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## MORTGAGE

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THIS SECOND MORTGAGE (hereinafter called "Mortgage") made this 23<sup>rd</sup> day of September 1986, by AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but as Trustee under Trust Agreement dated July 22, 1986 and known as Trust No. 068816-01 (hereinafter called "Borrower") the sole beneficiary of which is Cicero Associates, a New York partnership (the "Beneficiary").

### WITNESSETH

WHEREAS, Borrower is justly indebted unto Barclays American Business Credit, Inc. (hereinafter referred to as "Noteholder") whose address is 111 Founders Plaza, East Hartford, Connecticut 06108 in the full sum of \$2,250,000.00 for which amount Borrower has executed and delivered its Promissory Note (hereinafter referred to as the "Note") of even date herewith payable to the order of Noteholder bearing interest and payable in the manner therein set forth with the maturity of said Note being the fifth (5th) anniversary of the date hereof all as more particularly set forth in said Note ~~the Note being indentified by the signature of \_\_\_\_\_ and~~

the first day of the month following

WHEREAS, as a condition to the incurring of said indebtedness, Borrower agreed to execute and deliver this Mortgage to secure <sup>(i)</sup> the payment of the Note and <sup>(ii)</sup> the performance of the covenants and conditions in this Mortgage and any extension, renewal or modification thereof, and <sup>(iii)</sup> any other advances permitted by this Mortgage, but in no event shall the indebtedness secured hereby exceed the sum of \$5,000,000.00

NOW THEREFORE, to secure the payment of the amounts due under the Note and any and all renewals, extensions, modifications and replacements thereof and to assure performance of the agreements contained in the Note, this Mortgage and all other instruments securing the Note, Borrower enters into the covenants and agreements and makes the representations and warranties contained in this Mortgage and grants, bargains, sells, conveys and mortgages to Noteholder:

(A) **THE LAND.** The following described premises situated in Cook County, Illinois, to wit: The land described in detail in Schedule "A" (the "Land") which is attached hereto and incorporated herein and made a part of this document for all purposes.

(B) **THE IMPROVEMENTS; TOGETHER WITH** (1) all the buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and (2) all fixtures, machinery, appliances, equipment, furniture and personal property of every nature whatsoever now or hereafter owned by the Borrower and located in or on, or attached to, and used or intended to be used in connection with or with the operation of, the Land, buildings, structures or other improvements, or in connection with any construction being conducted or which may be conducted thereon, and owned by Borrower, and all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing, and all of the right, title and interest of the Borrower in and to any such personal property or fixtures, which, to the fullest extent permitted by law, shall be conclusively deemed fixtures and a part of the real property encumbered hereby (hereinafter called the "Improvements").

(C) **EASEMENTS; TOGETHER WITH** all easements, rights-of-way, gores of land, streets, ways, alleys, passages, sewer rights, water courses, water rights and powers, and all appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property described in paragraphs (A) and (B) hereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Borrower.

(D) **TOGETHER WITH** (i) all the estate, right, title and interest of the Borrower of, in and to all judgments, insurance proceeds, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the property described in paragraphs (A), (B) and (C) hereof or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property described in paragraphs (A), (B) and (C) hereof or any part thereof, or to any rights appurtenant thereto, and all proceeds of any sales or other disposition of the property described in paragraphs (A), (B) and (C) hereof or any part thereof; and the Noteholder is hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittances therefor, and (if it so elects) to apply the same toward the payment of the indebtedness and other sums secured hereby, notwithstanding the fact that the amount owing thereon may not then be due and payable; and (ii) all contract rights, general intangibles, actions and rights in action, including without limitation all rights to insurance proceeds and unearned premiums arising from or relating to the property described in paragraphs (A), (B) and (C) above; and (iii) all proceeds, products, replacements, additions, substitutions, renewals and acccessions of and to the property described in paragraphs (A), (B) and (C).

(E) **TOGETHER WITH** all rents, income and other benefits to which the Borrower may now or hereafter be entitled from the property described in paragraphs (A), (B) and (C) hereof to be applied against the indebtedness and other sums

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but subject to the First Mortgage, as hereinafter defined

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secured hereby provided, however, that permission is hereby given to the Borrower, so long as no Event of Default has occurred hereunder, to collect and use such rents, income and other benefits as they become due and payable, but not in advance thereof. Upon the occurrence of any such Event of Default, the permission hereby given to the Borrower to collect such rents, income and other benefits from the property described in paragraphs (A), (B) and (C) hereof shall terminate and such permission shall not be reinstated upon a cure of such Event of Default without the Noteholder's specific written consent.

The foregoing provisions hereof shall constitute an absolute and present assignment of the rents, income and other benefits from the property described in (A), (B) and (C) above, subject, however, to the conditional permission given to the Borrower to collect and use such rents, income and other benefits as hereinabove provided, and the existence or exercise of such right of the Borrower shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by the Borrower, and any such subsequent assignment by the Borrower shall be subject to the rights of the Noteholder hereunder.

(F) TOGETHER WITH all right, title and interest of the Borrower in and to any and all leases now or hereafter on or affecting the property described in paragraphs (A), (B) and (C) hereof, together with all security therefor and all monies payable thereunder, and all books and records which contain payments made under the leases and all security therefor, subject, however, to the conditional permission hereinabove given to the Borrower to collect the rents, income and other benefits arising under any such lease. The Noteholder shall have the right, at any time and from time to time, to notify any lessee of the rights of the Noteholder as provided by this paragraph. (as such)

(G) TOGETHER WITH (i) the Borrower's rights further to encumber the property described in paragraphs (A), (B) and (C) above for debt and (ii) all of the Borrower's rights to enter into any lease or lease agreement.

(H) Paragraph (H) contained in the Rider attached hereto and made a part hereof. All of the property described in paragraphs (A), (B), (C), (D), (E), (F) and (G) above, and each item of property therein described, is herein referred to as "THE PROPERTY" and (H)

TO HAVE AND TO HOLD "THE PROPERTY" and all parts thereof unto Noteholder, its successors and assigns, to its own proper use and benefit forever, subject, however, to the terms and conditions herein:

PROVIDED, HOWEVER, that if Borrower shall promptly pay or cause to be paid to Noteholder the principal and interest payable under the Note, at the times and in the manner stipulated therein, herein, and in all other instruments securing the Note, all without any deduction or credit for taxes or other similar charges paid by Borrower, and shall keep, perform and observe all the covenants and promises in the Note, and any renewal, extension or modification thereof, and in this Mortgage and in all other instruments securing the Note, to be kept, performed or observed by Borrower, then, upon complete satisfaction and payment thereof, the Noteholder shall release and reconvey the Property unto the parties legally entitled thereto at the cost of Borrower.

ARTICLE ONE  
COVENANTS OF BORROWER

The Borrower covenants and agrees with the Trustee and the Noteholder, or any successor in title as holder of the Note above described as follows:

1.01 Performance of Note, Deed of Trust Etc. The Borrower shall cause to be performed, observed and complied with all provisions hereof, of the Note and of every other instrument securing the Note, and will promptly pay to the Noteholder the principal with interest thereon and all other sums required to be paid by the Borrower under the Note and pursuant to the provisions of this Mortgage and of every other instrument securing the Note when payment shall become due, without relief from valuation and appraisal laws, and with reasonable attorneys' fees.

1.02 General Representations, Covenants and Warranties. The Borrower represents and covenants that (a) subject only to the rights of others provided in the instrument described in Schedule "B" attached hereto and incorporated herein and made a part hereof, the Borrower is seized of an indefeasible estate in fee simple in, and has good and absolute title to, THE PROPERTY, and has good right, full power and lawful authority to mortgage and pledge the same as provided herein and the Noteholder may at all times peaceably and quietly enter upon, hold, occupy and enjoy THE PROPERTY in accordance with the terms hereof; THE PROPERTY is free and clear of all liens, security interests, charges and encumbrances whatsoever except those described in Schedule "B"; (b) the Borrower will maintain and preserve the lien of this Mortgage until the indebtedness and other sums secured hereby have been paid in full; (c) the Borrower and each guarantor (if any) of the indebtedness evidenced by the Note (said guarantor(s) herein referred to jointly and severally as the "Guarantor") are now able to meet their respective debts as they mature, the fair market value of their respective assets exceeds their respective liabilities and no bankruptcy or insolvency proceedings are pending or contemplated by or against the Borrower or the Guarantor; (d) all reports, statements and other data furnished by the Borrower and the Guarantor to the Noteholder in connection with the loan evidenced by the Note are true, correct and complete in all material respects and do not omit to state any fact or circumstance necessary to make the statements contained therein not misleading; (e) this Mortgage and the Note and other instruments securing the Note or otherwise executed in connection therewith are valid and binding obligations enforceable in accordance with their respective terms and the execution and delivery thereof do not contravene any contract or agreement to which the Borrower or the Guarantor is a party or by which the Borrower or the Guarantor or any of its or his respective properties may be bound and do not contravene any law, order, decree, rule or regulation to which the Borrower or the Guarantor is subject; (f) there are no actions, suits or proceedings pending, or to the knowledge of the Borrower threatened, against or affecting the Borrower or the Guarantor or THE PROPERTY; (g) all costs arising from construction of any improvements and the purchase of all equipment located on THE PROPERTY have been paid; (h) THE PROPERTY is improved with those improvements described in Schedule "C" attached hereto and incorporated herein and made a part hereof and has frontage on, and direct access for ingress and egress to, the street(s) described therein; and (i) electric, gas, sewer, water facilities and any other necessary utilities are, and at all times hereafter shall be, available in sufficient capacity to service THE PROPERTY satisfactorily, and any easements necessary to the furnishing of such utility service by the Borrower have been obtained and duly recorded; and (j) the Borrower and the Guarantor are not in default under the terms of any instrument evidencing or securing any indebtedness of the Borrower or the Guarantor, respectively, and there has occurred no event which would, if uncured or uncorrected, constitute a default under any such instrument with the giving of notice, passage of time or both.

