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Cook County Recorder 59.00

RETURN TO RECORDER'S BOX 340

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MORTGAGE

THIS MORTGAGE is made on November 22, 1999, by COSMOPOLITAN BANK AND TRUST, not personally but solely as Trustee under Trust Agreement dated September 22, 1999 and known as Trust No. 31068, whose address is 801 North Clark Street, Chicago, Illinois (herein referred to as "Mortgagor") to and for the benefit and security of WILLIAM LEVY, whose address is c/o Harper Realty, Inc., 900 West Jackson Boulevard, Suite 8E, Chicago, Illinois (herein referred to as "Lender").

WITNESS:

Mortgagor is justly indebted to Lender in the principal sum of THREE HUNDRED THOUSAND DOLLARS (\$300,000.00) DOLLARS, as evidenced by a Promissory Note of Mortgagor and ELIO MARZULLO (herein referred to as the "Note") dated of even date herewith, made payable to Lender, providing for mandatory payments of principal and interest until the Note is fully paid. The Note matures on May 1, 2001, unless earlier accelerated according to its terms.

To secure the payment of the principal sum of money evidenced by the Note, with interest thereon as provided therein, and the payment of all other sums advanced to protect the security of this Mortgage, with interest thereon, and the performance by Mortgagor of all of the covenants and conditions contained herein and in the Note and all other sums due and owing by Mortgagor to Lender and in further consideration of one dollar (\$1.00) in hand paid, the

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receipt of which is acknowledged, the Mortgagor does hereby by these presents, GRANT, MORTGAGE, CONVEY AND WARRANT to Lender, its successors and assigns the following described real estate and all of its estate, right, title and interest therein, situated, lying and being in the County of Cook and State of Illinois, legally described on Exhibit "A" attached hereto and by this reference incorporated herein, together with all improvements, tenements, easements, hereditaments and appurtenances thereunto belonging and all rents, issues and profits thereof for so long and during all such times as the Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily), and all the structures, buildings, additions and improvements, and replacements thereof, erected upon said realty, including any on-site energy systems providing power, electricity, heating, air conditioning, refrigeration, lighting, ventilation, water, and all plants, equipment, apparatus, machinery and fixtures of every kind and nature whatsoever forming part of said structures or buildings or of any structures or buildings heretofore or hereafter standing on the realty or on any part thereof or now or hereafter used in connection with the use and enjoyment of said realty, whether or not physically attached thereto, and together with all of Mortgagor's rights further to encumber said property. All of the above-mentioned and described real estate, property and rights are hereinafter referred to as "Premises".

TO HAVE AND TO HOLD the Premises unto the said Lender, its successors and assigns forever, for the purposes and uses therein set forth.

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. Taxes. Mortgagor shall pay before any penalty attaches all general taxes, special taxes, special assessments, water charges, sewer service charges and other charges against the Premises when due, and shall, upon written request, furnish to Lender duplicate receipts therefor. To prevent default hereunder Mortgagor shall pay in full under protest, in the manner provided by statute, any tax or assessment which Mortgagor may desire to contest. In the event, as owner of the Premises, Mortgagor shall be entitled to the benefits of membership in any condominium, homeowner's or property owner's association, or similar organization affording common area, recreational or other facilities for the use of Mortgagor and other property owners or occupants in the vicinity of the Premises, or to the use, in common with others, of any such facilities located beyond the Premises by any arrangement whereby the cost of such facilities is to be shared by the users thereof, Mortgagor agrees to become a member of such association (incorporated or unincorporated) and to perform all obligations of membership, including the payment of any and all dues, assessments, service fees or other obligations incurred, to maintain such

membership. The terms "assessments," as used in Paragraph 4 hereof, shall be deemed to also include all payments so required.

2. Insurance. Mortgagor shall keep all buildings and improvements now or hereafter situated on said Premises insured against loss or damage by fire and such other hazards as may reasonably be required by Lender, including without limitation on the generality of the foregoing, war damage insurance whenever in the opinion of Lender such protection is necessary. Mortgagor shall also provide liability insurance with such limits for personal injury and death and property damage as Lender may require. All policies of insurance to be furnished hereunder shall be in forms, companies and amounts satisfactory to Lender, with mortgage clauses attached to all policies in favor of and in form satisfactory to Lender, including a provision requiring the coverage evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to Lender. Mortgagor shall deliver all policies, including additional and renewal policies, to Lender, and, in the case of insurance about to expire, shall deliver renewal policies not less than ten (10) days prior to their respective dates of expiration.

