

UNOFFICIAL COPY

IF Premises Located in
State of New York:

87627273

SECTION _____
BLOCK _____
LOT _____

NOV 25 1987 10

(11/25/87)

CMB Loan No. _____

Date: November 17, 1987

BUILDING LOAN MORTGAGE, ASSIGNMENT OF LEASES
AND RENTS AND SECURITY AGREEMENT
("this Mortgage")

5400

FROM

LA SALLE NATIONAL BANK, not personally but as
Trustee under Trust Agreement dated November 7, 1983
and known as Trust No. 107291

("Mortgagor")

Address: 135 South LaSalle Street, Chicago, Illinois 60690
AND

HIGGINS-MANNHEIM PROPERTIES, an Illinois Partnership

("Borrower")

Address: 10275 West Higgins Road, Suite 200,
Rosemont, Illinois 60018

TO

THE CHASE MANHATTAN BANK
(National Association),

a national banking association having its principal office at
1 Chase Manhattan Plaza, New York, New York 10081

("Mortgagee")

Mortgage Amount: \$44,200,000

This instrument prepared by, and after recording please return to:
Dewey, Ballantine, Bushby, Palmer & Wood
101 Park Avenue
New York, New York 10178

87627273

BOX 888 - HV

Attention: Michael N. Burlant, Esq.

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THE AMOUNT OF THIS MORTGAGE IS \$44,200,000.

RECITAL

Mortgagor is the owner of the premises described in Schedule A hereto and Borrower, as the owner of 100% of the beneficial interest under Trust No. 107291, proposes to erect substantial improvements on said premises. In order to finance the construction thereof, Mortgagor will borrow the Mortgage Amount from Mortgagee which is to be advanced pursuant to a building loan agreement (the "Building Loan Agreement") between Borrower and Mortgagee of even date herewith. The Mortgage Amount is evidenced by a note (the "Note") of Mortgagor of even date herewith in that amount, and Mortgagor and Borrower, in order to secure the payment thereof, have duly authorized the execution and delivery of this Mortgage.

CERTAIN DEFINITIONS

Mortgagor and Mortgagee agree that, unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified, such definitions to be applicable equally to the singular and the plural forms of such terms.

"Chattels" means all fixtures, fittings, appliances, apparatus, equipment, machinery and articles of personal property and replacements thereof, other than those owned by lessees, now or at any time hereafter affixed to, attached to, placed upon, or used in any way in connection with the complete and comfortable use, enjoyment, occupancy or operation of the Premises.

"Construction Period" means the period from the date hereof to the Completion Date, as that term is defined in the Building Loan Agreement.

"Events of Default" means the events and circumstances described as such in Section 2.01 hereof.

"Guarantor" means the party or parties, if any, identified as such in the Building Loan Agreement.

"Improvements" means all structures or buildings, and replacements thereof, to be erected or now or hereafter located upon the Premises by Mortgagor, including all plant equipment, apparatus, machinery and fixtures of every kind and nature whatsoever forming part of said structures or buildings.

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"Premises" means the premises described in Schedule A hereto including all of the easements, rights, privileges and appurtenances (including air rights) thereunto belonging or in anywise appertaining, and all of the estate, right, title, interest, claim or demand whatsoever of Mortgagor therein and in the streets and ways adjacent thereto, either in law or in equity, in possession or expectancy, now or hereafter acquired, and as used in this Mortgage, shall, unless the context otherwise requires, be deemed to include the Improvements.

"Involuntary Rate" means the rate (or, if more than one, the highest of the rates) of interest per annum provided in the Note plus 1-1/2%, but in no event to exceed the maximum rate allowed by law.

All terms of this Mortgage which are not defined above shall have the meaning set forth elsewhere in this Mortgage.

GRANTING CLAUSE

NOW, THEREFORE, Mortgagor, in consideration of the premises and in order to secure the payment of both the principal of, and the interest and any other sums payable on, the Note or this Mortgage and the performance and observance of all the provisions hereof and of the Note, hereby gives, grants, bargains, sells, warrants, aliens, remises, releases, conveys, assigns, transfers, mortgages, hypothecates, deposits, pledges, sets over and confirms unto Mortgagee, all its estate, right, title and interest in, to and under any and all of the following described property (the "Mortgaged Property") whether now owned or held or hereafter acquired:

- (i) the Premises;
- (ii) the Improvements;
- (iii) the Chattels;
- (iv) all leases of the Mortgaged Property or portions thereof now or hereafter entered into and all right, title and interest of Mortgagor thereunder, including, without limitation, cash or securities deposited thereunder to secure performance by the lessees of their obligations thereunder, whether such cash or securities are to be held until the expiration of the terms of such leases or applied to one or more of the instalments of rent coming due immediately prior to the expiration of such terms, including, further, the right upon the happening of an Event of Default, to receive and collect the rents thereunder;

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(v) the Permanent Commitment, if any, as that term is defined in the Building Loan Agreement and all amounts payable to Mortgagor thereunder; and

(vi) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards, and all rights of Mortgagor to refunds of real estate taxes and assessments.

TO HAVE AND TO HOLD unto Mortgagee, its successors and assigns forever

ARTICLE I

PARTICULAR COVENANTS OF MORTGAGOR

Mortgagor covenants and agrees as follows:

SECTION 1.01. (a) Mortgagor² warrants that³ it has a good and marketable title to an indefeasible fee estate in the Premises subject to no lien, charge or encumbrance except such as are listed as exceptions to title in the title policy insuring the lien of this Mortgage; that it will own the Chattels free and clear of liens and claims; and that this Mortgage is and will remain a valid and enforceable lien on the Mortgaged Property subject only to the exceptions referred to above. Mortgagor has full power and lawful authority to mortgage the Mortgaged Property in the manner and form herein done or intended hereafter to be done. Mortgagor⁴ will preserve such title, and will forever⁵ warrant and defend the same to Mortgagee and⁶ will forever⁷ warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever.

(b) Mortgagor represents and⁸ warrants to Mortgagee that (i) the Premises and the improvements thereon⁹ are not currently and have never¹⁰ been subject to hazardous or toxic substances or wastes or their effects and (ii)¹¹ there are no claims, litigation, administrative or other proceedings, whether actual or threatened, or judgments or orders, relating to any hazardous or toxic substances or wastes, discharges, emissions or other forms of pollution relating in any way to the Premises or the improvements thereto.¹²

SECTION 1.02. (a) Mortgagor will, at its sole cost and expense, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as Mortgagee shall from time to time require,

1-11. See Rider 3A attached hereto and made a part hereof.