Beneficiary and have no knowledge as to any third parties contemplating such proceedings

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~~If this Mortgage is to be acquired by Barclays American Business Credit, Inc. from an interim lender, the representations, covenants and warranties contained in this paragraph 1.02 shall be deemed repeated as of the date this Mortgage is acquired by Lender.~~

1.03 Compliance with Laws. The Borrower covenants and warrants that THE PROPERTY presently complies with and will continue to comply with all applicable restrictive covenants, applicable zoning and subdivision ordinances and building codes, all applicable health and environmental laws and regulations and all other applicable laws, rules and regulations. If the Borrower receives notice from any federal, state or other governmental body that it is not in compliance with any such covenant, ordinance, code, law or regulation the Borrower will provide the Noteholder with a copy of such notice promptly.

without reliance upon any zoning variances, provisions of law relating to nonconforming uses or rights appurtenant to the Property,

including, but not limited to, that certain Mortgage dated May 24, 1971 ("First Mortgage") and recorded as Doc. No. 21499710 from Len-Stopps, Inc. to The Mutual Life Insurance Company of New York ("First Mortgage") to which First Mortgage this Mortgage and the rights of the Noteholder are subject and subordinate

1.04 Taxes and Other Charges.

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1.04.1 Taxes and Assessments. Subject to the provisions of this paragraph 1.04, the Borrower shall pay promptly when due all taxes, assessments, rates, dues, charges, fees, levies, fines, impositions, liabilities, obligations and encumbrances of every kind whatsoever now or hereafter imposed, levied or assessed upon or against THE PROPERTY or any part thereof, or upon or against this Mortgage or the indebtedness or other sums secured hereby, or upon or against the interest of the Noteholder in THE PROPERTY, as well as all income taxes, assessments and other governmental charges levied and imposed by the United States of America or any state, county, municipality or other taxing authority upon or against the Borrower or in respect of THE PROPERTY or any part thereof, provided, however, that the Borrower may in good faith, by appropriate proceedings (including without limitation payment of the asserted tax or assessment under protest if such payment must be made in order to contest such tax or assessment), contest the validity, applicability or amount of any asserted tax or assessment and pending such contest the Borrower shall not be deemed in default hereunder if on or before the due date of the asserted tax or assessment the Borrower establishes an escrow acceptable to the Noteholder in an amount estimated by Noteholder to be adequate to cover the payment of such tax or assessment with interest, costs and penalties and a reasonable additional sum to cover possible interest, costs and penalties; and, if the amount of such escrow is insufficient to pay any amount adjudged by a court of competent jurisdiction to be due, with all interest, costs and penalties thereon, Borrower shall pay such deficiency no later than the date such judgment becomes final.

or other security

1.04.2 Mechanic's and Other Liens. The Borrower shall not permit or suffer any mechanic's, laborer's, materialman's, statutory or other lien (other than any lien for taxes not yet due) to be created upon THE PROPERTY, other than the lien of the First Mortgage. This paragraph is continued in the Rider attached hereto.

1.04.3 Taxes Affecting Lender's Interest. If any state, federal, municipal or other governmental law, order, rule or regulation, passed subsequent to the date hereof, in any manner changes or modifies existing laws governing the taxation of mortgages or debts secured by mortgages, or the manner of collecting taxes so as adversely to affect the Noteholder's security in THE PROPERTY, the entire balance of the indebtedness and other sums secured by this Mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of the Noteholder. This paragraph is continued in the Rider attached hereto.

1.04.4 Tax Escrow. In order to secure the performance and discharge of the Borrower's obligations under this paragraph 1.04, but not in lieu of such obligations, the Borrower will pay over to the Noteholder an amount equal to one-twelfth (1/12th) of the next maturing annual ad valorem taxes, assessments and charges (which charges for purposes of this paragraph shall include without limitation water and sewer rents) of the nature described in paragraph 1.04 for each month that has elapsed since the last date to which such taxes, assessments and charges were paid, and the Borrower will, in addition, pay over to the Noteholder, together with each installment on the Note sufficient funds (as estimated from time to time by the Noteholder in its sole discretion) to permit the Noteholder to pay when due said taxes, assessments and charges. Upon demand by the Noteholder, the Borrower shall deliver to the Noteholder such additional monies as are required to make up any deficiencies in the amount necessary to enable the Noteholder to pay such taxes, assessments and similar charges. Such deposits shall not be, nor be deemed to be, trust funds but may be commingled with the general funds of the Noteholder, and no interest shall be payable in respect thereof. In event of a default under any of the terms, covenants and conditions in the Note, this Mortgage or any other instrument securing the Note to be kept, performed or observed by Borrower, Noteholder may apply to the reduction of the sums secured hereby, in such manner as Noteholder shall determine, any amount under this paragraph 1.04.4 of Article One remaining to Borrower's credit

beyond applicable grace periods, if any,

1.04.5 No Credit Against the Indebtedness Secured Hereby. The Borrower shall not claim, demand or be entitled to receive any credit, against the principal or interest payable under the terms of the Note or on any other sums secured by this Mortgage for so much of the taxes, assessments or similar impositions assessed against THE PROPERTY or any part thereof or that are applicable to the indebtedness secured hereby or to the Noteholder's interest in THE PROPERTY. No deduction shall be claimed from the taxable value of THE PROPERTY or any part thereof by reason of the Note, this Mortgage or any other instrument securing the Note.

1.04.6 Insurance.

(a) Subject to paragraph 1.04 (b)(d), the Borrower shall at its sole expense obtain for, deliver to, assign and maintain for the benefit of the Noteholder, during the life of this Mortgage, insurance policies in such amounts as the Noteholder may require, insuring THE PROPERTY against all insurable hazards, casualties and contingencies (including without limitation loss of rentals or business interruption and liability insurance naming Borrower, its beneficiary and Noteholder as named insureds), as the Noteholder may require, and shall pay promptly when due any premiums on such insurance policies and on any renewals thereof. The form of such policies and the companies issuing them shall be acceptable to the Noteholder. All such policies and renewals thereof shall be held by the Noteholder and shall contain a non-contributory standard Mortgagee's endorsement making losses payable to the Noteholder as its interests may appear. At least fifteen (15) days prior to the expiration date of all such policies, renewals thereof satisfactory to the Noteholder shall be delivered to the Noteholder. Within fifteen (15) days after the anniversary or effective date of each policy, the Borrower shall deliver to the Noteholder receipts evidencing the payment of all premiums on such insurance policies and renewals. In the event of loss, the Borrower will give immediate written notice to the Noteholder and the Noteholder may make proof of loss if not made promptly by the Borrower. In the event of the foreclosure of this Mortgage or any other transfer of title to THE PROPERTY in extinguishment of the indebtedness and other sums secured hereby, all right, title and interest of the Borrower in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee. All such policies shall provide that they shall not be cancelled or terminated without at least thirty (30) days' prior written notice to the Noteholder.

reasonably

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(b) Pursuant to its rights granted hereunder in all proceeds from any insurance policies, the Noteholder is hereby authorized and empowered at its option to adjust or compromise any loss under any insurance policies on THE PROPERTY and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses directly to the Noteholder alone and not to the Borrower and the Noteholder jointly. After deducting from such insurance proceeds any expenses incurred by the Noteholder in the collection or handling of such funds, the Noteholder may apply the net proceeds, at its option, either toward restoring THE PROPERTY or as a credit on any portion of the indebtedness and other sums secured hereby, whether then matured or to mature in the future, or at the option of the Noteholder such sums either wholly or in part may be paid over to the Borrower to be used to repair such improvements or to build new improvements in their place or for any other purpose or object satisfactory to the Noteholder, without affecting the lien of this Mortgage for the full amount secured hereby before such payment took place. Although the Noteholder intends to use its best efforts to collect such payments in a timely fashion, the Noteholder shall not be responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

(c) The Borrower shall at its sole expense obtain for, deliver to and maintain for the benefit of, the Noteholder during the life of this Mortgage liability insurance policies relating to THE PROPERTY, in such amounts, with such companies and in such form as may be required by the Noteholder. The Noteholder may require such policies to contain

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In the event of the foreclosure of this Mortgage or any other transfer of title to the Property in extinguishment in whole or in part of the indebtedness secured hereby, all right, title and interest of the Borrower in and to all insurance policies then in force shall pass to the purchaser or grantee.

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an endorsement, in form satisfactory to the Noteholder, naming the Noteholder as an additional insured thereunder. The Borrower shall pay promptly when due any premiums on such insurance policies and renewals thereof.

(d) In order to secure the performance and discharge of the Borrower's obligations under this paragraph 1.04.6, but not in lieu of such obligations, the Borrower will pay over to the Noteholder an amount equal to one-twelfth (1/12th) of the next maturing annual insurance premiums for each month that has elapsed since the last date to which such premiums were paid; and the Borrower will, in addition, pay over to the Noteholder together with each installment on the Note sufficient funds (as estimated from time to time by the Noteholder in its sole discretion) to permit the Noteholder to pay said premiums when due. Such deposits shall not be, nor be deemed to be, trust funds but may be commingled with the general funds of the Noteholder, and no interest shall be payable in respect thereof. Upon demand by the Noteholder, the Borrower shall deliver to the Noteholder such additional monies as are necessary to make up any deficiencies in the amounts necessary to enable the Noteholder to pay such premiums when due.

(e) The provisions of this paragraph 1.04.6 with respect to delivery of policies to the Noteholder and assignments thereof and the proceeds thereof to the Noteholder and the provisions of subparagraph (d) shall be subject to the terms of any instrument referred to in Schedule "B" securing any prior lien on THE PROPERTY.

**1.04.7 Non-Impairment of Noteholder's Rights.** The provisions of paragraphs 1.04.4 and 1.04.6(d) shall not be effective so long as the holder of any prior lien is receiving in escrow from the Borrower amounts sufficient to pay the taxes and insurance required to be paid by paragraphs 1.04.1 and 1.04.6 respectively. Nothing contained in either of said paragraphs shall be deemed to affect any right or remedy of the Noteholder under any provision of this Mortgage or of any statute or rule of law to pay any amount required to be paid by paragraphs 1.04.1 and 1.04.6 and to add the amount so paid together with interest at the Default Rate to the indebtedness hereby secured. Although Noteholder intends to use its best efforts to make such payments in a timely fashion, the arrangements provided for in paragraphs 1.04.4 and 1.04.6 are solely for the added protection of the Noteholder and entail no responsibility on the Noteholder's part beyond the allowing of due credit, without interest, for sums actually received by it. Upon assignment of this Mortgage, any funds on hand shall be turned over to the assignee, and any responsibility of the Noteholder with respect thereto shall terminate. This paragraph is contained in the rider attached hereto.