3. Flood Insurance. If the Premises are now or hereafter located in an area which has been identified by the Secretary of Housing and Urban Development as a flood hazard area and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (the Act), Mortgagor will keep the Premises covered for the term of the Note by flood insurance up to the maximum limit of coverage available under the Act.

4. Deposits. Mortgagor covenants and agrees to deposit at such place as Lender may from time to time in writing appoint, and in the absence of such appointment, then at the office of Lender in Chicago, Illinois, on each interest installment payment date under the Note, until the indebtedness secured by this Mortgage is fully paid, a sum equal to one-twelfth of the last total annual taxes and assessments for the last ascertainable year (general and special) on said Premises (unless said taxes are based upon assessments which exclude the improvements or any part thereof now constructed, or to be constructed, in which event the amount of such deposits shall be based upon the Mortgagor's reasonable estimate as to the amount of taxes and assessments to be levied and assessed). Mortgagor, concurrently with the delivery of the Note to Lender, will also deposit with Lender an amount, based upon the taxes and assessments so ascertainable or so estimated by Lender, as the case may be, for taxes and assessments on said Premises, on an accrual basis, for the period from January 1, succeeding the year for which all taxes and assessments have been paid, to and including the date of the first deposit in this Paragraph herein above mentioned. Such deposits need not be kept separate and apart by Lender and are to be held without any allowance of interest and are to be used for the payment of taxes and assessments (general and special) on said Premises next

due and payable when they become due. If the funds so deposited are insufficient to pay any such taxes or assessments (general and special) for any year when the same shall become due and payable, the Mortgagor shall within ten (10) days after receipt of demand therefor, deposit such additional funds as may be necessary to pay such taxes and assessments (general and special) in full. If the funds so deposited exceed the amount required to pay such taxes and assessments (general and special) for any year, the excess shall, at the option of Lender, be applied on a subsequent tax payment. Lender as additional security for the indebtedness secured hereby is hereby granted a security interest pursuant to the Uniform Commercial Code in effect in the State of Illinois in all such deposits. Notwithstanding that Mortgagor has made the deposits above required, Mortgagor (and not Lender) shall have the duty to make or cause to be made all payments of taxes, assessments and insurance premiums on or before the due date thereof.

5. Duties When Paying Premises Obligations. Lender in making any payment hereby authorized: (a) relating to taxes and assessments or insurance premiums, may do so according to any bill, statement or estimate 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 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.

6. Insurance Settlements and Proceeds. In case of loss, Lender (or after entry of decree of foreclosure, the purchaser at the sale or the decree creditor, as the case may be) is hereby authorized either (a) to settle and adjust any claim under such insurance policies without consent of Mortgagor, or (b) to allow Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss. In either case Lender is authorized to collect and receipt for any such insurance money. At the sole discretion and election of Lender, the insurance proceeds may be applied (i) to restoration or repair of the Premises damaged, or (ii) to the sums secured by this Mortgage (whether or not then due), with the excess, if any, paid to Mortgagor.

7. Condemnation. Mortgagor hereby assigns, transfers and sets over unto Lender the entire proceeds of any award or any claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation. At the sole discretion and election of Lender, the proceeds of the award may be applied upon or in reduction of the indebtedness secured hereby, whether then due or not, or to require Mortgagor to restore or rebuild. Any surplus which may remain out of said award after payment of such cost of rebuilding or restoration shall be applied on account of the indebtedness secured hereby. If the Premises is abandoned by Mortgagor or if after notice by Lender to Mortgagor that the condemnor offers to make an award or settle a claim for damages,

Mortgagor fails to respond to Lender within five (5) days of the date of such notice, Lender is authorized to settle, collect and apply the proceeds at Lender's discretion.

8. Variation. 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 said 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, the right of recourse against all such persons' being expressly reserved by Lender, notwithstanding such extension, variation or release.

9. Prepayment. At such time as the Mortgagor is not in default either under the terms of the Note secured hereby or under the terms of this Mortgage, the Mortgagor shall have the privilege of making prepayments on the principal of said Note (in addition to the required payments) in accordance with the terms and conditions, if any, set forth in said Note.