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RIDER 3A

1. (vii) the Contract of Sale and Disposition and Development Agreement dated November 25, 1981, as amended December 2, 1981, December 7, 1983 and by Agreement dated as of August 7, 1985 (the "Agreement") between the Village of Rosemont (the "Village") and Borrower;
 - (viii) any and all permits, licenses, approvals certificates and consents heretofore or hereafter issued by any governmental or private authority or agency relating to the Agreement or otherwise in connection with the acquisition, development, construction, operation, maintenance and use of the Premises; and
 - (ix) all of Borrower's right, title and interest in and to that certain Demand Note, Guaranty and Fund, as such terms are defined in that certain Escrow Agreement, dated March 15, 1984, between Mortgagee and the Village of Rosemont, Illinois, subject, however, to the prior rights therein of said Village pursuant to that certain Agreement to Implement the Issuance of Village Obligations for the Higgins-Mannheim Redevelopment Project, dated December 13, 1983, as amended March 15, 1984, between said Village and the Borrower.
2. represents and Borrower
 3. Mortgagor
 4. or Borrower
 5. defend and Borrower will forever
 6. Mortgagor
 7. Borrower
 8. , and, to the best of Mortgagor's and Borrower's knowledge, the surrounding areas,
 9. , during the period of Mortgagor's ownership.
 10. to the best of Mortgagor's and Borrower's knowledge, the Premises and the improvements thereon have never, prior to the period of Mortgagor's ownership, been subject to hazardous or toxic substances or wastes or their effects, (iii) to the best of Mortgagor's and Borrower's knowledge, the areas surrounding the Premises are not currently an have never been subject to hazardous or toxic substances or wastes or their effects and (iv)
 11. As used in the immediately preceding sentence, the term "hazardous or toxic substances or wastes" shall mean any substances or wastes which are so identified or defined, as of the date hereof, in any applicable federal, state or local laws, provided, however, that this definition shall not apply to any other references in this Mortgage to "hazardous or toxic substances or wastes".

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for the better assuring, conveying, assigning, transferring and confirming unto Mortgagee the property and rights hereby conveyed or assigned or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage, or for filing, registering or recording this Mortgage and, on demand, will execute and deliver, and hereby authorizes Mortgagee to execute and file in Mortgagor's name, to the extent it may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien hereof upon the Chattels.

(b) Mortgagor will, at its sole cost and expense, do, execute, acknowledge and deliver all and every such acts, information reports, returns and withholding of monies as shall be necessary or appropriate to comply fully, or to cause full compliance, with all applicable information reporting and back-up withholding requirements of the Internal Revenue Code of 1986, as amended (including all regulations promulgated thereunder) in respect of the Premises and all transactions related to the Premises, and will at all times provide Mortgagee with satisfactory evidence of such compliance and notify Mortgagee of the information reported in connection with such compliance.

SECTION 1.03. (a) Mortgagor forthwith upon the execution and delivery of this Mortgage, and thereafter from time to time, will cause this Mortgage, the Building Loan Agreement and any security instrument creating a lien or evidencing the lien hereof upon the Chattels and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the interest of Mortgagee in, the Mortgaged Property.

(b) Mortgagor will pay all filing, registration or recording fees, and all expenses incident to the execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Chattels, and any instrument of further assurance, and all federal, state, county and municipal stamp taxes and other taxes,¹ duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note, this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Chattels or any instrument of further assurance.

SECTION 1.04. Mortgagor will punctually pay the principal and interest and all other sums to become due in respect of the Note at the time and place and in the manner specified in the Note, according to the true intent and meaning thereof, all in any coin or currency of the United States of America which at the time of such payment shall be legal tender for the payment of public and private debts.

1. other than income tax,

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SECTION 1.05. Mortgagor, if other than a natural person, will, so long as it is owner of all or part of the Mortgaged Property, do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges as a business or stock corporation, partnership, trust or other entity under the laws of the state of its formation and will comply¹ with all regulations, rules, statutes, orders and decrees of any governmental authority or court applicable to it or to the Mortgaged Property or any part thereof.

SECTION 1.06. All right, title and interest of Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Mortgaged Property, hereafter acquired by, or released to, Mortgagor or constructed, assembled or placed by Mortgagor on the Premises, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment or other act by Mortgagor, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by Mortgagor and specifically described in the granting clause hereof, but at any and all times Mortgagor will execute and deliver to Mortgagee any and all such further assurances, mortgages, conveyances or assignments thereof as Mortgagee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Mortgage.

SECTION 1.07. (a) Mortgagor, from time to time when the same shall become due and payable, will pay and discharge all taxes of every kind and nature (including real and personal property taxes and income, franchise, withholding, profits and gross receipts taxes), all general and special assessments, levies, permits, inspection and license fees, all water and sewer rents and charges, and all other public charges whether of a like or different nature, imposed upon or assessed against it or the Mortgaged Property or any part thereof or upon the revenues, rents, issues, income and profits of the Mortgaged Property or arising in respect of the occupancy, use or possession thereof. Mortgagor will, upon Mortgagee's request, deliver to Mortgagee receipts evidencing the payment of all such taxes, assessments, levies, fees, rents and other public charges imposed upon or assessed against it or the Mortgaged Property or the revenues, rents, issues, income or profits thereof.

Mortgagee may, at its option,² to be exercised by thirty (30) days¹ written notice to Mortgagor, require the deposit by Mortgagor, at the time of each payment of an instalment of interest or principal under the Note, of an additional amount sufficient to discharge the obligations under this clause (a) when they become due. The determination of the amount so payable and of the fractional part thereof to be deposited with Mortgagee, so that the aggregate of such deposits shall be sufficient for this purpose, shall be made by Mortgagee in its sole³

1. in all material respects
2. and following a default hereunder
3. reasonable

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discretion. Such amounts shall be held by Mortgagee without interest and applied to the payment of the obligations in respect of which such amounts were deposited or, at Mortgagee's option, to the payment of said obligations in such order or priority as Mortgagee shall determine, on or before the respective dates on which the same or any of them would become delinquent. If one month prior to the due date of any of the aforementioned obligations the amounts then on deposit therefor shall be insufficient for the payment of such obligation in full, Mortgagor within ten (10) days after demand shall deposit the amount of the deficiency with Mortgagee. Nothing herein contained shall be deemed to affect any right or remedy of Mortgagee under any provisions of this Mortgage or of any statute or rule of law to pay any such amount and to add the amount so paid, together with interest at the Involuntary Rate, to the indebtedness hereby secured.

(b) Mortgagor will pay, from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers, and others which, if unpaid, might result in, or permit the creation of, a lien on the Mortgaged Property or any part thereof, or on the revenues, rents, issues, income and profits arising therefrom and in general will do or cause to be done everything necessary so that the lien hereof shall be fully preserved, at the cost of Mortgagor and without expense to Mortgagee.

(c) Nothing in this Section 1.07 shall require the payment or discharge of any obligation imposed upon Mortgagor by this Section so long as Mortgagor shall in good faith and at its own expense contest the same or the validity thereof by appropriate legal proceedings which shall operate to prevent the collection thereof or other realization thereon and the sale or forfeiture of the Mortgaged Property or any part thereof to satisfy the same; provided that during such contest Mortgagor shall, at the option of Mortgagee, provide security satisfactory to Mortgagee, assuring the discharge of Mortgagor's obligation hereunder and of any additional charge, penalty or expense arising from or incurred as a result of such contest; and provided further, that if at any time payment of any obligation imposed upon Mortgagor by clause (a) above shall become necessary to prevent the delivery of a tax deed conveying the Mortgaged Property or any portion thereof because of non-payment, then Mortgagor shall pay the same in sufficient time to prevent the delivery of such tax deed.