**1.05 Condemnation.** The Noteholder shall be entitled to all compensation awards, damages, claims, rights of action and proceeds of, or on account of, any damage or taking through condemnation and is hereby authorized, at its option, to commence, appear in and prosecute in its own or the Borrower's name any action or proceeding relating to any condemnation and to settle or compromise any claim in connection therewith. All such compensation awards, damages, claims, rights of action and proceeds, and any other payments or relief, and the right thereto, are included in THE PROPERTY and the Noteholder, after deducting therefrom all its expenses including attorneys' fees, may release any monies so received by it to the Borrower without affecting the lien of this Mortgage or may apply the same, in such manner as the Noteholder shall determine, to the reduction of the sums secured hereby. Any balance of such monies then remaining shall be paid to Borrower. The Borrower agrees to execute such further assignments of any compensation awards, damages, claims, rights of action and proceeds as the Noteholder may require. Notwithstanding any such condemnation, the Borrower shall continue to pay interest, computed at the rate provided in the Note, on the entire unpaid principal amount thereof. The provisions of this paragraph 1.05 with respect to receipt and application of condemnation awards shall be subject to the terms of any instrument referred to in Schedule "B" securing any prior lien on THE PROPERTY.

**1.06 Care of Property.**

(a) The Borrower shall preserve and maintain THE PROPERTY in good condition and repair. The Borrower shall not permit, commit or suffer any waste, impairment or deterioration of THE PROPERTY or of any part thereof, and will not take any action which will increase the risk of fire or other hazard to THE PROPERTY or to any part thereof.

(b) Except as otherwise provided in this Mortgage, no part of THE PROPERTY shall be removed, demolished or altered, without the prior written consent of the Noteholder. The Borrower shall have the right, without such consent, to remove and dispose of free from the lien of this Mortgage any part of THE PROPERTY as from time to time may become worn out or obsolete, provided that either simultaneously with or prior to such removal, any such property shall be replaced with other property of equal utility and of a value at least equal to that of the replaced equipment when first acquired and free from any security interest of any other person and by such removal and replacement the Borrower shall be deemed to have subjected such replacement property to the lien of this Mortgage.

(c) The Noteholder may enter upon and inspect THE PROPERTY at any reasonable time during the life of this Mortgage.

(d) If any part of THE PROPERTY shall be lost, damaged or destroyed by fire or any other cause, the Borrower will give immediate written notice thereof to the Noteholder and shall promptly restore THE PROPERTY to the equivalent of its original condition regardless of whether or not there shall be any insurance proceeds therefor. If a part of THE PROPERTY shall be lost, physically damaged, or destroyed through condemnation, the Borrower will promptly restore, repair or alter the remaining property in a manner satisfactory to the Noteholder.

(e) No work required to be performed under this paragraph shall be undertaken until plans and specifications therefor, prepared by an architect or engineer satisfactory to the Noteholder, have been submitted to and approved in writing by the Noteholder.

**1.07 Further Assurances.** At any time and from time to time, upon the Noteholder's request, the Borrower shall make, execute and deliver, or cause to be made, executed and delivered, to the Noteholder and where appropriate shall cause to be recorded or filed, and from time to time thereafter to be re-recorded and refiled at such time and in such offices and places as shall be deemed desirable by the Noteholder, any and all such further deeds of trust, instruments of further assurance, certificates and other documents as the Noteholder may consider necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve the obligations of the Borrower under the Note and this Mortgage, and the lien of this Mortgage as a lien upon all of THE PROPERTY, whether now owned or hereafter acquired by the Borrower, subject only to the prior liens described in Schedule "B", and unto all and every person or persons deriving any estate, right, title or interest under this Mortgage. Upon any failure by the Borrower to do so, the Noteholder may make, execute, record, file, re-record or refile any and all such deeds of trust, instruments, certificates and documents for and in the name of the Borrower, and the Borrower hereby irrevocably appoints the Noteholder the agent and attorney-in-fact of the Borrower to do so.

**1.08 Security Agreement and Financing Statements.** The Borrower (as Debtor) hereby grants to the Noteholder (as Creditor and Secured Party) a security interest in all fixtures, machinery, appliances, equipment, furniture and personal property of every nature whatsoever constituting part of THE PROPERTY, subject only to any prior security interests described in Schedule "B".

make monthly payments of principal and interest as

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The Borrower shall execute and file such documents, including without limitation financing Statements pursuant to the Uniform Commercial Code of the state in which THE PROPERTY is located, as the Noteholder may request, to preserve and maintain the priority of the lien created hereby on property which may be deemed personal property or fixtures, and shall pay to the Noteholder on demand any expenses incurred by the Noteholder in connection with the preparation, execution and filing of any such documents. The Borrower hereby authorizes and empowers the Noteholder to execute and file, on the Borrower's behalf, all Financing Statements and refilings and continuations thereof as the Noteholder deems necessary or advisable to create, preserve and protect said lien. When and if the Borrower and the Noteholder shall respectively become the Debtor and Secured Party in any Uniform Commercial Code Financing Statement affecting THE PROPERTY, this Mortgage shall be deemed a security agreement as defined in said Uniform Commercial Code and the remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall be (i) as prescribed herein, (ii) by general law, or (iii) as to such part of the security which is also reflected in said Financing Statement by the specific statutory consequences now or hereafter enacted and specified in the Uniform Commercial Code, all at the Noteholder's sole election.

The Borrower and the Noteholder agree that the filing of a Financing Statement in the records normally having to do with personal property shall never be construed as in anywise derogating from or impairing the express declaration and intention of the parties hereto, hereinabove stated, that everything used in connection with the production of income from THE PROPERTY and/or adapted for use therein and/or which is described or reflected in this Mortgage is, and at all times and for all purposes and in all proceedings both legal or equitable, shall be regarded as part of the real estate encumbered by this Mortgage irrespective of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with the Noteholder, or (iii) any such item is referred to or reflected in any such Financing Statement so filed at any time. Similarly, the mention in any such Financing Statement of (1) rights in or to the proceeds of any fire and or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) the Borrower's interest as lessor in any present or future lease or rights to income growing out of the use and or occupancy of the property mortgaged hereby, whether pursuant to lease or otherwise, shall never be construed as in anywise altering any of the rights of the Noteholder as determined by this instrument or impugning the priority of the Noteholder's lien granted hereby or by any other recorded document, but such mention in the Financing Statement is declared to be for the protection of the Noteholder in the event any court or judge shall at any time hold with respect to (1), (2) and (3) that notice of the Noteholder's priority of interest to be effective against a particular class of persons, including but not limited to the federal government and any subdivisions or entity of the federal government, must be filed in the Uniform Commercial Code records.

**1.09 Assignment of Rents.** The assignment contained in paragraph (E) of this Mortgage shall be fully operative without any further action on the part of either party and specifically the Noteholder shall be entitled, at its option, upon the occurrence of an Event of Default hereunder, to all rents, income and other benefits from the property described in paragraphs (A), (B), (C) and (D) hereof whether or not the Mortgage takes possession of such property. The Borrower hereby further grants to the Noteholder the right (i) to enter upon and take possession of THE PROPERTY for the purpose of collecting the said rents, income and other benefits, (ii) to dispossess by the usual summary proceedings any tenant defaulting in the payment thereof to the Noteholder, (iii) to let THE PROPERTY or any part thereof, and (iv) to apply said rents, income and other benefits, after payment of all necessary charges and expenses, on account of the indebtedness and other sums secured hereby. Such assignment and grant shall continue in effect until the indebtedness and other sums secured hereby are paid, the execution of this Mortgage constituting and evidencing the irrevocable consent of the Borrower to the entry upon and taking possession of THE PROPERTY by the Noteholder pursuant to such grant, whether or not foreclosure has been instituted. Neither the exercise of any rights under this paragraph by the Noteholder nor the application of any such rents, income or other benefits to the indebtedness and other sums secured hereby, shall cure or waive any default or notice of default hereunder or invalidate any act done pursuant hereto or to any such notice, but shall be cumulative of all other rights and remedies.

**1.10 After Acquired Property.** To the extent permitted by and subject to applicable law, the lien of this Mortgage will automatically attach, without further act, to all after acquired property located in or on, or attached to, or used or intended to be used in connection with, or with the operation of, THE PROPERTY or any part thereof.

**1.11 Leases Affecting Encumbered Property.** The Borrower represents that the schedule of leases set forth in Schedule "D" is true and correct; that all such leases are presently in effect and that no default exists in such leases. As any such lease shall expire or terminate or as any new lease shall be made, the Borrower shall so notify the Noteholder in order that at all times the Noteholder shall have a current list of all leases affecting the property described in paragraphs (A), (B) and (C) hereof. The assignment contained in paragraph (F) hereof shall not be deemed to impose upon the Noteholder any of the obligations or duties of the Borrower provided in any such lease (including, without limitation, any liability under the covenant of quiet enjoyment contained in any lease in the event that any tenant shall have been joined as a party defendant in any action to foreclose this Mortgage and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in THE PROPERTY or any part thereof), and the Borrower shall comply with and observe its obligations as landlord under all leases affecting THE PROPERTY or any part thereof. The Borrower, if required by the Noteholder, shall furnish promptly to the Noteholder original or certified copies of all such leases now existing or hereafter created. The Borrower shall not, without the express prior written consent of the Noteholder, amend, modify, extend, terminate or cancel, accept the surrender of, subordinate, accelerate the payment of rent as to, or change the terms of any renewal option of any such lease now existing or hereafter created, or permit or suffer an assignment or sublease. The Borrower shall not accept payment of rent more than one (1) month in advance without the prior written consent of the Noteholder.