10. Obligations Relating to Premises. Mortgagor shall (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed; (b) keep said Premises in good condition and repair, free of waste and mechanics' liens or other liens or claims for lien not expressly subordinated to the lien hereof; (c) 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 Lender; (d) comply with all requirements of law, municipal ordinances, or restrictions of record with respect to the Premises and the use thereof; (e) make no material alterations to said Premises, except as required by law or municipal ordinance and provided Lender has given prior written consent; (f) not use or suffer or permit use of the Premises for any purpose other than that for which the same is now used; (g) not initiate or acquiesce in any zoning reclassification without Lender's written consent; (h) pay each item of indebtedness secured by this Mortgage when due according to the terms hereof or of the Note; and (i) pay all filing, registration, recording and search and information fees, and all expenses incident to the execution and acknowledgment of this Mortgage and all other documents securing the indebtedness secured hereby and all federal, state, county and municipal taxes, other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution, delivery, filing, recording or registration of the indebtedness secured hereby, this Mortgage and all other documents securing the indebtedness secured hereby and all assignments thereof.

11. Mortgagor's Additional Covenants. Mortgagor further covenants and agrees with Lender, its successors and assigns as follows:

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A. Mortgagor will fully comply and cause compliance by tenants with all of the material terms, conditions and provisions of all leases on the Premises so that the same shall not become in default or be canceled, terminated or declared void, and will do all that is needful to preserve all said leases in force. Except for taxes and assessments to be paid by Mortgagor pursuant to Paragraph 1 of this Mortgage, Mortgagor will not create or suffer or permit to be created, subsequent to the date of this Mortgage, any lien or encumbrance which may be or become superior to any lease affecting the Premises; and

B. No construction shall be commenced upon the Land or upon any adjoining land at any time owned or controlled by Mortgagor or by other business entities related to Mortgagor, unless the plans and specifications for such construction shall have been submitted to and approved in writing by Lender to the end that such construction shall not, in the sole judgment of Lender, entail prejudice to the loan evidenced by the Note and secured by this Mortgage.

C. Mortgagor will at all times fully comply with and cause the Premises and the use and condition thereof to fully comply with all federal, state, county, municipal, local and other governmental statutes, ordinances, requirements, regulations, rules, orders and decrees of any kind whatsoever that apply or relate thereto, and will observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits, privileges, franchises and concessions (including, without limitation, those relating to land use and development, landmark preservation, construction, access, water rights, use, noise and pollution) which are applicable to Mortgagor or the Premises.

D. Mortgagor shall within fifteen (15) days after a written request by Lender furnish from time to time a signed statement setting forth the amount of the obligation secured hereby and whether or not any Event of Default, offset or defense then is alleged to exist against the same and, if so, specifying the nature thereof.

12. Environmental Matters. A. Mortgagor represents to Lender that there are no known or unknown, nor have there been any, nor will Mortgagor cause or suffer there to be, nor, to the best of its knowledge after due investigation has any other person or entity caused there to be, any "Hazardous Materials" (as hereinafter defined) generated, released, stored, buried or deposited over, beneath, in or upon, or which have been or will be used in the construction or renovation of any buildings, facilities or improvements of any nature whatsoever on, the Land, or, to the best of its knowledge, over, beneath, in or on adjacent parcels of real estate. For purposes of this Mortgage, "Hazardous Materials" shall mean and include asbestos, radon, underground storage tanks, PCBs

and any hazardous, toxic or dangerous waste, substance or material defined as such in or for purposes of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USC Section 9601 et. seq.), the Hazardous Materials Transportation Act (49 USC Section 1802, et. seq.), the Resource Conservation and Recovery Act (42 USC Section 6901 et. seq.), the United States Department of Transportation Table (49 CFR Section 172.101 and amendments thereto) or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material as now or at any time hereafter in effect.

B. Mortgagor covenants that Mortgagor will indemnify, hold harmless, and defend Lender and any current or former officer, director, employee or agent of Lender (hereinafter collectively referred to as the "Indemnitees") from any and all claims, losses, damages, response costs, clean-up costs and expenses arising out of or in any way relating to (i) the existence, presence, suspected presence, release or suspected release of any Hazardous Materials over, beneath, in or upon the Premises or adjacent parcels, or in the improvements on the Premises, or (ii) a breach of any representations, warranties, covenants or agreements set forth in Paragraph 12A hereof, in either event including, but not limited to: (a) claims of third parties (including governmental agencies) for damages, penalties, response costs, clean-up costs, injunctive or other relief; (b) costs and expenses of removal, remediation and restoration, including, without limitation, fees of attorneys and experts, and costs of reporting the existence of Hazardous Materials to any governmental agency; and (c) any and all other expenses or obligations, whether or not taxable as costs, including, without limitation, attorneys' fees, witness fees, deposition costs, copying and telephone charges and other expenses, all of which shall be paid by Mortgagor when incurred. The foregoing indemnity shall survive the payoff of the loan evidenced by the Note.