SECTION 1.08. Mortgagor will pay any taxes, except income taxes, imposed on Mortgagee by reason of its ownership of the Note or this Mortgage.

SECTION 1.09. (a) Mortgagor will keep the Improvements and Chattels insured against loss by fire, casualty and such other hazards

1. in Mortgagee's reasonable judgment
2. Continued on Rider 6A hereto.

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RIDER 6A

Nothing herein contained shall require Mortgagor to pay any claims for labor, materials, or services which Mortgagor, at its own expense, is currently and diligently contesting in good faith; provided, however, that during the pendency of any such contest, Mortgagor shall furnish to Mortgagee (a) a letter of credit or other cash equivalent security, in form and substance reasonably satisfactory to Mortgagee, in an amount equal to the amount being contested plus a reasonable additional sum to cover possible costs, interest, and penalties or (b) an endorsement to the title insurance policy required by Section 3.04(b) of the Building Loan Agreement affirmatively insuring that any such lien or claim will not be enforced against the Mortgaged Property; and provided further that Mortgagor shall pay (unless the obligation to pay is deferred during an appeal) any amount adjudged by a court of competent jurisdiction to be due, with all costs, interest, and penalties. Mortgagor hereby indemnifies and agrees to hold Mortgagee harmless from and against any liability, cost or expense of any kind that may be imposed upon Mortgagee in connection with any such contest and any loss resulting therefrom.

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as may be specified by Mortgagee for the benefit of Mortgagee. Such insurance shall be written in forms, amounts, and by companies satisfactory to Mortgagee, and losses thereunder shall be payable to Mortgagee pursuant to a standard first mortgage endorsement substantially equivalent to the New York standard mortgage endorsement. The policy or policies of such insurance shall be delivered to Mortgagee. Mortgagor shall give Mortgagee prompt notice of any loss covered by such insurance and Mortgagee shall have the right to join Mortgagor in adjusting any loss in excess of \$50,000¹. Any moneys received as payment for any loss under any such insurance shall be paid over to Mortgagee to be applied, at Mortgagee's option, either to the prepayment of the Note or to the reimbursement of Mortgagor from time to time for expenses incurred by it in the restoration of the Improvements in the same manner as advances of loan proceeds are made by Mortgagee under the Building Loan Agreement².

(b) Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Section 1.09 unless Mortgagee is included thereon as a named insured with loss payable to Mortgagee under a standard mortgage endorsement of the character above described. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee the policy or policies of such insurance.

(c) If the Premises are located in an area which has been identified by the Secretary of the United States Department of Housing and Urban Development as a flood hazard area, Mortgagor will keep the Improvements covered, until all sums secured hereby have been repaid in full, by flood insurance in an amount at least equal to the full amount of the Note or the maximum limit of coverage available for the Premises under the National Flood Insurance Act of 1968, whichever is less.

SECTION 1.10. If Mortgagor shall fail to perform any of the covenants contained in Section 1.01, 1.03, 1.07, 1.08, 1.09, 1.12 or 1.16 Mortgagee may make advances to perform the same on its behalf,³ and all sums so advanced shall be a lien upon the Mortgaged Property and shall be secured hereby. Mortgagor will repay on demand all sums so advanced on its behalf together with interest thereon at the Involuntary Rate. The provisions of this Section 1.10 shall not prevent any default in the observance of any covenant contained in said Section 1.01, 1.03, 1.07, 1.08, 1.09, 1.12 or 1.16 from constituting an Event of Default.

SECTION 1.11. (a) Mortgagor will keep adequate records and books of account in accordance with ~~generally accepted~~ accounting principles⁴ and will permit Mortgagee, by its agents, accountants and attorneys, to visit and inspect the Mortgaged Property and examine its⁵ records and

1. \$100,000
2. Continued on Rider 7A hereto.
3. not exceeding in the aggregate 250% of the initial principal amount of the Note
4. which fairly and accurately present its financial condition and will cause Borrower to do likewise
5. such

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Rider 7A

, provided however, that if there exists no Event of Default hereunder, any monies received as payment for any loss under any insurance shall be paid to Mortgagee to be applied to the reimbursement of Mortgagor for expenses incurred by it in the restoration of the Improvements and advances of insurance proceeds shall be made to Mortgagor in the same manner as advances of building loan proceeds under the Building Loan Agreement. Amounts not required for such purposes shall be applied at the option of Mortgagee to the prepayment of the Note, without premium. In no event shall Mortgagee be required to advance such insurance proceeds to Mortgagor or Borrower unless Mortgagee shall have reasonably determined that the restoration of the Improvements can be completed at a cost which does not exceed the amount of available insurance proceeds or, in the event that such insurance proceeds are inadequate, Mortgagor or Borrower shall have deposited with Mortgagee cash or other security satisfactory to Mortgagee in an amount (the "Excess Amount") equal to the excess of the estimated cost of restoration as determined by Mortgagee over the amount of such insurance proceeds. If Mortgagor or Borrower shall not have deposited the Excess Amount with Mortgagee within 90 days following Mortgagee's receipt of the insurance proceeds or if the restoration shall not have been commenced within 90 days following Mortgagee's receipt of such proceeds, Mortgagee shall have the option at any time thereafter to apply such insurance proceeds to the prepayment of the Note, without premium, and interest accrued and unpaid thereon in such order as Mortgagee shall designate.

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books of account and to discuss its affairs, finances and accounts with the officers or general partners, as the case may be, of Mortgagor¹, at such reasonable times as may be requested by Mortgagee.

(b) ~~Mortgagor²~~ and Guarantor will deliver to Mortgagee with reasonable promptness after the close of their respective fiscal years a balance sheet and statement of profit, loss and cash flow setting forth in each case, in comparative form, figures for the preceding year and, ~~during the Construction Period, shall deliver such statements for each quarter of their respective fiscal years without, however, setting forth comparative figures.~~ Throughout the term of this Mortgage, Mortgagor² and Guarantor, with reasonable promptness, will deliver to Mortgagee such other information with respect to ~~Mortgagor²~~ or Guarantor as Mortgagee may reasonably request from time to time. All financial statements of ~~Mortgagor²~~ or Guarantor shall be prepared in accordance with generally accepted accounting principles³, shall be delivered in duplicate and, in the case of ~~Mortgagor²~~, shall be accompanied by the certificate of a principal financial or accounting officer or general partner, as the case may be, of ~~Mortgagor²~~, dated within five (5) days of the delivery of such statements to Mortgagee, stating that he knows of no Event of Default, nor of any event which after notice or lapse of time or both would constitute an Event of Default, which has occurred and is continuing, or, if any such event or Event of Default has occurred and is continuing, specifying the nature and period of existence thereof and what action ~~Mortgagor²~~ has taken or proposes to take with respect thereto, and, except as otherwise specified, stating that ~~Mortgagor⁴~~ has fulfilled all of its obligations under this Mortgage which are required to be fulfilled on or prior to the date of such certificate.