With respect to the assignment contained in paragraph (F) hereof, the Borrower shall, from time to time upon request of the Noteholder, specifically assign to the Noteholder as additional security hereunder, by an instrument in writing in such form as may be approved by the Noteholder, all right, title and interest of the Borrower in and to any and all leases now or hereafter on or affecting THE PROPERTY, together with all security therefor and all monies payable thereunder, subject to the conditional permission hereinabove given to the Borrower to collect the rentals under any such lease. The Borrower shall also execute and deliver to the Noteholder any notification, Financing Statement or other document reasonably required by the Noteholder to perfect the foregoing assignment as to any such lease. The provisions of this paragraph 1.11 shall be subject to the provisions of said paragraph (F).

~~Any other provision of this Mortgage to the contrary notwithstanding, if any part of THE PROPERTY consists of individual apartment units the Borrower shall, upon the expiration of a lease with respect to such unit in accordance with its terms, have the right to lease any such unit on a form of lease which has been approved by the Noteholder, without obtaining the prior written consent of the Noteholder, provided the rent payable with respect to the new lease is equal to or greater than the rent payable with respect to the expired lease, and further provided the other terms of the lease are at least as favorable to the Borrower as the terms of the expired lease.~~



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1.12 Expenses. The Borrower will pay when due and pay all appraisal fees, recording fees, taxes, brokerage fees

and commissions, abstract fees, title policy fees, escrow fees, attorney's fees, court costs, fees of inspecting architect(s) and engineers) and all other costs and expenses of every character which have been incurred or which may hereafter be incurred by the Noteholder or any takeout lender in connection with: (i) the issuance of its commitment; (ii) the preparation and execution of loan documents; (iii) the funding of its loan; (iv) in the event an Event of Default occurs, preparation for enforcement of its loan documents, whether or not suit or other action is actually commenced, or undertaken; (v) enforcement of its loan documents; (vi) court or administrative proceedings of any kind to which Noteholder may be a party, either as plaintiff or defendant, by reason of the Note, the Mortgage or any other instrument securing the Note; (vii) preparation for and actions taken in connection with Noteholder's taking possession of THE PROPERTY; (viii) negotiations with Borrower, its beneficiary, Guarantor or any of their respective agents in connection with the existence or cure of any Event of Default; (ix) any proposed refinancing by Noteholder or any other person or entity of the debt secured hereby; (x) the transfer of THE PROPERTY in lieu of foreclosure; and (xi) the approval by Noteholder of actions taken or proposed to be taken by Borrower, its beneficiary, Guarantor or other person or entity which approval is required by the terms of this Mortgage or any other instrument securing the Note. The Borrower will, upon demand by the Noteholder, reimburse the Noteholder or any takeout lender for all such expenses which have been incurred or which shall be incurred by it, and will indemnify and hold harmless the Noteholder from and against, and reimburse it for, all claims, demands, liabilities, losses, damages, judgments, penalties, costs, and expenses (including, without limitation, Attorney's fees) which may be imposed upon, asserted against, or incurred or paid by them by reason of, on account of or in connection with any bodily injury or death or property damage occurring in or upon or in the vicinity of THE PROPERTY through any cause whatsoever or asserted against them on account of any act performed or omitted to be performed hereunder or on account of any transaction arising out of or in any way connected with THE PROPERTY, or with this Mortgage or any of the indebtedness evidenced by the Note.

1.13 Noteholder's Performance of Defaults. If the Borrower defaults in the payment of any tax, assessment, encumbrance or other imposition, in its obligation to furnish insurance hereunder, or in the performance or observance of any other covenant (condition or term) in this Mortgage, the Note or in any other instrument securing the Note, the Noteholder may, to preserve its interest in THE PROPERTY, perform or observe the same, and all payments made (whether such payments are regular or accelerated payments) and costs and expenses incurred or paid by the Noteholder in connection therewith shall become due and payable immediately. The amounts so incurred or paid by the Noteholder, together with interest thereon at the Default Rate from the date incurred until paid by the Borrower, shall be added to the indebtedness and secured by the lien of this Mortgage. The Noteholder is hereby empowered to enter and to authorize others to enter upon THE PROPERTY or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Borrower or any person in possession holding under the Borrower.

1.14 Books and Records. The Borrower shall keep and maintain at all times complete, true and accurate books of account and records reflecting the results of the operation of THE PROPERTY. Borrower shall furnish to Noteholder: (a) within 90 days after the end of Borrower's fiscal year and within 30 days after the end of each fiscal quarter, a statement of income and expenses with respect to THE PROPERTY, in form required by Noteholder; (b) within 90 days after the end of Borrower's fiscal year, statements of financial condition of Borrower and Guarantor, in form as required by Noteholder; (c) within 30 days after the end of such fiscal year, a rent schedule of THE PROPERTY, as of the end of such fiscal year, certified by the Borrower, showing the name of each tenant and the space occupied, the lease expiration date, the rent and additional rent due and payable, the last date to which rent was paid and whether or not such tenant was then in default under any of the terms of his lease and showing all tenant space which is not occupied.

The Borrower shall also furnish such interim unaudited financial statements and other information as the Noteholder may require. Noteholder and its designated agents shall have the right to inspect Borrower's books and records with respect to THE PROPERTY at all reasonable times.

Should Borrower fail to comply with the requirements set forth in (a), (b) and (c) above, it shall constitute an Event of Default and Noteholder may (i) pursue those remedies set forth in Article Three hereof, and (ii) direct an independent certified public accountant to audit Borrower's books and records, and the cost of such audit shall be paid by Borrower.

1.15 Estoppel Affidavits. The Borrower, within ten (10) days after a written request from the Noteholder, shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of and interest on the Note, and any other unpaid sums secured hereby, and whether or not any offsets or defenses exist against such principal and interest or other sums.

1.16 Use of Property. The Borrower covenants that THE PROPERTY will be used for the purposes set forth in Schedule "E".

1.17 Prior Liens. In the event that THE PROPERTY or any part thereof is now subject to an approved prior deed of trust, mortgage, lien or other permitted encumbrance described in Schedule "B" which has priority over the lien of this Mortgage ("Approved Prior Encumbrance"), the Borrower shall: (i) pay the principal, interest and all other sums secured thereby no later than five (5) days prior to their due date, either directly to the holder of the Approved Prior Encumbrance or, at the election of the Noteholder, to the Noteholder, or remittance to the holder of the Approved Prior Encumbrance, and will comply with all of the other terms, covenants and conditions thereof; (ii) if requested hereafter by the Noteholder, produce to the Noteholder from time to time no less than three (3) days prior to the due date of the installments of principal, interest and other sums payable thereon, receipts or other evidence of payment thereof satisfactory to the Noteholder, unless the Noteholder shall have required that such payments be made to the Noteholder in accordance with subparagraph (i) hereof; (iii) not enter into any modification, amendment, agreement or arrangement with respect thereto and will not obtain any additional advances thereunder without the prior written consent of the Noteholder, expressly including, but not in limitation of the foregoing, any such modification, amendment, agreement or arrangement pursuant to which the Borrower is granted any forbearance or indulgence (as to time or amount) in the payment of any principal, interest or other sums due in accordance with the terms and provisions of the Approved Prior Encumbrance; (iv) use its best efforts to obtain the agreement of the holder from time to time of any such Approved Prior Encumbrance to send the Noteholder copies of all notices; and (v) notify the Noteholder promptly of the receipt of any notice given by the holder of any Approved Prior Encumbrance. This paragraph is continued in Rider attached hereto.

1.18 Use of the Noteholder's Name. Borrower shall not use the Noteholder's name or the name of any person, firm or corporation controlling, controlled by or under common control with the Noteholder in connection with any of the Borrower's activities, except as such use may be required by applicable law or regulation of any governmental body, or by any financing institution with which the Borrower may be doing business.

1.19 Business Loan. To induce Noteholder to disburse the principal amount of the Note, Borrower warrants, represents and covenants that the loan represented thereby is a business loan (as such term is used in Ill. Rev. Stat. ch. 74, 1-4-11), as amended to Borrower, that its beneficiary owns and operates a commercial or industrial enterprise which is carried on for the purpose of investment or profit in connection with THE PROPERTY and that the funds represented by the Note will be used solely to further such commercial or industrial enterprise.

1.20 Future Indebtedness of Borrower. The lien of this Mortgage secures, as of the date hereof, without further act, any and all indebtedness of Borrower to Noteholder, whether representing the future advance of sums under the Note, or otherwise.

Paragraphs 1.21 and 1.22 contained in the Rider attached hereto are made a part hereof.

provided, however, if the Noteholder may pay the holder of the Approved Prior Encumbrance by wire transfer of federal funds, Borrower may pay Noteholder on the due date, not including any grace period

subject to applicable grace periods, if any,

reasonably

Beneficiary's and Guarantor's fiscal year's

to the best of Beneficiary's knowledge

reasonably

(including, but not limited to the First Mortgage)

will not increase the principal amount thereof

regulation

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## ARTICLE TWO DEFAULTS

2.01 **Event of Default.** The term Event of Default, wherever used in this Mortgage, shall mean any one or more of the following events:

(a) Failure by the Borrower to pay (i) any periodic installment of interest or principal which shall become due and payable under the Note; or (ii) the outstanding principal balance on the Note, together with interest accrued thereon, at maturity or upon prepayment of the Note; or (iii) any deposits for taxes and assessments or insurance premiums when due hereunder; or (iv) any other sums to be paid by the Borrower hereunder or under any other instrument securing the Note, when due hereunder or thereunder.

(b) Failure by the Borrower to duly keep, perform and observe any other covenant, condition or agreement in the Note, this Mortgage, or any other instrument securing the Note or executed in connection therewith, which failure continues for thirty (30) days after notice to Borrower.

(c) If any material inaccuracy shall exist in any of the financial statements, certificates or in any other information furnished by or to be furnished by the Borrower to the Noteholder pursuant to the provisions of this Mortgage or furnished or to be furnished to the Noteholder to induce the Noteholder to make the loan evidenced by the Note.

(d) Breach of any warranty or untruth of any representation of the Borrower or Guarantor contained in the Note, this Mortgage or any other instrument securing the Note.