C. The representations, warranties, covenants and agreements contained herein and the obligations of Mortgagor to indemnify Lender and the other Indemnitees with respect to the expenses, damages, losses, costs, damages and liabilities set forth in Paragraph 12B hereof shall survive (i) any transfer of all or any portion of the beneficial interest in, to and under Mortgagor, (ii) the foreclosure of any liens on the Premises by Lender or a third party or the conveyance thereof by deed in lieu of foreclosure (and shall not be limited to the amount of any deficiency in any foreclosure sale of Premises) and (iii) all other indicia of the termination of the relationship between Mortgagor and Lender.

D. During the term of the loan evidenced by the Note, Lender shall have the right, at its option, to retain, at Mortgagor's expense, an environmental consultant who shall prepare a report indicating whether the Premises contain any wetlands or are being

used for any activities involving, directly or indirectly, the use, generation, treatment, storage or disposal of any Hazardous Materials. Mortgagor hereby grants to Lender and Lender's agents, employees, consultants and contractors the right to enter upon the Premises and to perform such tests on the Premises as are reasonably necessary to conduct any such investigation.

E. If any of the provisions of the Illinois Responsible Premises Transfer Act of 1988 ("IRPTA") are now or hereafter become applicable to the Premises, Mortgagor shall comply with such provisions. Without limitation on the generality of the foregoing, (i) if the delivery of a disclosure document is now or hereafter required by IRPTA, Mortgagor shall cause the delivery of such disclosure document to be made to all parties entitled to receive same within the time period required by IRPTA; and (ii) Mortgagor shall cause any such disclosure document to be recorded with the Recorder of Deeds of the County in which the Premises are located and filed with the Illinois Environmental Protection Agency, all within the time periods required by IRPTA. Mortgagor shall promptly deliver to Lender evidence of such recording and filing of such disclosure document.

13. Inspection. Lender shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

14. Maintenance of Mortgagor's Existence. So long as any part of the Note remains unpaid, Mortgagor shall maintain its existence and shall not merge into or consolidate with any other corporation, firm, joint venture or association; nor convey, transfer, lease or otherwise dispose of all or substantially all of its property, assets or business; nor assume, guarantee or become primarily or contingently liable on any indebtedness or obligation of any other person, firm, joint venture or corporation, without prior written consent from Lender.

15. Default. If (a) default be made in the due and punctual payment of the Note, or any installment due in accordance with the terms hereof, either of principal or interest, or in any other payment required to be made under the terms of the Note or this Mortgage; or (b) a petition shall be filed by or against the Mortgagor in voluntary or involuntary bankruptcy or under Chapters XI, XII or XIII of the Federal Bankruptcy Act or any similar law, state or federal, whether now or hereafter existing; or (c) the Mortgagor shall be adjudicated a bankrupt, or a trustee or a receiver shall be appointed for the Mortgagor or for all Mortgagor's property or the major part thereof in any proceeding, or any court shall have taken jurisdiction of the property of the Mortgagor or the major part thereof in any proceeding for the arrangement, liquidation or winding up of the affairs of the Mortgagor; or (d) the Mortgagor shall make an assignment for the benefit of creditors, or shall admit in writing inability to pay Mortgagor's



debts generally as they become due; or (e) default shall be made in the due observance or performance of any other of the covenants, agreements or conditions hereinbefore or hereinafter contained in this Mortgage or as contained in any other instrument evidencing, securing or guarantying the Note, required to be kept or performed or observed by the Mortgagor or any other signatory to any such instrument evidencing, securing or guarantying the Note, and the same shall continue for five (5) days (any and all of the foregoing being herein referred to as an "Event of Default"), then and in every such case the whole of said principal sum hereby secured shall, at once, at the option of Lender become immediately due and payable, together with accrued interest thereon, without notice to Mortgagor.

16. Prohibition on Sale or Financing.

A. Any sale, conveyance, assignment, pledge, hypothecation, encumbrance or other transfer of title to, or any interest in, or the placing of any lien upon the Premises, the beneficial interest in Mortgagor or any ownership interest in the Mortgagor or the beneficiary of Mortgagor (whether voluntary or by operation of law) without Lender's prior written consent shall be an Event of Default hereunder.