(c) Mortgagor¹, within ~~three (3)~~ days upon request in person or ~~within five (5) days upon request~~ by mail, will furnish a written statement, duly acknowledged, of the amount due whether for principal or interest on this Mortgage and whether any offsets, counterclaims or defenses exist against the indebtedness secured hereby.

SECTION 1.12. (a) Mortgagor will not commit any waste on the Premises or make any change in the use of the Premises which will in any way increase any ordinary fire or other hazard arising out of construction or operation. Mortgagor will, at all times, maintain the Improvements and Chattels⁷ in good operating order and condition and will promptly make, from time to time, all repairs, renewals, replacements, additions and improvements in connection therewith which are needful or desirable to such end. ~~After completion of the improvements, they shall not be demolished or substantially altered, nor shall any Chattels be removed without the prior written consent of Mortgagee except where appropriate replacements free of superior title, liens and claims are immediately made of value at least equal to the value of the removed Chattels.~~

1-7. See Rider attached hereto and made a part hereof.

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RIDER 8A

1. and Borrower
2. Borrower
3. except that the financial statements of Guarantor shall be prepared in the form previously submitted to Mortgagee and based upon accounting principles reasonably acceptable to Mortgagee and consistently applied
4. and Borrower have
5. their
6. ten (10)
7. hereafter constructed or placed on the Premises

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(b) Mortgagor will, at its sole cost and expense, promptly remove, or cause the removal of, any and all hazardous or toxic substances or wastes or the effects thereof at any time identified as being on, in, under or affecting the Premises.

SECTION 1.13. Mortgagor, immediately upon obtaining knowledge of the institution or pending institution of any proceedings for the condemnation of the Premises or any portion thereof, will notify Mortgagee thereof. Mortgagee may participate in any such proceedings and may be represented therein by counsel of its selection. Mortgagor from time to time will deliver to Mortgagee all instruments requested by it to permit or facilitate such participation. In the event of such condemnation proceedings, the award or compensation payable is hereby assigned to and shall be paid to Mortgagee. Mortgagee shall be under no obligation to question the amount of any such award or compensation and may accept the same in the amount in which the same shall be paid. The proceeds of any award or compensation so received shall, at the option of Mortgagee, either be applied to the prepayment of the Note at the rate of interest provided therein regardless of the rate of interest payable on the award by the condemning authority, or be paid over to Mortgagor from time to time for restoration of the Improvements in the same manner as advances of loan proceeds are made by Mortgagee under the Building Loan Agreement¹.

SECTION 1.14. (a) Mortgagor will not (i) execute an assignment of the rents or any part thereof from the Premises without Mortgagee's prior written consent, (ii) except where the lessee is in default thereunder, terminate or consent to the cancellation or surrender of any lease of the Premises or of any part thereof, now existing or hereafter to be made, having an unexpired term of one (1) year or more, provided, however, that any lease may be cancelled if promptly after the cancellation or surrender thereof a new lease is entered into with a new lessee having a credit standing, in the² judgment of Mortgagee, at least equivalent to that of the lessee whose lease was cancelled, on substantially the same terms³ as the terminated or cancelled lease, (iii) modify any such lease so as to shorten the unexpired term thereof or so as to⁴ decrease the amount of the rents payable thereunder, (iv) accept prepayments of any instalments of rents to become due under such leases, except prepayments in the nature of security for the performance of the lessees thereunder or (v) in any other manner impair the value of the Mortgaged Property or the security of this Mortgage.

(b) Mortgagor will not execute any lease of all or a substantial portion of the Premises except for actual occupancy by the lessee thereunder, and will at all times promptly and faithfully perform, or cause to be performed, all of the covenants, conditions and agreements contained in all leases of the Premises or portions thereof now or hereafter existing, on the part of the lessor thereunder to be kept and performed and will at all times do all things necessary to⁵ compel performance by the lessee under each lease of all obligations, covenants and agreements by such lessee to be performed thereunder. If any of such leases provide for the giving by the lessee of certificates with

1. Continued on Rider 9A attached hereto and made a part hereof.
2. reasonable
3. or on terms more favorable to the lessor
4. materially
5. attempt to

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Rider 9A

, provided however, that if there exists no Event of Default hereunder, the proceeds of any award or compensation received by Mortgagee as a result of the condemnation of the Premises, the Improvements or any portion thereof shall, subject to the conditions set forth below, be advanced to Mortgagor in reimbursement for amounts expended or incurred by Mortgagor in the restoration of the Improvements on the Premises; advances shall be made to Mortgagor in the same manner as advances of building loan proceeds under the Building Loan Agreement. Amounts not required for such purpose shall be applied, at the option of Mortgagee, to the prepayment of the Note, without premium, at the rate of interest provided therein regardless of the rate of interest payable on the award by the condemning authority. In no event shall the Mortgagee be required to advance such proceeds to Mortgagor unless Mortgagee shall have received written advice from the Construction Consultant that in the Construction Consultant's reasonable judgment restoration of the Improvements can be completed at a cost which does not exceed the amount of available condemnation proceeds or in the event that such condemnation proceeds are inadequate Mortgagor shall have deposited with Mortgagee an amount (the "Condemnation Amount") equal to the excess of the estimated cost of restoration as determined by the Construction Consultant over the amount of such condemnation proceeds. If Mortgagor shall not have deposited the Condemnation Amount with Mortgagee within 90 days following Mortgagee's receipt of the condemnation award or if restoration shall not have been commenced within 90 days following Mortgagee's receipt of such proceeds, Mortgagee shall have the option at any time thereafter to apply such condemnation award to the payment of the Note, without premium, and interest accrued and unpaid thereon (at the rate of interest provided therein regardless of the rate of interest payable on the award by the condemning authority) in such order as Mortgagee shall designate. In no event shall Mortgagee be required to advance such proceeds to Mortgagor unless in Mortgagee's reasonable judgment, the Improvements can be restored with the monies received from such award and the Condemnation Amount so as to constitute an architecturally whole and commercially viable building capable of supporting a loan in the Mortgage Amount or such reduced amount as shall be effected through the application of the proceeds of such award or compensation in repayment of the Note.

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respect to the status of such leases, Mortgagor shall exercise its right to request such certificates within five (5) days of any demand therefor by Mortgagee.

