALLATION OF ANY ADDITIONAL SEWERS OR OTHER MUNICIPALLY-OWNED SERVICE FACILITIES NOW LOCATED OR WHICH IN THE FUTURE MAY BE LOCATED IN THAT PART OF THE PUBLIC STREET AS HEREIN VACATED AND THE PROVISIONS RELATING THERETO, ALL AS RESERVED IN THE ORDINANCE VACATING A PORTION OF SOUTH WINCHESTER AVENUE AND PUBLIC ALLEY IN BLOCK BOUNDED BY WEST 23RD STREET, SOUTH WOLCOTT AVENUE, SOUTH BLUE ISLAND AVENUE AND SOUTH DAMEN AVENUE, A COPY OF WHICH WAS RECORDED OCTOBER 29, 1999 AS DOCUMENT 09022204.  
  
(AFFECTS A PORTION OF PARCEL 8)
4. EASEMENT FOR THE BENEFIT OF THE PEOPLES GAS LIGHT AND COKE COMPANY, TO OPERATE, MAINTAIN, REPAIR, RENEW AND REPLACE EXISTING UNDERGROUND FACILITIES AND TO CONSTRUCT NEW FACILITIES IN ALL THAT PART OF THE PUBLIC STREET TO BE VACATED WITH THE RIGHT OF INGRESS AND EGRESS AT ALL TIMES FOR AN AND SUCH PURPOSES, AND THE PROVISIONS RELATING THERETO, ALL AS RESERVED IN THE ORDINANCE FOR THE VACATION OF PORTION OF SOUTH WINCHESTER AVENUE AND PUBLIC ALLEY IN BLOCK BOUNDED BY WEST 23RD STREET, SOUTH WOLCOTT AVENUE SOUTH BLUE ISLAND AVENUE AND SOUTH DAMEN AVENUE, A COPY OF WHICH WAS RECORDED OCTOBER 29, 1999 AS DOCUMENT 09022204.  
  
(AFFECTS A PORTION OF PARCEL 8)
5. RESTRICTIVE COVENANT EXECUTED BY LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE KNOWN AS TRUST NUMBER 109482, BANCO POPULAR TRUST NUMBER 24426, BANCO POPULAR TRUST NUMBER 26684 IN FAVOR OF THE CITY OF CHICAGO, RECORDED OCTOBER 29, 1999 AS DOCUMENT 09022205, RELATING TO THE USE OF THE LAND AND WHICH CONTAINS A REVERTER PROVISION TO THE CITY OF CHICAGO IN THE EVENT OF VIOLATION THEREOF.  
  
(AFFECTS PARCEL 8)
6. RESTRICTIVE COVENANT BY AND BETWEEN BANCO POPULAR, FORMERLY KNOWN AS PIONEER BANK AND TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED MARCH 11, 1986 AND KNOWN AS TRUST NUMBER 24426 AND THE CITY OF CHICAGO DATED MAY 7, 1997 AND RECORDED JUNE 27, 1997 AS DOCUMENT 97465683 RELATING TO THE USE OF THE LAND AND THE TERMS AND PROVISIONS CONTAINED THEREIN.  
  
(AFFECTS PARCEL 3)