B. For the purpose of, and without limiting the generality of, Paragraph 16A, the occurrence at any time of any of the following events shall be deemed to be an unpermitted transfer of title to the Premises and therefore an Event of Default hereunder: (a) any sale, conveyance, assignment or other transfer of any general partnership interest in any limited partnership or general partnership (hereinafter called the "Partnership") which constitutes the Mortgagor or the beneficiary of Mortgagor hereunder; provided that if there is only one general partner and that general partner dies or becomes incapacitated, a transfer to a successor general partner, subject to the approval of Lender, which approval will not unreasonably be withheld, will not be an event of default; (b) any grant of a security interest in any general partnership interest in the Partnership; (c) any sale, conveyance, assignment or other transfer of any share of stock of any corporation which constitutes the Mortgagor or the beneficiary of Mortgagor, or which directly or indirectly controls the Partnership, which results in any material change in the identity of the individuals previously in control of such corporation or Partnership; (d) the grant of a security interest in any share of stock of any corporation described in the previous clause (c) which could result in a material change in the identity of the individuals previously in control of such corporation or Partnership if the secured party holding such security interest would exercise its remedies.

C. It is understood and agreed that the indebtedness secured hereby was created solely due to the financial sophistication, credit worthiness, background and business

sophistication of Mortgagor (or in the event Mortgagor is a trust, the beneficiary of Mortgagor) and Lender continues to rely upon same as the means of maintaining the value of the Premises. It is further understood and agreed that any secondary or junior financing placed upon the Premises or the improvements located thereon, or upon the interests of Mortgagor (or in the event Mortgagor is a trust, the beneficial interest of the trust) may divert funds which would otherwise be used to pay the indebtedness secured hereby, and could result in acceleration and/or foreclosure by any such junior lienor. Any such action would force Lender to take measures, and incur expenses, to protect its security, and would detract from the value of the Premises, and impair the rights of Lender granted hereunder.

D. Any consent by Lender to, or any waiver of any event which is prohibited under this Paragraph 16, shall not constitute a consent to, or waiver of, any right, remedy or power of Lender upon a subsequent event of default.

17. Default of Cosigner. The Note has been cosigned by ELIO MARZULLO as his joint and several obligation and liability, and it is a covenant hereof that in case cosigner shall be declared a bankrupt, or shall file a petition in voluntary bankruptcy, or under Title 11 of the United States Code, or any other similar state or federal law, or should cosigner file any declaration, answer or pleading admitting his insolvency or inability to pay his debts or discharge his liabilities, or if a trustee or receiver is appointed for cosigner or for the property or estate of cosigner, or should any court take jurisdiction of cosigner's property, or estate, or should cosigner make an assignment for the benefit of his creditors, then upon the occurrence or happening of any such event, Lender may declare an Event of Default hereunder, and may at its option declare the entire remaining principal balance to be immediately due, or said Lender may immediately institute foreclosure proceedings, and/or avail itself of any right or remedy herein reserved, and/or any right or remedy allowed by law in such case made and provided.

18. Foreclosure. When the indebtedness hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Lender shall have the right to foreclose the lien hereof for such indebtedness or 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 Lender for attorneys' fees, appraisers' 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) for 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 Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant

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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 Lender 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 from the date of disbursement at the Default Rate stated in the Note and shall be secured by this Mortgage.

The proceeds of any foreclosure sale of the premises shall be distributed and applied in the order set forth in Paragraph 7 of the Note; and the overplus (if any) to Mortgagor, Mortgagor's heirs, legal representatives or assigns, as their rights may appear.

19. 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 shall, at the request of the Lender, appoint a receiver of the Premises and the Court shall, if not otherwise illegal, appoint such receiver as may be nominated by the Lender. 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 Lender 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 the 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 after deducting reasonable compensation for the receiver and his counsel as allowed by the court, in payment (in whole or in part) of any or all of any obligation secured hereby, including without limitation the following, in such order of application as Lender may elect: (i) amounts due upon the Note, (ii) amounts due upon any decree entered in any suit foreclosing this Mortgage, (iii) costs and expenses of foreclosure and litigation upon the Premises; (iv) insurance premiums, repairs, taxes, special assessments, water charges and interest, penalties and costs, in connection with the Premises; (v) any other lien or charge upon the Premises that may be or become superior to the lien of this Mortgage, or of any decree

foreclosing the same; provided that such application is made prior to foreclosure sale, and (vi) the deficiency in case of a sale and a deficiency.