(c) Each lease of the Premises, or of any part thereof, shall provide that, in the event of the enforcement by Mortgagee of the remedies provided for by law or by this Mortgage, the lessee thereunder will, upon request of any person succeeding to the interest of Mortgagor as a result of such enforcement, automatically become the lessee of said successor in interest, without change in the terms or other provisions of such lease, provided, however, that said successor in interest shall not be bound by (i) any payment of rent or additional rent for more than one (1) month in advance, except prepayments in the nature of security for the performance by said lessee of its obligations under said lease or (ii) any amendment or modification of the lease made without the consent of Mortgagee or such successor in interest. Each lease shall also provide that, upon request by said successor in interest, such lessee shall execute and deliver an instrument or instruments confirming such attornment.²

To the extent that any part of the Premises is located in the State of New York, reference is hereby made to Section 291-f of the Real Property Law of the State of New York for the purpose of obtaining for Mortgagee the benefits of said Section in connection with this Mortgage.

(d) Mortgagor shall furnish to Mortgagee, within thirty (30) days after a request by Mortgagee, a written statement containing the names of all lessees of the Premises, the terms of their respective leases, the space occupied and the rentals payable thereunder.

SECTION 1.15. Subject to the conditions specified in the next paragraph of this Section, Mortgagee will, upon Mortgagor's request, execute non-disturbance and attornment agreements, in Mortgagee's then standard form, with lessees of the Premises which shall provide that in the event Mortgagee or any purchaser at foreclosure shall succeed to Mortgagor's interest in the Premises, the leases of such lessees will remain in full force and effect and be binding upon Mortgagee or such purchaser and such lessee as though each were the original parties thereto.

Mortgagee's obligation to execute such agreements shall be subject to the following conditions: (i) the credit of the lessee and the terms of the lease shall be³ satisfactory to Mortgagee, (ii) Mortgagee shall have received and approved the standard form of lease to be used in connection with the leasing of the Premises, (iii) upon each request for such an agreement Mortgagee shall receive a photocopy of the executed lease on which all changes from the standard form shall be indicated by appropriate markings, certified to be true and complete by the

1. material
2. Provided each such lease is acceptable to Mortgagee, and lessee thereunder so requires, and instruments of attornment acceptable to Mortgagee are executed and delivered to Mortgagee, Mortgagee will subordinate the lien of this Mortgage to such lease.
3. reasonably

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responsible officer or general partner, as the case may be, of Mortgagor or by its counsel, (iv) Mortgagee shall receive a letter, in the form attached to the Building Loan Agreement, signed by Mortgagor and addressed to the lessee, to be forwarded to the lessee by Mortgagee, giving notice of the assignment of each lease provided for herein, and (v) the approval by any lender to which this Mortgage is to be assigned of the execution of such an agreement.

SECTION 1.16. Mortgagor will cause the Improvements to be constructed in accordance with the terms of the Building Loan Agreement, will prosecute such construction with due diligence, will comply with the covenants and agreements made by it therein and will permit no failures of performance thereunder.

SECTION 1.17. Mortgagor will receive the advances secured by this Mortgage and will hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the costs of completing the "Improvements" defined in the Building Loan Agreement (or, if all or any part of the Premises are located in the State of New York, for the purpose of paying the "cost of improvement", as such quoted term is defined in the New York Lien Law) and will apply the same first to the payment of such costs before using any part of the total of the same for any other purpose and, in the event all or any part of the Premises is located in the State of New York, will comply with Section 13 of the New York Lien Law. Mortgagor will indemnify and hold Mortgagee harmless against any loss or liability, cost or expense, including, without limitation, any judgments, attorney's fees, costs of appeal bonds and printing costs, arising out of or relating to any proceeding instituted by any claimant alleging a violation by Mortgagor of any applicable lien law including, without limitation, any section of Article 3-A of the New York Lien Law.¹

ARTICLE 11

EVENTS OF DEFAULT AND REMEDIES

SECTION 2.01. If one or more of the following Events of Default shall happen, that is to say:

(a) if (i) default shall be made in the payment of any principal, interest or other sums under the Note, in any such case, when and as the same shall become due and payable, whether at maturity or by acceleration or as part of any payment or prepayment or otherwise, in each case, as in the Note and this Mortgage provided and such default shall have continued for a period of ten ~~(10)~~² days or (ii) default shall be made in the payment of any tax

1. Upon request of Mortgagor or Borrower, Mortgagee will subordinate the lien of this Mortgage to such easements and declarations encumbering the Premises as are required for its development providing such shall first be approved by Mortgagee in its reasonable discretion.
2. fifteen (15)

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required by Section 1.07 to be paid and said default shall have continued for a period of twenty (20) days; or

(b) if default shall be made in the due observance or performance of any covenant or agreement on the part of Mortgagor¹ contained in Section 1.01, 1.03, 1.08 or 1.09, and such default shall have continued for a period of twenty (20) days after notice thereof shall have been given to Mortgagor by Mortgagee. For the purposes of this clause if any representation made in Section 1.01 hereof shall be incorrect,² it shall be deemed to be a default; or

(c) if default shall be made in the due observance or performance of any other covenant, condition or agreement in the Note, the Building Loan Agreement, this Mortgage, any guaranty executed by Guarantor or in any other document executed or delivered to Mortgagee in connection with the loan secured hereby, and such default shall have continued for a period of thirty (30) days after notice thereof shall have been given to Mortgagor by Mortgagee, or, in the case of such other documents, such shorter grace period, if any, as may be provided for therein³; or

(d) if by order of a court of competent jurisdiction, a trustee, receiver or liquidator of the Mortgaged Property or any part thereof, or of Mortgagor shall be appointed and such order shall not be discharged or dismissed within sixty (60) days after such appointment; or

(e) if Mortgagor shall file a petition in bankruptcy or for an arrangement or for reorganization pursuant to the Federal Bankruptcy Act or any similar law, federal or state, or if, by decree of a court of competent jurisdiction, Mortgagor shall be adjudicated a bankrupt, or be declared insolvent, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or receivers of all or any part of its property; or

(f) if any of the creditors of Mortgagor shall file a petition in bankruptcy against Mortgagor or for reorganization of Mortgagor pursuant to the Federal Bankruptcy Act or any similar law, federal or state, and if such petition shall not be discharged or dismissed within sixty (60) days after the date on which such petition was filed; or

(g) if final judgment for the payment of money shall be rendered against Mortgagor and Mortgagor shall not discharge the same or cause it to be discharged within sixty (60) days from the

1. or Borrower
2. in any material respect
3. unless by reason of the nature thereof such default cannot be cured by the payment of money and cannot with due diligence be wholly cured within such period, as the case may be, and Mortgagor has made diligent efforts to cure such default within the period aforesaid and thereafter prosecutes the curing of such default with all due diligence

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entry thereof, or shall not appeal therefrom or from the order, decree or process upon which or pursuant to which said judgment was granted, based or entered, and secure a stay of execution pending such appeal¹; or

(h) if any of the events enumerated in clauses (d) through (g) of this Section 2.01 shall happen to Guarantor² or any of its³ property⁴; or

(i) if it shall be illegal for Mortgagor to pay any tax referred to in Section 1.08 hereof or if the payment of such tax by Mortgagor would result in the violation of applicable usury laws; or