(e) If (i) a petition is filed by or against the Borrower or any guarantor, co-maker or endorser of the Note seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any law relating to bankruptcy or insolvency, or (ii) the Borrower or any guarantor, co-maker or endorser of the Note seeks or consents to or acquiesces in the appointment of any trustee, receiver, master or liquidator of itself or all or any part of THE PROPERTY or of all or any part of the rent, revenues, issues, earnings, profits or income thereof, or (iii) the Borrower or any guarantor, co-maker or endorser of the Note makes any general assignment for the benefit of creditors, or (iv) the Borrower, or any guarantor, co-maker or endorser of the Note is "insolvent", as hereafter defined; or (v) any trustee, receiver or liquidator of the Borrower or of all or any part of THE PROPERTY or of any or all of the rents or income thereof is appointed. For purposes of this paragraph, a person or entity shall be deemed to be insolvent if he or it is unable to pay its debts as they become due and/or if the fair market value of his or its assets do not exceed his or its aggregate liabilities, or in the event of the commencement by or against Borrower, Beneficiary or Guarantor under the Federal Bankruptcy Law, Paragraph

(f) If all or any part of THE PROPERTY shall be taken through condemnation or if the value of THE PROPERTY shall be impaired by condemnation (which term when used herein shall include any damage or taking by any governmental authority or any other authorized by the laws of the state where the land is located or the United States of America to so damage or take, and any transfer by private sale in lieu thereof), either temporarily for a period in excess of thirty (30) days, or permanently, (2.01(f) is continued in Rider attached hereto).

(g) The entry by any court of last resort of a decision that an undertaking by the Borrower as herein provided to pay taxes, assessments, levies, liabilities, obligations and encumbrances is legally inoperative or cannot be enforced, or in the event of the passage of any law changing in any way or respect the laws now in force for the taxation of deeds of trust or mortgages or debts secured thereby for any purpose or the manner of collection of any such taxes, so as to affect adversely this Mortgage or the indebtedness or other sums secured hereby, subject to paragraph 1.04.3 hereof.

(h) The occurrence of a default under an Approved Prior Encumbrance or under any other approved encumbrance affecting all or any portion of THE PROPERTY, or any other event permitting acceleration of the maturity of any indebtedness secured thereby or any other such default or event with respect to any indebtedness of the Borrower to the Noteholder. The Borrower shall promptly notify the Noteholder in writing of the occurrence of any such default or event.

(i) Death of any individual Borrower or Guarantor.

(j) In the event THE PROPERTY is operated pursuant to a franchise or license agreement, the occurrence of a default thereunder, or the modification, amendment, suspension, or termination thereof without the prior written consent of the Noteholder.

## ARTICLE THREE REMEDIES

3.01 **Acceleration of Maturity.** If an Event of Default shall have occurred, Noteholder may declare ~~without demand~~ <sup>upon</sup> or notice the outstanding principal amount of the Note and the interest accrued thereon, and all other sums secured hereby, to be due and payable immediately, and upon such declaration such principal and interest and other sums shall immediately become and be due and payable without demand or notice.

3.02 **Foreclosure.** If an Event of Default shall have occurred, regardless of whether Noteholder has declared the outstanding principal amount of the Note and the interest thereon, and all other sums secured hereby, to be immediately due and payable, Noteholder may, in any combination, foreclose this Mortgage and take such other action as the law allows to enforce this Mortgage, to realize upon the security hereof and to enforce any or all of the other instruments securing the Note. In any such foreclosure proceeding, THE PROPERTY may be sold in one or more parcels, at Noteholder's option, and without obligation to have THE PROPERTY marshalled. The proceeds of any such sale shall be applied as follows:

FIRST, to the payment of all necessary costs and expenses incident to such foreclosure sale, including but not limited to all court costs and charges of every character in the event foreclosed by suit, and reasonable attorneys' fees;

SECOND, to the payment in full of the secured indebtedness in such order as the Noteholder may elect;

THIRD, to discharge junior liens, if the Court so directs; and

FOURTH, the remainder, if any there shall be, shall be paid to Borrower's successors or assigns.

It is agreed that if default be made in the payment of the secured indebtedness the holder of said indebtedness or any part thereof on which the payment is delinquent shall have the option to proceed with foreclosure in satisfaction of such item either through the courts or by proceeding as if under a full foreclosure, conducting the sale as herein provided, and without declaring the entire secured indebtedness due; provided that if sale is made because of default of a part of the secured indebtedness, such sale may be made subject to the unmatured part of the secured indebtedness; and it is agreed that such sale, if so made, shall not in any manner affect the unmatured part of the secured indebtedness but as to such unmatured part of this Mortgage shall remain in full force and effect just as though no sale had been made under the provision of this paragraph. It is further agreed that several sales may be made hereunder without exhausting the rights of sale for any unmatured part of the secured indebtedness, it being the purpose to provide for a foreclosure and sale of the secured indebtedness for any matured portion of the secured indebtedness without exhausting the power to foreclose and to sell the mortgaged properties for any other part of the secured indebtedness whether matured at the time or maturing subsequently thereto. In the event there is a foreclosure sale hereunder and at the time of such sale Borrower or Borrower's successors or assigns are occupying THE PROPERTY, or any part thereof, each and all shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy at sufferance, terminable at will of either landlord or tenant, at a reasonable rental based upon the value of the property occupied, such rental to be due to the purchaser. An action of unlawful detainer shall lie if the tenant holds over after a demand in writing for possession of said property and premises.

3.03 Noteholder's or Trustee's Right to Enter and Take Possession, Operate and Apply Income.

(a) If an Event of Default shall have occurred, (i) the Borrower upon demand of the Noteholder, shall forthwith surrender to the Noteholder or Trustee the actual possession and if and to the extent permitted by law, the Noteholder itself, or by such officers or agents as it may appoint, or Trustee, may enter upon and take possession of THE PROPERTY or have a receiver of the rents, issues and profits thereof appointed, without proof of depreciation in the value of THE PROPERTY, inadequacy of the value of THE PROPERTY as security for the debt, or insolvency of Borrower; and Noteholder or the receiver may lease THE PROPERTY in the name of Borrower, the Noteholder or the receiver, and may receive the rents, issues and profits and apply the same as hereinafter set forth.

(b) If the Borrower shall for any reason fail to surrender or deliver THE PROPERTY or any part thereof after the Noteholder's demand, the Noteholder may obtain a judgment or decree conferring on the Noteholder the right to immediate possession or requiring the Borrower to deliver immediate possession of all or part of THE PROPERTY to the Noteholder, to the entry of which judgment or decree the Borrower hereby specifically consents. The Borrower shall pay to the Noteholder, upon demand, all costs and expenses of obtaining such judgment or decree and reasonable compensation to the Noteholder, its attorneys and agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Mortgage.

(c) Upon every such entering upon or taking of possession, the Noteholder may hold, store, use, operate, manage and control THE PROPERTY and conduct the business thereof, and, from time to time:

(i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property;

(ii) insure or keep THE PROPERTY insured;

(iii) manage and operate THE PROPERTY and exercise all the rights and powers of the Borrower in its name or otherwise with respect to the same;

(iv) enter into agreements with others to exercise the powers herein granted the Noteholder, all as the Noteholder from time to time may determine; and the Noteholder may collect and receive all the rents, income and other benefits thereof, including those past due as well as those accruing thereafter; and shall apply the monies so received by the Noteholder in such priority as the Noteholder may determine to (1) the payment of interest and principal due and payable on the Note; (2) the deposits for taxes and assessments and insurance premiums due; (3) the cost of insurance, taxes, assessments and other expenses of operating, maintaining, repairing and improving THE PROPERTY, including without limitation renting, commissions and rental collection commissions paid to an agent of the Noteholder or of the receiver; and (4) the compensation, expenses and disbursements of the agents, attorneys and other representatives of the Noteholder. All costs, expenses and liabilities of every character incurred by the Noteholder in managing, operating and maintaining THE PROPERTY, not paid out of rent as hereinabove provided, shall constitute advances and by demand obligations owing by Borrower and shall bear interest from the date of expenditure until paid at the rate of 18 percent per annum. All of which shall constitute a portion of the secured indebtedness. While in possession of THE PROPERTY, the Noteholder or the receiver shall be liable to account only for the rents, issues and profits actually received.

Default Rate (as herein-after defined)

The Noteholder, at its election, and without notice to the Borrower, may, to preserve its interest in THE PROPERTY, make any payments which the Borrower has failed to make under any Approved Prior Encumbrance, but such payment by the Noteholder shall not release the Borrower from the Borrower's obligations or constitute a waiver of the Borrower's default hereunder.

if any,

The Noteholder may remain in possession of THE PROPERTY, in the event of foreclosure, until the foreclosure sale and thereafter during the entire period of redemption if a deficiency exists. The Noteholder shall incur no liability for, nor shall Borrower assert any claim or set off as a result of, any action taken while the Noteholder is in possession of THE PROPERTY, except only for the Noteholder's own gross negligence. In the event no foreclosure proceedings are commenced, the Noteholder may remain in possession as long as there exists an Event of Default.

3.05 Leases. Noteholder, at its option, is authorized to foreclose this Mortgage subject to the rights of any tenants of THE PROPERTY, and the failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted by the Borrower to be, a defense to any proceedings instituted by the Noteholder to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of THE PROPERTY. Unless otherwise agreed by Noteholder in writing, all leases and tenancies of THE PROPERTY executed subsequent to the date hereof, or any part thereof, shall be subordinate and inferior to the lien of this Mortgage, except that from time to time the Noteholder may execute and record among the land records of the jurisdiction where this Mortgage is recorded, subordination statements with respect to such of said leases as Noteholder may designate, whereby the leases so designated by Noteholder will be made superior to the lien of this Mortgage. From and after the recordation of such subordination statements, the leases therein referred to shall be superior to the lien of this Mortgage and shall not be affected by any foreclosure hereof. All such leases and tenancies shall contain a provision to the effect that the tenant recognizes the right of the Noteholder to effect such subordination of this Mortgage and consents thereto.