20. Application of Funds Upon Default. In the event of a default in any of the provisions contained in this Mortgage or in the Note secured hereby, Lender may at its option, without being required to do so, apply any monies at the time on deposit pursuant to Paragraph 4 hereof, on any of Mortgagor's obligations herein or in the Note contained in such order and manner as Lender may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Mortgagor. So long as any amount is unpaid under the Note or this Mortgage, the funds on deposit pursuant to Paragraph 4 hereof shall be applied for the purposes for which made hereunder and shall not be subject to the direction or control of the Mortgagor; and Lender shall not be liable for any failure to apply to the payment of taxes, assessments or insurance premiums unless Mortgagor, while not in default hereunder, shall have requested in writing to make application of such funds to the payment of the particular taxes, assessments or insurance premiums for payment of which they were deposited, accompanied by bills for such taxes, assessments or insurance premiums.

21. Lender's Right to Exercise Remedies. The rights and remedies of Lender as provided in the Note, in this Mortgage, in any other Loan Document or available under applicable law, shall be cumulative and concurrent and may be pursued separately, successively or together against Mortgagor or against other obligors, if any, or against the Premises, or against any one or more of them, at the sole discretion of Lender, and may be exercised as often as occasion therefor shall arise. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof. No delay or omission of Lender to exercise any right or power accruing upon any default shall impair any such right or power, or shall be construed to be a waiver of any such default or any acquiescence therein; and every power and remedy given by this Mortgage to Lender may be exercised from time to time as often as may be deemed expedient by Lender. Nothing in this Mortgage or in the Note shall affect the obligation of Mortgagor to pay the principal of, and interest on, the Note in the manner and at the time and place therein respectively expressed.

22. Rights of Lender. In case of default herein, Lender may, but need not, make any payment or perform any act herein 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. 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 Lender to protect the Premises and the lien hereof, shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon from the date of the disbursement at the rate stated in the Note; provided that the aggregate amount of the indebtedness secured hereby together with all such additional sums advances shall not exceed one thousand percent (1,000%) of the amount of the original indebtedness secured hereby. Inaction of Lender shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

23. Forbearance. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy hereunder. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Mortgage or to demand repayment for amounts so paid, with interest, as provided herein or in the Note.

24. Waivers by Mortgagor. Mortgagor waives the benefit and agrees not to invoke any appraisement, valuation, stay, extension or exemption laws, or any so-called "moratorium laws," not existing or hereafter enacted, in order to prevent or hinder the enforcement of foreclosure of this Mortgage. Mortgagor for Mortgagor and all who may claim through or under Mortgagor waives any and all rights to have the property and estates comprising the mortgaged Premises marshaled upon any foreclosure of the lien hereof and agree that any court having jurisdiction to foreclose such lien may order the mortgaged Premises sold as an entirety. Mortgagor hereby waives any and all rights of reinstatement and rights of redemption from sale under any order or decree of foreclosure of this Mortgage on Mortgagor's behalf and on behalf of each and every person (except decree or judgment creditors of Mortgagor) acquiring any interest in or title to the Premises subsequent to the date of this Mortgage. Mortgagor hereby waives and releases all rights and benefits under and by virtue of the homestead exemption laws of the State of Illinois.

25. Binding. 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 liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage, and shall include the singular or plural as the context may require. All obligations of Mortgagor hereunder shall be joint and several if more than one party comprise the Mortgagor. The word "Lender" when used herein shall include the successors and assigns of Lender named herein, and the holder or holders, from time to time, of the Note secured hereby.

26. No Merger. It being the desire and intention of the parties hereto that this Mortgage and the lien hereof do not merge in fee simple title to the Premises, it is hereby understood and agreed that should Lender acquire any additional interest in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Lender, as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

27. Release. Lender shall release this Mortgage and the lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby and payment of a reasonable fee to Lender or Lender's attorney for the preparation and execution of such release.

28. Mortgagor not a Joint Venturer or Partner. Mortgagor acknowledges and agrees that in no event shall Lender be deemed to be a partner or joint venturer with Mortgagor or any beneficiary of Mortgagor. Without limitation of the foregoing, Lender shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document evidencing or securing any of the indebtedness secured hereby, or otherwise.

29. Notice. Any notice which either party hereto may desire or be required to give to the other party shall be in writing and the mailing thereof by certified mail addressed to the Mortgagor or Lender at the address set forth above, 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.

30. Severability. In the event any of the provisions contained in this Mortgage or in any other Loan Documents (as defined in the Note) shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or lack of enforceability shall, at the option of Lender, not affect any other provision of this Mortgage, the obligations secured hereby or any other Loan Document and same shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein and therein. This Mortgage has been executed and delivered at Chicago, Illinois and shall be construed in accordance therewith and governed by the laws of the State of Illinois.

31. 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. Wherever used, the singular number shall include the plural and the plural the singular, and the use of any gender shall be applicable to all genders.