(j) if there should occur a default which is not cured within the applicable grace period, if any, under any other mortgage or deed of trust of all or part of the Mortgaged Property regardless of whether any such other mortgage or deed of trust is prior or subordinate to this Mortgage; it being further agreed by Mortgagor that an Event of Default hereunder shall constitute an Event of Default under any such other mortgage or deed of trust held by Mortgagee; or

(k) if Mortgagor² shall transfer, or agree to transfer, in any manner, either voluntarily or involuntarily, by operation of law or otherwise, all or any portion of the Mortgaged Property, or any interest therein (including any air or development rights) without, in any such case, the prior written consent of Mortgagee. Mortgagee may grant or deny such consent in its sole discretion and, if consent should be given, any such transfer shall be subject to this Mortgage and any other documents which evidence or secure the loan secured hereby, and any such transferee shall assume all of Mortgagor's³ obligations hereunder and thereunder and agree to be bound by all provisions and perform all obligations contained herein and therein. Consent to one such transfer shall not be deemed to be a waiver of the right to require consent to future or successive transfers. As used herein "transfer" shall include, without limitation, any sale, assignment, lease or conveyance except leases for occupancy subordinate to this Mortgage⁴ and to all advances made and to be made hereunder or, in the event Mortgagor² or Guarantor (or a general partner or co-venturer of either of them) is a partnership, joint venture, trust or closely-held corporation, the sale, conveyance, transfer or other disposition of more than ten percent (10%) of any class of the issued and outstanding capital stock of such closely-held corporation or of the beneficial interest of such partnership, venture or trust, or a change of any general partner or any joint venturer, either voluntarily, involuntarily, or otherwise, or in the event Mortgagor² or Guarantor (or a general partner

1-6. See Rider 13A attached hereto and made a part hereof.

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RIDER 13A

1. and if such judgment would materially impair the ability of Mortgagor to perform its obligations under the Note, this Mortgage or any other documents executed or delivered in connection therewith, as determined by Mortgagee in its sole discretion
2. or Borrower
3. their respective
4. , and the happening of any of such events would materially impair the ability of Guarantor to perform its obligations under any guaranty executed by it in connection with the loan which is evidenced and secured, respectively by the Note and this Mortgage, as determined by Mortgagee in its sole discretion or materially impair the ability of Borrower to perform its obligations under this Mortgage, the Loan Agreement or any other document executed or delivered in connection therewith, as determined by Mortgagee in its sole discretion
5. or Borrower's
6. except as otherwise permitted herein

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or co-venturer of either of them) is a publicly held corporation, the sale, conveyance, transfer or other disposition of more than 10% of the stock-holdings of any of the Major Shareholders. For purposes of this clause (k), "Major Shareholders" shall mean those five individuals or entities that own the greatest number of shares of each class of stock issued and outstanding of the corporation. In the event Mortgagor² or Guarantor is a limited partnership, and so long as a limited partner has contributed to (or remains personally liable for) the partnership capital contributions (present and future) required of such limited partner by the limited partnership agreement, such limited partner may sell, convey, devise, transfer or dispose of all or a part of his limited partnership interest to his spouse, children, grandchildren or a family trust in which his spouse, children³ or grandchildren are sole beneficiaries;⁴ or

(1) if Mortgagor² shall encumber, or agree to encumber, in any manner, either voluntarily or involuntarily, by operation of law or otherwise, all or any portion of the Mortgaged Property, or any interest therein (including any air or development rights) without, in any such case, the prior written consent of Mortgagee. Mortgagee may grant or deny such consent in its sole discretion and, if consent should be given, any such encumbrance shall be subject to this Mortgage and any other documents which evidence or secure the loan secured hereby. Consent to one such encumbrance shall not be deemed to be a waiver of the right to require consent to future or successive encumbrances. As used herein "encumber" shall include, without limitation, the placing or permitting the placing of any mortgage, deed of trust, assignment of rents or other security device;

then and in every such case:

I. During the continuance of any such Event of Default, Mortgagee, by notice given to Mortgagor, may declare the entire principal of the Note then outstanding (if not then due and payable), and all accrued and unpaid interest thereon, to be due and payable immediately, and upon any such declaration the principal of the Note and said accrued and unpaid interest shall become and be immediately due and payable, anything in the Note or in this Mortgage to the contrary notwithstanding.

II. During the continuance of any such Event of Default, Mortgagee personally, or by its agents or attorneys, may enter into and upon all or any part of the Premises, and each and every part thereof, and is hereby given a right and license and appointed Mortgagor's ~~attorney in fact~~ to do so, and may exclude Mortgagor,

1. any
2. or Borrower
3. , siblings
4. Continued on Rider 14A hereto.
5. (m) if Borrower shall be declared by the Village to be in default beyond the expiration of any applicable grace period under the Agreement; or
6. (n) if a default shall occur beyond any applicable grace periods under the \$5,888,000 note, or mortgage from Mortgagor and Borrower to Mortgagee of even date with this Mortgage or under any document or instrument executed or delivered in connection therewith;
7. irrevocable agent

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Rider 14A

Notwithstanding the foregoing, (a) transfers of partnership interests in BNW-Rosemont Partnership ("BNW") shall not constitute a default hereunder so long as Joseph S. Beale shall retain control of BNW, and not less than 50% of the equity interests in BNW, (b) transfers of stock in Simon-Rosemont, Inc. ("SRI") shall not constitute a default hereunder so long as Melvin Simon or Herbert Simon or both of them or an entity under the control of Melvin Simon or Herbert Simon or both of them or Melvin Simon & Associates, Inc. or an entity under its control shall retain control of SRI and (c) transfer of the 50% partnership interest in Borrower owned by SRI to Rosemont Associates Limited Partnership, an Illinois limited partnership ("RALP"), shall not constitute a default hereunder so long as Melvin Simon or Herbert Simon or both of them or Melvin Simon & Associates, Inc. or an entity controlled by any of the foregoing or a combination thereof (i) owns in the aggregate not less than 50% of the equity interests in RALP and (ii) is the controlling general partner or partners of RALP. For the purposes hereof "control" shall mean the effective power to direct the management and policies of the applicable entity.