, or any part thereof,

3.06 Purchase by Noteholder. Upon any sale held by the Noteholder or by any receiver or public officer, the Noteholder may bid for and purchase THE PROPERTY and, upon compliance with the terms of sale, may hold, retain and possess and dispose of such property in its own absolute right without further accountability.

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**3.07 Application of Indebtedness Toward Purchase Price.** Upon any such sale, the Noteholder may, if permitted by law, and after allowing for costs and expenses of the sale, compensation and other charges, in paying the purchase price, apply any portion of or all of the indebtedness and other sums due to the Noteholder under the Note, this Mortgage or any other instrument securing the Note, in lieu of cash, to the amount which shall, upon distribution of the net proceeds of such sale, be payable thereon, to the extent of the purchase price.

**3.08 Waiver of Appraisement, Valuation, Stay, Extension and Redemption Laws.** The Borrower agrees to the full extent permitted by law that in case of a default on its part hereunder, neither the Borrower nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisement, valuation, stay of execution notice of election to mature or declare due the whole of the secured indebtedness, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage or the absolute sale of THE PROPERTY or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereof, and the Borrower, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising THE PROPERTY marshalled upon any foreclosure of the lien hereof and agrees that the Noteholder or any court having jurisdiction to foreclose such lien may sell THE PROPERTY in part or as an entirety. If any law referred to in this paragraph and now in force, of which Borrower, its successors and assigns, might take advantage despite this paragraph, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this paragraph. Without limiting the foregoing, Borrower hereby waives all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on its own behalf and on behalf of the trust estate and all persons beneficially interested in THE PROPERTY and each and every person except decree and judgment creditors of Borrower (in its representative capacity), or the trust estate, who may acquire any interest in or title to THE PROPERTY subsequent to the date thereof.

**3.09 Receiver.** Upon the occurrence of an Event of Default, either before or after the foreclosure sale, a receiver may be appointed by the court without notice, without regard to the solvency or insolvency of Borrower, without regard to the then value of THE PROPERTY, and without regard to whether they are then occupied as a homestead. The receiver shall have the power to collect the rents and income from THE PROPERTY during the pendency of the foreclosure suit and, in case of a sale and deficiency, during the full statutory period of redemption, whether there be redemption or not. The receiver shall have all other powers for the protection, possession, management and operation of THE PROPERTY which an absolute owner would have, but the net rents in the hands of the receiver shall be applied on the debt hereby secured or to such expenses of the receivership or foreclosure suit as the court may direct. Borrower does hereby consent to the appointment of such receiver or receivers and agrees not to oppose any application therefor by the Noteholder, provided, however, that the appointment of any receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of the Noteholder to receive payment of the rents and income pursuant to this Mortgage.

**3.10 Suits to Protect the Property.** The Noteholder shall have the power and authority to institute and maintain any suits and proceedings as the Noteholder may deem advisable (a) to prevent any impairment of THE PROPERTY by any acts which may be unlawful or any violation of this Mortgage, (b) to preserve or protect its interest in THE PROPERTY, and (c) to restrain the enforcement of or compliance with any legislation or other government enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to the Noteholder's interest.

**3.11 Proofs of Claim.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting the Borrower or any guarantor, co-maker or endorser of any of the Borrower's obligations, its creditors or its property, the Noteholder, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have its claims allowed in such proceedings for the entire amount due and payable by the Borrower under the Note, this Mortgage and any other instrument securing the Note, at the date of the institution of such proceedings, and for any additional amounts which may become due and payable by the Borrower after such date.

**3.12 Borrower to Pay the Note on Any Default in Payment; Application of Monies by Noteholder.**

(a) If default shall be made in the payment of any amount due under the Note, this Mortgage or any other instrument securing the Note, then, upon the Noteholder's demand, the Borrower will pay to the Noteholder the whole amount due and payable under the Note and all other sums secured hereby; and if the Borrower shall fail to pay the same forthwith upon such demand, the Noteholder shall be entitled, unless precluded under the Note from seeking a deficiency judgment against the Borrower, to sue for and to recover judgment against the Borrower for the whole amount so due and unpaid together with costs and expenses, including without limitation the reasonable compensation, expenses and disbursements of the Noteholder's agents, attorneys and other representatives, either before, after or during the pendency of any proceedings for the enforcement of this Mortgage, and the right of the Noteholder to recover such judgment shall not be affected by any taking possession or foreclosure sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the terms of this Mortgage, or the foreclosure of the lien hereof.

(b) In case of a foreclosure sale of all or any part of THE PROPERTY and of the application of the proceeds of sale to the payment of the sums secured hereby, the Noteholder shall, unless precluded under the Note from seeking a deficiency judgment against the Borrower, be entitled to enforce payment from the Borrower of all amounts then remaining due and unpaid and to recover judgment against the Borrower for any portion thereof remaining unpaid, with interest.

(c) The Borrower hereby agrees, to the extent permitted by law, that no recovery of any such judgment by the Noteholder and no attachment or levy of any execution upon any of THE PROPERTY or any other property shall in any way affect the lien of this Mortgage upon THE PROPERTY or any part thereof or any lien, rights, powers or remedies of the Noteholder hereunder, but such lien, rights, powers and remedies shall continue unimpaired as before.

(d) Any monies collected or received by the Noteholder under this paragraph 3.12 shall be applied to the payment of compensation, expenses and disbursements of the agents, attorneys and other representatives of the Noteholder, and the balance remaining shall be applied to the payment of amounts due and unpaid under the Note, this Mortgage and all other instruments securing the Note.

(e) The provisions of this paragraph shall not be deemed to limit or otherwise modify the provisions of any guaranty of the indebtedness evidenced by the Note.

**3.13 Delay or Omission No Waiver.** No delay or omission of Noteholder or of any holder of the Note to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to the Noteholder may be exercised from time to time and as often as may be deemed expedient by the Noteholder.

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3.14 **No Waiver of One Default to Affect Another.** No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies consequent thereon. If the Noteholder (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted in the Note, this Mortgage or any other instrument securing the Note; (d) releases any part of THE PROPERTY from the lien of this Mortgage or any other instrument securing the Note; (e) consents to the filing of any map, plat or replat of the Land; (f) consents to the granting of any easement on the Land, or (g) makes or consents to any agreement changing the terms of this Mortgage or subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the original liability under the Note, this Mortgage or otherwise of the Borrower, or any subsequent purchaser of THE PROPERTY or any part thereof or any maker, co-signer, endorser, surety or guarantor. No such act or omission shall preclude the Noteholder from exercising any right, power or privilege herein granted or intended to be granted in case of any Event of Default then existing or of any subsequent Event of Default nor, except as otherwise expressly provided in an instrument or instruments executed by the Noteholder, shall the lien of this Mortgage be altered thereby, except to the extent of releases as described in subparagraph (d) above of this paragraph 3.14. In the event of the sale or transfer by operation of law or otherwise of all or any part of THE PROPERTY, the Noteholder, without notice to any person, firm or corporation, is hereby authorized and empowered to deal with any such vendee or transferee with reference to THE PROPERTY or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

3.15 **Discontinuance of Proceedings; Position of Parties Restored.** If the Trustee or the Noteholder shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise and such proceedings shall have been discontinued or abandoned for any reason, or such proceedings shall have resulted in a final determination adverse to the Noteholder, (he) and in every such case the Borrower and the Noteholder shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Noteholder shall continue as if no such proceedings had occurred or had been taken.

3.16 **Remedies Cumulative.** No right, power or remedy conferred upon or reserved to the Noteholder by the Note, this Mortgage or any other instrument securing the Note is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or under the Note or any other instrument securing the Note, or now or hereafter existing at law, in equity or by statute.

3.17 **Interest After Event of Default.** If an Event of Default shall have occurred, all sums outstanding and unpaid under the Note and this Mortgage shall, at Noteholder's option, bear interest at the Default Rate set forth herein. In such event, any deferred interest provision, as contained in the Note, shall be inoperative, and interest at the Default Rate shall be currently payable.

Paragraph 3.18 is contained in the Rider attached hereto and made a part hereof.

## ARTICLE FOUR

### TRANSFER OR FURTHER ENCUMBRANCE OF THE PROPERTY

4.01 **Transfer or Further Encumbrance of THE PROPERTY.** In the event of any sale, conveyance, transfer, lease, pledge or further encumbrance of THE PROPERTY or an interest in or any part of THE PROPERTY, or of any interest in THE PROPERTY or any further assignment of rents from THE PROPERTY without the prior written consent of Noteholder then, at Noteholder's option, Noteholder may declare the outstanding principal amount of the Note and the interest accrued thereon, and all other sums secured hereby, to be due and payable immediately, and upon such declaration such principal and interest and other sums shall immediately become and be due and payable without demand or notice. Noteholder's consent shall be within its sole and absolute discretion, and Noteholder specifically reserves the right to condition its consent upon (by way of illustration but not of limitation) its approval of the financial and/or management ability of the purchaser, transferee, lessee, pledgee or assignee, upon an agreement to escalate the interest rate of the Note to Noteholder's then current interest rate for similarly situated properties, upon the assumption of the obligations and liabilities of the Note and this Mortgage by the purchaser, transferee, lessee, pledgee or assignee, upon the receipt of guaranties of the indebtedness satisfactory to Noteholder and upon payment to Noteholder of a reasonable assumption fee. Any purchaser, transferee, lessee, pledgee or assignee shall be deemed to have assumed and agreed to pay the indebtedness evidenced by the Note or secured by this Mortgage and to have assumed and agreed to be bound by the terms and conditions of this Mortgage, including the terms of this paragraph, unless Noteholder specifically agrees in writing to the contrary. Borrower agrees that in the event the ownership of THE PROPERTY or any part thereof becomes vested in a person other than Borrower, Noteholder may, without notice to Borrower, deal in any way with such successor or successors in interest with reference to this Mortgage and the Note and all obligations hereby secured without in any way vitiating or discharging Borrower's liability hereunder or under the Note and other obligations hereby secured. No transfer or encumbrance of THE PROPERTY or any interest therein and no forbearance or assumption by any person with respect to this Mortgage and no extension to any person of the time for payment of the Note and other sums hereby secured given by Noteholder shall operate to release, discharge, modify, change or affect the liability of Borrower either in whole or in part, unless Noteholder specifically agrees in writing to the contrary, (4.01 is continued in the Rider attached hereto).