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32. Assignment of Rents and Leases. A. To further secure the indebtedness secured hereby, Mortgagor does hereby sell, assign and transfer unto Lender all the rents, issues and profits now due with respect to the Premises and does hereby sell, assign and transfer unto Lender all Mortgagor's right, title and interest as lessor 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 to or which may be made or agreed to by Mortgagor or its agents or beneficiaries 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 Lender, and Mortgagor does hereby appoint irrevocably Lender its true and lawful attorney in its name and stead (with or without taking possession of the Premises) to rent, lease or let all or any portion of the Premises to any party or parties at such rental and upon such terms as Lender 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 exist on the Premises.

B. Mortgagor represents and agrees that no rent has been or will be paid by any person in possession of any portion of the Premises for more than one installment in advance and that the payment of none of the rents to accrue for any portion of the Premises has been or will be, without Lender's consent, waived, released, reduced, discounted, or otherwise discharged or compromised by Mortgagor. Mortgagor shall not grant any rights of set off or permit any set off to rent by any person in possession of any portion of the Premises. Mortgagor agrees that it will not assign any lease or any rents or profits of the Premises, except to Lender or with the prior written consent of Lender.

C. Nothing herein contained shall be construed as constituting Lender as a mortgagee in possession in the absence of the taking of actual possession of the Premises by Lender. In the exercise of the powers herein granted Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Mortgagor.

D. Mortgagor further agrees to assign and transfer to Lender all future leases upon all or any part of the Premises and to execute and deliver, at the request of Lender, all such further assurances and assignments in the Premises as Lender shall from time to time require.

E. Although it is the intention of the parties that the assignment contained in this Paragraph 32 shall be a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that so long as there is no Event of Default hereunder, Mortgagor shall have the privilege of collecting and retaining the rents accruing under the leases

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assigned hereby, until such time as Lender shall elect to collect such rents pursuant to the terms and provisions of this Mortgage.

F. Mortgagor expressly covenants and agrees that if Mortgagor, as lessor under any lease for all or any part of the Premises, shall fail to perform and fulfill any term, covenant, condition or provision in said lease or leases, or any of them on its part to be performed or fulfilled, at the times and in the manner in said lease or leases provided, or if Mortgagor shall suffer or permit to occur any breach or default under the provisions of any assignment of any lease or leases given as additional security for the payment of the indebtedness secured hereby, such breach or default shall constitute a default hereunder and entitle Lender to all rights available to it in such event.

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

33. Mortgagee in Possession. At any time after default hereunder, Mortgagee is authorized, without notice and in its sole discretion, to enter upon and take possession of the Property or any part thereof and to perform any acts which Mortgagee deems necessary or proper to conserve the security herein intended to be provided by the Property, to operate any business or businesses conducted thereon and to collect and receive all rents, issues and profits thereof and therefrom, including those past due as well as those accruing thereafter.

34. Not Residential Real Estate. The Mortgagor hereby covenants and agrees, for itself and each of successor and assign, that the Premises do not constitute residential real estate, as defined in 735 ILCS 5/15-1219.

35. UCC Remedies. This Mortgage shall also serve as a "security agreement" within the meaning of that term as used in the Uniform Commercial Code as adopted and in force from time to time in the State of Illinois, and shall be operative and effective as a security agreement in addition to, and not in substitution for, any other security agreement executed by Mortgagor in connection with the extension of the credit transaction secured hereby. Mortgagor agrees to and shall, upon the request of Lender, execute and deliver to Lender such financing statements, descriptions of property and such further assurances as Lender, in its sole discretion, may from time to time consider necessary to create, perfect, continue and preserve the lien and encumbrances hereof and the security interest granted herein upon and in the Premises,



including all buildings, improvements, goods, chattels, furniture, furnishings, fixtures, equipment, apparatus, appliances, and other items of tangible and intangible personal property on and about the Premises. Without the prior written consent of Lender, Mortgagor shall not create or suffer to be created, pursuant to the Uniform Commercial Code, any other security interest in the Premises. Upon the occurrence of an Event of Default, Lender shall have the remedies of a secured party under the Illinois Uniform Commercial Code and, at Lender's option, the remedies provided for in this Mortgage. Mortgagor shall execute, now or hereafter, such financing statements or continuation statements as Lender may request, and the expense of preparing and filing or recording same shall be borne by Mortgagor.