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its agents and servants wholly therefrom; and having and holding the same, may use, operate, manage and control the Premises and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receivers; and upon every such entry, Mortgagee, at the expense of the Mortgaged Property, from time to time, either by purchase, repairs or construction, may maintain and restore the Mortgaged Property, whereof it shall become possessed as aforesaid, may complete the construction of the Improvements and in the course of such completion may make such changes in the contemplated Improvements as it may deem desirable and may insure the same; and likewise, from time to time, at the expense of the Mortgaged Property, Mortgagee may make all necessary or proper repairs, renewals and replacements and such useful alterations, additions, betterments and improvements thereto and thereon as to it may seem advisable; and in every such case Mortgagee shall have the right to manage and operate the Mortgaged Property and to carry on the business thereof and exercise all rights and powers of Mortgagor¹ with respect thereto either in the name of Mortgagor or otherwise as it shall deem best; and Mortgagee shall be entitled to collect and receive all earnings, revenues, rents, issues, profits and income of the mortgaged Property and every part thereof, all of which shall for all purposes constitute property of Mortgagor; and in furtherance of such right Mortgagee may collect the rents payable under all leases of the Premises directly from the lessees thereunder upon notice to each such lessee that an Event of Default exists hereunder accompanied by a demand on such lessee for the payment to Mortgagee of all rents due and to become due under its lease, and Mortgagor FOR THE BENEFIT OF MORTGAGEE AND EACH SUCH LESSEE hereby covenants and agrees that the lessee shall be under no duty to question the accuracy of Mortgagee's statement of default and shall unequivocally be authorized to pay said rents to Mortgagee without regard to the truth of Mortgagee's statement of default and notwithstanding notices from Mortgagor² disputing the existence of an Event of Default such that the payment of rent by the lessee to Mortgagee pursuant to such a demand shall constitute performance in full of the lessee's obligation under the lease for the payment of rents by the lessee to Mortgagor²; and after deducting the expenses of conducting the business thereof and of all maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvements and amounts necessary to pay for taxes, assessments, insurance and prior or other proper charges upon the Mortgaged Property or any part thereof, as well as just and reasonable compensation for the services of Mortgagee and for all attorneys, counsel, agents, clerks, servants and other employees by it engaged and employed, Mortgagee shall apply the moneys arising as aforesaid, first, to the payment of the principal

-
1. and Borrower
 2. or Borrower

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of the Note and the interest thereon, when and as the same shall become payable and second, to the payment of any other sums required to be paid by Mortgagor under this Mortgage.

III. Mortgagee, with or without entry, personally or by its agents or attorneys, insofar as applicable, may:

(1) sell the Mortgaged Property¹ to the extent permitted and pursuant to the procedures provided by law, and all estate, right, title and interest, claim and demand therein, and right of redemption thereof, at one or more sales as an entity or in parcels or parts, and at such time and place upon such terms and after such notice thereof as may be required or permitted by law; or

(2) institute proceedings for the complete or partial foreclosure of this Mortgage²; or

(3) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note or in the Building Loan Agreement or in this Mortgage, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee shall elect.

SECTION 2.02. (a) Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(b) Upon the completion of any sale or sales made by Mortgagee under or by virtue of this Article II, Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument or instruments conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Mortgagee is hereby appointed the true and lawful attorney irrevocable of⁴ Mortgagor, in its⁵ name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Mortgagor⁶ hereby ratifying and confirming all

1. if and
2. to the extent permitted and pursuant to the procedures provided by law
3. subject to Section 3.10 and 3.11 hereof,
4. Borrower and the irrevocable agent of
5. their
6. and Borrower

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that ¹ ~~its said~~ attorney or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, Mortgagor², if requested by Mortgagee, shall ratify and confirm any such sale or sales by executing and delivering to Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of Mortgagee, for the purpose, and as may be designated in such request. Any such sale or sales made under or by virtue of this Article II, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor³ in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor² and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Mortgagor³.

(c) In the event of any sale or sales made under or by virtue of this Article II (whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale), the entire principal of, and interest on, the Note, if not previously due and payable, and all other sums required to be paid by Mortgagor pursuant to this Mortgage, immediately thereupon shall, anything in the Note or in this Mortgage to the contrary notwithstanding, become due and payable.

(d) The purchase money, proceeds or avails of any sale or sales made under or by virtue of this Article II, together with any other sums which then may be held by Mortgagee under this Mortgage, whether under the provisions of this Article II or otherwise, shall be applied as follows:

First: To the payment of the costs and expenses of such sale, including reasonable compensation to Mortgagee, its agents and counsel, and of any judicial proceedings wherein the same may be made, and of all expenses, liabilities and advances made or incurred by Mortgagee under this Mortgage, together with interest at the Involuntary Rate on all advances made by Mortgagee, and of all taxes, assessments or other charges, except any taxes, assessments or other charges subject to which the Mortgaged Property shall have been sold.

Second: To the payment of the whole amount then due, owing or unpaid upon the Note for principal and interest, with interest on the unpaid principal at the Involuntary Rate from and after the happening of any Event of Default described in clause (a) of Section 2.01 hereof from the due date of any such payment of principal until the same is paid.

1. their said agent or
2. and Borrower
3. or Borrower

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Third: To the payment of any other sums required to be paid by Mortgagor¹ pursuant to any provision of this Mortgage or of the Note.

Fourth: To the payment of the surplus, if any, to whomsoever may be lawfully entitled to receive the same.

(e) Upon any sale or sales made under or by virtue of this Article II, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the indebtedness secured by this Mortgage the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage.

SECTION 2.03. (a) In case an Event of Default described in clause (a) of Section 2.01 hereof shall have happened and be continuing, then, upon written demand of Mortgagee, Mortgagor will pay to Mortgagee the whole amount which then shall have become due and payable on the Note, for principal or interest or both, as the case may be, and after the happening of said Event of Default will also pay to Mortgagee interest at the Involuntary Rate on the then unpaid principal of the Note, and the sums required to be paid by Mortgagor¹ pursuant to any provision of this Mortgage, and in addition thereto such further amount as shall be sufficient to cover the costs and expenses of collection, including reasonable compensation to Mortgagee, its agents and counsel and any expenses incurred by Mortgagee hereunder. In the event Mortgagor shall fail forthwith to pay such amounts upon such demand, Mortgagee shall be entitled and empowered to institute such action or proceedings at law or in equity as may be advised by its counsel for the collection of the sums so due and unpaid, and may prosecute any such action or proceedings to judgment or final decree, and may² enforce any such judgment or final decree against Mortgagor³ and collect, ~~out of the property of Mortgagor wherever situated, as well as out of the Mortgaged Property,~~⁴ in any manner provided by law, moneys adjudged or decreed to be payable.

(b) Mortgagee shall be entitled to recover judgment as aforesaid either before, after or during the pendency of any proceedings for the enforcement of the provisions of this Mortgage; and the right of Mortgagee to recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this Mortgage, or the foreclosure of the lien hereof; and² in the event of a sale of the Mortgaged Property, and of the application of the proceeds of sale, as in this Mortgage provided, to the payment of the debt hereby secured,

1. or Borrower
2. subject to the provisions of Section 3.10 and 3.11 hereof
3. and Borrower
4. and out of such other collateral, if any, now or hereafter given or pledged to Mortgagee by Mortgagor or Borrower

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Mortgagee shall be entitled to enforce payment of, and to receive all amounts then remaining due and unpaid upon, the Note, and to enforce payment of all other charges, payments and costs due under this Mortgage, and shall be entitled to recover judgment for any portion of the debt remaining unpaid, with interest at the Involuntary Rate. In case of proceedings against Mortgagor¹ in insolvency or bankruptcy or any proceedings for its² reorganization or involving the liquidation of its assets, then Mortgagee shall be entitled to prove the whole amount of principal and interest due upon the Note to the full amount thereof, and all other payments, charges and costs due under this Mortgage, without deducting therefrom any proceeds obtained from the sale of the whole or any part of the Mortgaged Property, provided, however, that in no case shall Mortgagee receive a greater amount than such principal and interest and such other payments, charges and costs from the aggregate amount of the proceeds of the sale of the Mortgaged Property and the distribution from the estate of Mortgagor³.