## ARTICLE FIVE

### MISCELLANEOUS PROVISIONS

5.01 **Heirs, Successors and Assigns Included in Parties.** Whenever one of the parties hereto is named or referred to herein, the heirs, successors and assigns of such party shall be included and all covenants and agreements contained in this Mortgage, by or on behalf of the Borrower or the Noteholder shall bind and inure to the benefit of their respective heirs, successors and assigns, whether so expressed or not.

#### 5.02 **Addresses for Notices, Etc.**

(a) Any notice, report, demand or other instrument authorized or required to be given or furnished under this Mortgage to the Borrower or the Noteholder shall be deemed given or furnished (i) when addressed to the party intended to receive the same, at the address of such party set forth below, and delivered at such address or (ii) three days after the same is deposited in the United States mail as first class certified mail, return receipt requested, postage paid, whether or not the same is actually received by such party:

or a non-monetary Event of Default shall have occurred and shall continue beyond any applicable grace period,

assignment

monetary

or of any interest in the Beneficiary

, other than pursuant to an approved transfer (as hereinafter defined),

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**Noteholder:** Barclays American Business Credit, Inc.  
 111 Founders Plaza  
 Suite 1200  
 East Hartford, Connecticut 06108  
 Attention: Real Estate Division, Region II, Loan No. 795

**Copy to:** Katten, Muchin, Zavis, Pearl, Greenberger & Geller  
 525 West Monroe Street - Suite 1600  
 Chicago, Illinois 60606-3693  
 Attention: Arthur E. Pape, Esq.

**Borrower:** Cloero Associates  
 c/o Goodrich Associates  
 560 Sylvan Avenue  
 Englewood Cliffs, New Jersey 07632

**Copy to:** Battle, Fowler, Jaffin & Kneel  
 280 Park Avenue  
 New York, New York 10017  
 Attn: Martin Edelman, Esq.

(b) Either party may change the address to which any such notice, report, demand or other instrument is to be delivered or mailed, by furnishing written notice of such change to the other party, but no such notice of change shall be effective unless and until received by such other party.

**5.03 Headings.** The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit or expand or otherwise affect any of the terms hereof.

**5.04 Invalid Provisions to Affect No Others.** In the event that any of the covenants, agreements, terms or provisions contained in the Note, or in this Deed of Trust or in any other instrument securing the Note shall be deemed invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein or in the Note or in any other instrument securing the Note shall be in no way affected, prejudiced or disturbed thereby; and if any application of any term, restriction or covenant to any person or circumstances is deemed illegal or unenforceable, the application of such term, restriction or covenant to other persons and circumstances shall remain unaffected to the extent permitted by law.

**5.05 Changes, Etc.** Neither this Mortgage nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. The modification hereof or of the Note or any other instrument securing the Note or the release of any part of THE PROPERTY from the lien hereof shall not impair the priority of the lien of this Mortgage.

**5.06 Governing Law.** This Mortgage is made by the Borrower and accepted by the Noteholder in the State of Illinois under the laws of such State and shall be construed, interpreted, enforced and governed by and in accordance with the laws of such state.

**5.07 Required Notices.** The Borrower shall notify promptly of the occurrence of any of the following: (i) receipt of notice from any governmental authority relating to THE PROPERTY; (ii) receipt of any notice from any tenant leasing all or any portion of THE PROPERTY; (iii) any change in the occupancy of THE PROPERTY; (iv) receipt of any notice from the holder of any other lien or security interest in THE PROPERTY; or (v) commencement of any judicial or administrative proceedings by or against or otherwise affecting the Borrower, the Guarantor (if any), THE PROPERTY or any entity controlled by or under common control with the Borrower or the Guarantor, or any other action by any creditor thereof as a result of any default under the terms of any loan.

**5.08 Management.** The Borrower covenants that at all times prior to the payment in full of the indebtedness evidenced by the Note and other sums secured hereby, THE PROPERTY shall be managed by the Borrower or by a management company which in writing by the Noteholder prior to the execution thereof, in a first-class, professional manner, if at any time the Property is managed pursuant to a Management Agreement, such Management Agreement, and agent shall be subject to Noteholders prior written approval.

**5.09 Default Rate.** The Default Rate shall be the highest maximum legal rate or two percent in excess of the rate specified in the Note, whichever shall be the lower.

**5.10 Exculpatory Clause.** This Mortgage is executed by AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not individually but as trustee under a Trust Agreement date July 22, 1986, and known as Trust No. 068816-01 in the exercise of the authority conferred upon it as such trustee. It is agreed that nothing contained in this Mortgage or the Note shall be construed as creating any liability on AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO

\_\_\_\_\_ in its individual capacity to pay the Note or any interest that may accrue thereon or any fee or charge that may become payable under this Mortgage or the Note, or to perform any covenant (either express or implied) contained in this Mortgage, the Note, or in other instruments securing the Note, all such liability, if any, being hereby waived by the Noteholder and by every person hereafter claiming any right or security hereunder. So far as the liability of Borrower and its successors is concerned, the legal holder of the Note and the owner of any indebtedness accruing hereunder shall, upon the occurrence of an Event of Default, look solely to any one or more of the following for the payment of the indebtedness due under the Note or arising under the terms of this Mortgage or other instruments securing the Note:

- (a) THE PROPERTY and the rents, issues and profits thereof, by the enforcement of the lien hereby created and the remedies available hereunder.
- (b) The enforcement of any remedy available under and any other security instrument now or hereafter given to secure such indebtedness.

This Section 5.10 shall not affect the liability of any person or entity other than the trustee.

Paragraphs 5.11 and 5.12 are contained in the Rider attached hereto and made a part hereof.

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or Beneficiary regarding claims, defaults, exercise of rights, exercise of self-help, modification of lease, termination of lease, or similar notices

or could adversely affect the financial condition of

operated and

and agent shall be subject to Noteholders prior written approval.

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IN WITNESS WHEREOF, the Borrower has executed this Mortgage on this 23<sup>rd</sup> day of September, 1986

American National Bank and Trust Company of Chicago  
NOT INDIVIDUALLY BUT SOLELY AS TRUSTEE

UNDER TRUST NO. 06881601

BY [Signature]  
ASSISTANT SECRETARY

## TRUSTEE'S ACKNOWLEDGEMENT

STATE OF ILLINOIS }  
COUNTY OF COOK }

ss.

LORETTA M. SOVIENSKI

I, \_\_\_\_\_, a Notary Public in and for and residing in said County and State. DO HEREBY CERTIFY THAT Robert E. Johnson (name)

and F. MICHAEL (name) Assistant Vice President (title) and ASSISTANT SECRETARY (title),

respectively, of American National Bank and Trust Company of Chicago

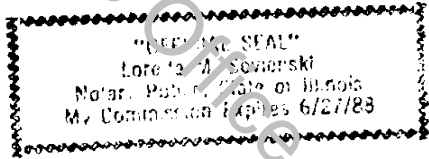
personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Assistant Vice President (title) and ASSISTANT SECRETARY (title)

appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary acts and as the free and voluntary act of said (bank) (trust company) for uses and purposes therein set forth; and the said ASSISTANT SECRETARY (title) acknowledged that (s)he, as custodian of the corporate seal of said (bank) (trust company), did affix said corporate seal to said instrument as (his) (her) own free and voluntary act and as the free and voluntary act of said (bank) (trust company) for said uses and purposes.

GIVEN under my hand and notarial seal this 23 day of SEP 23 1986, 1986.

Loretta M. Sovieniski  
Notary Public

My Commission Expires:



THIS INSTRUMENT WAS PREPARED BY  
AND AFTER RECORDING SHOULD BE RETURNED TO:

Jori E. Saks  
Katten, Muchin, Zavis, Pearl, Greenberger & Galler  
525 West Monroe Street - Suite 1600  
Chicago, Illinois 60606-3693

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RIDER ATTACHED TO AND MADE A PART OF MORTGAGE  
DATED AS OF September 23rd, 1986  
FROM AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO  
NOT PERSONALLY BUT AS TRUSTEE UNDER TRUST AGREEMENT  
DATED JULY 22, 1986  
AND KNOWN AS TRUST NO. 068816-01, THE SOLE BENEFICIARY OF  
WHICH IS CICERO ASSOCIATES, A NEW YORK PARTNERSHIP, TO  
BARCLAYSAMERICAN/BUSINESS CREDIT, INC.

H. TOGETHER WITH the Borrower's entire right, title and interest in and to (i) all permits, licenses and franchises relating to the use, occupancy, maintenance or repair of THE PROPERTY, including all extensions, additions, improvements, betterments, renewals and replacements of any of the foregoing, together with the benefit of any deposits or payments now or hereafter made by the Borrower or on its behalf in connection with any of the foregoing, and (ii) all accounts receivable of Borrower whether now existing or hereafter arising and (iii) all agreements, including management agreements, franchise agreements, service agreements or similar agreements relating to the use, occupation, operation, maintenance or repair of any other property mortgaged hereby.

1.04.2 Mechanic's and Other Liens (continued). Borrower may in good faith, by appropriate proceedings contest the validity, applicability or amount of any asserted lien and pending such contest the Borrower shall not be deemed in default hereunder if within ten (10) days after filing of such lien Borrower provides security acceptable to Noteholder and has the lien released from the Cook County Recorder's records.

1.04.3 Taxes Affecting Lender's Interest (continued). Notwithstanding the foregoing, the entire balance of indebtedness and other sums secured by this Mortgage shall not become due and payable if (a) in the opinion of counsel for the Noteholder the Borrower may legally pay any additional taxes and charges which have adversely affected the Noteholder's security in the Property, (b) payment of such additional taxes and assessments shall not result in the imposition of interest beyond the maximum amount permitted by law, and (c) the Borrower does pay such taxes and charges.