36. Revolving Credit Loans. This Mortgage is given to secure one or more "Revolving Credit" loans, as defined in 815 ILCS 205/4.1. This Mortgage secures not only the indebtedness of Mortgagor to the lender existing on the date hereof, but all such future advances as are made within twenty years from the date of this Mortgage, to the same extent as if such future advances were made on the date of the execution of this Mortgage, whether such advances are obligatory or to be made at the option of the Lender, or otherwise. Each such future advance is secured by this Mortgage even if there may be no indebtedness outstanding at the time such advance is made. The total amount of indebtedness secured by this Mortgage may increase or decrease from time to time, but the total unpaid balance so secured at any one time shall not exceed \$100,000,000.00.

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[Trustee: insert exculpation clause here]

Property of Cook County Clerk's Office

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage.

COSMOPOLITAN BANK AND TRUST, not personally but solely as Trustee under Trust Agreement dated September 22, 1999 and known as Trust No. 31068. For signatures, notary and exculpatory provisions, of the Trustee, see rider attached hereto which is expressly incorporated herein and made a part hereof.

ATTEST

By: \_\_\_\_\_  
Its: \_\_\_\_\_ President

\_\_\_\_\_  
Its: \_\_\_\_\_ Secretary

This MORTGAGE is executed by COSMOPOLITAN BANK and TRUST, 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 COSMOPOLITAN BANK and TRUST 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 note contained shall be construed as creating any liability on the said COSMOPOLITAN BANK and TRUST, either individually or as Trustee aforesaid, personally to pay said note or any interest that may accrue thereof, or any indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained all such liability if any, being expressly waived by the Mortgagee and by every person now or hereafter claiming any right or security hereunder, and that so far as COSMOPOLITAN BANK and TRUST, either individually or as trustee as aforesaid, or its successors, personally are concerned, the legal holder or holders 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 note provided or by action to enforce the personal liability of the guarantor, if any.

Signatures of the Trustee expressly exclude covenant of mortgagor pursuant to the Hazardous Substance Clause of this Mortgage as well as any and all other provisions which may be contained herein with respect to the condition of the premises. Trustee does not covenant or warranty that the premises are free from any hazardous substances, or that the premises are in compliance with the terms of any environmental act, including but not limited to the Comprehensive Environmental Response, Liability and Compensation Act, the Resource Conservation and Recovery Act and/or the Environmental protection Act.

IN WITNESS WHEREOF, COSMOPOLITAN BANK and TRUST not personally, but as Trustee as aforesaid, has caused these presents to be signed by its Vice President & Trust Officer and its corporate seal to be hereunto affixed and attested by its Trust Officer this 22nd day of November, 1999.

COSMOPOLITAN BANK and TRUST,  
as Trustee as aforesaid and not personally

ATTEST:  
[Signature]  
Trust Officer

BY:  
[Signature]  
Vice President & Trust Officer

STATE OF ILLINOIS)  
  )SS  
COUNTY OF COOK )

EVIDENCE OF TITLE  
NOT YET RECEIVED

I, the undersigned, a Notary Public in and for the County and State aforesaid DO HEREBY CERTIFY that the above named Gerald A. Wiel and Todd W. Cordell of COSMOPOLITAN BANK and TRUST, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President & Trust Officer and Trust Officer respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said COSMOPOLITAN BANK and TRUST for the uses and purposes therein set forth, and the said Trust Officer then and there acknowledged that as said Trust Officer's own free and voluntary act and as the free and voluntary act of said COSMOPOLITAN BANK and TRUST for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 24th day of November, 1999.

[Signature]  
Notary Public

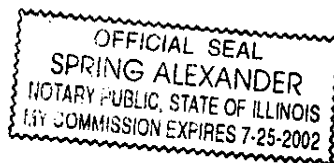


EXHIBIT A

Lots 34 to 44 inclusive, and the South Half of the vacated 20-foot alley lying North of and adjoining said Lots, in William Short's Subdivision of Block 38 in Canal Trustees' Subdivision of Section 7, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

PIN: 17-07-304-009-0000

Address: 2114-38 West Carroll, Chicago, Illinois

AND ALSO:

The East 55.3 feet of Lots 31, 32 and 33 taken as a unit and the East 55.3 feet of the South  $\frac{1}{2}$  of the vacated alley North of and adjoining said Lots in William Short's Subdivision of Block 38 in Canal Trustee's Subdivision of Section 7, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

PIN: 17-07-304-018-0000

Address: 2142 West Carroll, Chicago, Illinois

DOCUMENT PREPARED BY:

Kevin P. Breslin  
Katz Randall & Weinberg  
Suite 1800  
333 West Wacker Drive  
Chicago, Illinois 60606

**RETURN TO RECORDER'S BOX 340**