1.04.7 Non-Impairment of Noteholder's Rights (continued). The provisions of paragraph 1.04.4 shall not be effective so long as McDade & Company ("McDade") is required to pay and does pay all of the taxes and assessments assessed against the Property, and receipted bills for such taxes and assessments are provided within

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thirty (30) days after the due date of all taxes and assessments. If McDade pays only a portion of the taxes and assessments assessed against the Property, the provisions of paragraph 1.04.4 shall apply to the remainder of the taxes and assessments assessed against the Property.

1.17 Prior Liens (continued). Borrower may prepay the First Mortgage, so long as no other encumbrance replaces the First Mortgage in a position either prior or subordinate to this Mortgage.

1.21 Renewals of Licenses and Permits. Borrower shall obtain and furnish Noteholder with copies of all permits and licenses necessary to operate the Property as a shopping center, and as to any permit which expires prior to the maturity date of the loan secured hereby, Borrower shall preserve and renew such permits and submit copies of the renewals thereof, together with evidence of payment of all fees for such renewal, to Noteholder, at least thirty (30) days prior to expiration.

1.22 Subrogation. The Noteholder shall be subrogated to the claims and liens of all parties whose claims or liens are discharged in whole or in part or paid with the proceeds of the indebtedness secured hereby or any other sums advanced pursuant to this Mortgage.

2.01(e) Event of Default (continued). Notwithstanding anything herein to the contrary if an involuntary bankruptcy petition, insolvency or reorganizational proceeding is filed against Borrower, Beneficiary or any guarantor of the Note and is released within thirty (30) days of such filing, such filing shall not be an Event of Default hereunder.

2.01(f) Event of Default (continued). Notwithstanding the foregoing, it shall not be an Event of Default under this Mortgage if an insubstantial (as determined by Noteholder in its sole and absolute discretion) portion of only the Land is taken through condemnation if, after such condemnation, the Property is in full compliance with all applicable laws, rules, regulations and ordinances and such condemnation does not materially affect the adequacy of Noteholder's security for the loan evidenced by the Note.

2.01(i) Event of Default (continued). Notwithstanding the foregoing, the death of an individual Guarantor shall not be an Event of Default under this Mortgage if prior to the final accounting and distribution of the deceased Guarantor's estate, a person having equal or superior creditworthiness and successful real estate experience in owning, operating and managing projects similar to the Property (each of the foregoing being determined by Noteholder in its sole and absolute discretion) to the deceased



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Guarantor, is substituted for the deceased Guarantor, and such substitute executes and delivers all documents and instruments required by Noteholder to evidence his obligations in connection with the loan evidenced by the Note, or such other security satisfactory to Noteholder (in its sole and absolute discretion) is substituted for the decedent's Guaranty.

2.01(k) Failure by the Borrower to qualify for and draw down the Holdback (as defined in the Disbursement Agreement of even date herewith, between Noteholder and Borrower) on or before the nine (9) month anniversary of the date hereof.

3.18 Escrow Funds. Noteholder may upon default by Borrower and after applicable grace periods, if any, hereunder cause any amounts in any escrow account to be applied to the principal balance of the debt secured hereby or any other costs or expenses payable by Borrower hereunder.

#### 4.01 Transfer or Further Encumbrance of the Property (Continued)

a) The rights of Noteholder contained in this Paragraph 4.01 (including, but not limited to, the right to accelerate the maturity of the sum secured hereby as set forth above) shall likewise apply to the sale, encumbrance or other transfer, whether voluntary or by operation of law, of all or a substantial portion of the assets (except in the ordinary course of business) of any Guarantor of the indebtedness secured hereby.

b) Notwithstanding anything herein to the contrary the general partners of Beneficiary shall have the right to sell, transfer, assign or convey partial interests in Beneficiary, without the Noteholder's consent, if (a) no Event of Default shall have occurred under the Note, this Mortgage or any of the Security Documents; (b) after such sale, transfer, assignment or conveyance, Richard M. Cohen and Morris Weissman shall continue to control the Beneficiary; and (c) such sale, transfer, assignment or conveyance shall have been approved, if required, by the holder of the First Mortgage (hereinafter collectively referred to as an "Approved Transfer").

5.10 Adding Interest to Principal Balance of Note. The Note provides, among other things, that so long as no Event of Default (as such term is defined in the Note) shall have occurred, and to the extent that the Deferred Amount (as such term is defined in the Note) does not exceed \$112,500.00, if the Contract Rate (as such term is defined in the Note) for any month exceeds the Current Payment Rate (as such term is defined in the Note), Borrower shall be obligated to pay the Noteholder only that portion of accrued interest which is equal to interest calculated at the Current Payment Rate, and any balance, reflecting the

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difference between interest accrued at the Contract Rate and interest accrued and paid at the Current Payment Rate, shall be added to the principal balance of the Note on the applicable interest payment date and shall accrue interest at the Contract Rate. The Note further provides that, except as set forth in the preceding sentence all interest is payable monthly and at maturity, whether by acceleration or otherwise.

5.12 Time is of the Essence. Time is of the essence of this Mortgage and of every part hereof.

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SCHEDULE A

Legal Description

That part of the East 20.0 acres of the North 60.0 acres of the East 1/2 of the North East 1/4 of Section 33, Township 38 North, Range 13 East of the Third Principal Meridian, bounded and described as follows:

Beginning at the intersection of the West line of the East 20.0 acres of said North 60.0 acres and the South line of West 79th Street, being 50.0 feet South of the North line of said Section 33; thence East along the South line of West 79th Street, being 50.0 feet South of and parallel with the North line of said Section 33, a distance of 12.16 feet; thence Southeasterly 81.06 feet to a point 63.0 feet South of the North line of said Section 33; thence East parallel with the North line of said Section 33, a distance of 136.12 feet to a point 214.0 feet West of the East line of said Section 33, thence South parallel with said East line of Section 33, a distance of 152.0 feet; thence East parallel with the North line of said Section 33, a distance of 150.0 feet to the West line of South Cicero Avenue, being 64.0 feet West of the East line of said Section 33; thence South along the West line of South Cicero Avenue, being parallel with the East line of said Section 33, a distance of 156.50 feet; thence Southeasterly along the West line of South Cicero Avenue, 161.24 feet to a point 55.0 feet West of the East line of said Section 33; thence South along the West line of South Cicero Avenue, being parallel with the east line of said Section 33, a distance of 1,059.48 feet to the North line of the South 357.39 feet of the north 60.0 acres of the East 1/2 of the North East 1/4 of said Section 33; thence West parallel with the South line of the North 60.0 acres of the East 1/2 of said North East 1/4, 387.37 feet to the West line of the East 20.0 acres of the North 60.0 acres of said North East 1/4; thence North along said West line, 1,562.0 feet to the point of beginning, in Cook County, Illinois.

Common Address of Property: 79th and Cicero Avenues  
Burbank, Illinois

Permanent Real Estate Index Nos. 19-33-200-007  
19-33-200-008 *MC*

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## SCHEDULE B

### Permitted Exceptions

1. General Real Estate Taxes for 1986 and subsequent years.
2. Mortgage, dated May 24, 1971 to The Mutual Life Insurance Company of New York ("Mony") securing a Note in the principal amount of \$3,300,000.00.
3. Easement to Commonwealth Edison Company and Illinois Bell Telephone Company recorded April 23, 1969 as Document 20819128.
4. Financing Statement filed June 3, 1971 as Document No. 71U25797 to Mony and Continuations filed June 1, 1981 as Document No. 81U21005 and February 21, 1986 as Document No. 86-U05415.
5. Declaration of Easement and Restrictions recorded June 3, 1971 as Document No. 21499709.
6. Thirty foot front building line.

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## SCHEDULE C

### The Improvements

A 159,100 square foot shopping center with no less than 1,200 on-site parking spaces.

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## EXHIBIT D

### SCHEDULE OF LEASES

#### CICERO PLAZA

1. Lease dated August 23, 1977 by and between Richard M. Cohen and Morris Weissman, as Lessor, and Exchange National Bank of Chicago, as Trustee under Trust Agreement No. 32771, as Lessee.
2. Lease dated April 16, 1985 by and between Richard M. Cohen and Morris Weissman, as Lessor and Highland Appliance Company, Inc., as Lessee.
3. Lease dated December 22, 1983 by and between Richard M. Cohen and Morris Weissman, as Lessor, and Trak Auto East Corporation, as Lessee.
4. Lease dated April 28, 1981 by and between Richard M. Cohen and Morris Weissman, as Lessor, and R.J. Incorporated, as Lessee.
5. Lease dated November 2, 1979 by and between Cicero Properties, a joint venture, as Lessor, and Krader Home Furnishings Enterprises, Inc., as Lessee.
6. Lease dated December 10, 1985 by and between Richard M. Cohen and Morris Weissman, as Lessor, and Cinema Time, Inc., as Lessee.
7. Lease dated October 27, 1969 by and between Cicero Properties, a joint venture, as Lessor, and Lawrence Ksiazek, as Lessee, as amended October 26, 1973 by Richard M. Cohen and Morris Weissman, as Lessor (successor in interest to Cicero Properties), and Welmont Enterprises, Inc., as Lessee (successor in interest to Lawrence Ksiazek), as further modified and extended by agreement dated June 30, 1980, and as further modified and extended by agreement dated September 13, 1983, and further modified and extended by agreement dated February 3, 1986.
8. Lease dated November 6, 1970 by and between Cicero Properties, a joint venture, as Lessor, and Tandy Corporation, d/b/a Allied Radio Shack, as Lessee, as

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modified and extended by agreement dated January 21, 1981 by and between Richard M. Cohen and Morris Weissman, as Lessor, (successor in interest to Cicero Properties) and Tandy Corporation, as Lessee.

9. Lease dated May 11, 1970 by and between Cicero Properties, a joint venture, as Lessor, and Richard B. Deuerling and Dorothy M. Deuerling, as Lessee, assigned by agreement dated February 28, 1984 by and between Richard B. Deuerling and Dorothy M. Deuerling, as Lessee to Hickory Hills Dry Cleaners.

10. Lease dated May 12, 1986 by and between Richard M. Cohen and Morris Weissman, as Lessor, and Norman P. Lupescu, as Lessee.

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## SCHEDULE E

### Use of Property

The ownership and operation of a shopping center as described on Schedule C.

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