(c) No recovery of any judgment by Mortgagee and no levy of an execution under any judgment upon the Mortgaged Property ~~or upon any other property of Mortgagor~~ shall affect in any manner or to any extent, the lien of this Mortgage upon the Mortgaged Property or any part thereof, or any liens, rights, powers or remedies of Mortgagee hereunder, but such liens, rights, powers and remedies of Mortgagee shall continue unimpaired as before.

(d) Any moneys thus collected by Mortgagee under this Section 2.03 shall be applied by Mortgagee in accordance with the provisions of clause (d) of Section 2.02 hereof.

SECTION 2.04. After the happening of any Event of Default and immediately upon the commencement of any action, suit or other legal proceedings by Mortgagee to obtain judgment for the principal of, or interest on, the Note and other sums required to be paid by Mortgagor pursuant to any provision of this Mortgage, or of any other nature in aid of the enforcement of the Note or of this Mortgage, Mortgagor will (a) waive the issuance and service of process and enter its voluntary appearance in such action, suit or proceeding and (b) if required by Mortgagee, consent to the appointment of a receiver or receivers of the Mortgaged Property and of all the earnings, revenues, rents, issues, profits and income thereof. After the happening of any Event of Default and during its continuance, or upon⁴ the commencement of any proceedings to foreclose this Mortgage or to enforce the specific performance hereof or in aid thereof or upon⁴ the commencement of any other judicial proceeding to enforce any right of Mortgagee, Mortgagee shall be entitled, as a matter of right, if it shall so elect, without the giving of notice to any other party and without regard to the adequacy or inadequacy of any security for the indebtedness secured hereby,

1. or Borrower
2. or their
3. and Borrower
4. or at any time thereafter

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forthwith either before or after declaring the unpaid principal of the Note to be due and payable, to the appointment of such a receiver or receivers.¹

SECTION 2.05. Notwithstanding the appointment of any receiver, liquidator or trustee of Mortgagor², or of any of its³ property, or of the Mortgaged Property or any part thereof, Mortgagee shall be entitled to retain possession and control of all property now or hereafter held under this Mortgage.

SECTION 2.06. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of Mortgagee to exercise any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Event of Default or any acquiescence therein; and every power and remedy given by this Mortgage to Mortgagee may be exercised from time to time as often as may be deemed expedient by Mortgagee. Nothing in this Mortgage or in the Note shall affect the obligation of Mortgagor to pay the principal of, and interest on, the Note in the manner and at the time and place therein respectively expressed.

SECTION 2.07. Mortgagor will not at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of any stay or extension or moratorium law, any exemption from execution or sale of the Mortgaged Property or any part thereof, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Mortgage, nor claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision herein, or pursuant to the decree, judgment or order of any court of competent jurisdiction; nor, after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the property so sold or any part thereof and Mortgagor hereby expressly waives all benefit or advantage of any such law or laws, and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to Mortgagee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. Mortgagor, for itself and all who may claim under it, waives, to the extent that it lawfully may, all right to have the Mortgaged Property marshaled upon any foreclosure hereof.⁴

SECTION 2.08. During the continuance of any Event of Default and pending the exercise by Mortgagee of its right to exclude Mortgagor from

1. See Rider 20A attached hereto and made a part hereof.
2. or Borrower
3. or their
4. See Rider 20B attached hereto and made a part hereof.

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Rider 20A

Such appointment may be made either before or after any foreclosure sale without regard to the solvency or insolvency of Mortgagor or Borrower at the time of the application for such receiver and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder may be appointed as such receiver. Such receiver shall have power: (a) to collect the rents, issues and profits of the Premises and, in case of a foreclosure sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, (b) to extend or modify any then existing leases and to make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness secured hereby and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and Borrower and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the indebtedness secured hereby, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser, and (c) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (i) the indebtedness secured hereby, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale, (ii) and if this is a leasehold mortgage, all rents due or which may become due under the underlying lease, and (iii) the deficiency in case of a foreclosure sale and deficiency.

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RIDER 20B

Mortgagor hereby waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor, the trust estate, and all persons beneficially interested therein, and each and every person except decree or judgment creditors of Mortgagor in its representative capacity and of the trust estate, acquiring any interest in or title to the Premises subsequent to the date of this Mortgage. The foregoing waiver of the right of redemption is made pursuant to the provisions of Section 12-125 of the Illinois Code of Civil Procedure.

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all or any part of the Premises, Mortgagor agrees to pay the fair and reasonable rental value for the use and occupancy of the Premises or any portion thereof which are in its possession for such period and, upon default of any such payment, will vacate and surrender possession of the Premises to Mortgagee or to a receiver, if any, and in default thereof may be evicted by any summary action or proceeding for the recovery of possession of premises for non-payment of rent, however designated.¹

ARTICLE III

MISCELLANEOUS

SECTION 3.01. In the event any one or more of the provisions contained in this Mortgage or in the Note or Building Loan Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

SECTION 3.02. All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally or sent by registered or certified mail, if to Mortgagor² at its "address above stated", and if to Mortgagee, to the attention of its Real Estate Finance office at 101 Park Avenue, New York, New York 10081, or at such other address of which a party shall have notified the party giving such notice in writing.

SECTION 3.03. All of the grants, covenants, terms, provisions and conditions herein shall run with the land and shall apply to, bind and inure to the benefit of, the successors and assigns of Mortgagor and the successors and assigns of Mortgagee.

SECTION 3.04. No provision in this Mortgage or in the Note shall require the payment or permit the collection of interest in excess of the maximum amount permitted by law in commercial construction or permanent mortgage loan transactions between parties of the character of the parties hereto. Mortgagor shall not be obligated to pay any interest in excess of such maximum amount.

SECTION 3.05. This Mortgage may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts shall together constitute but one and the same mortgage.

SECTION 3.06. If all or any portion of the Premises is located in the State of New York, the covenants and conditions contained herein, other than those included in the New York Statutory Short Form of Mortgage, shall be construed as affording to Mortgagee rights additional to, and not exclusive of, the rights conferred under the provisions of Section 254 of the Real Property Law of the State of New York.

^{1-4.} See Rider 21A attached hereto.

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RIDER 21A

1. SECTION 2.09. In any suit to foreclose the lien hereof (including, to the extent permitted by law, any partial foreclosure) or to enforce any other remedy of Mortgagee under this Mortgage or the Note, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and similar data and assurances with respect to title and value as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises.
2. or Borrower
3. their respective
4. with a copy to (i) Radnick & Wolfe, located at 30 North LaSalle Street, Chicago, Illinois 60602 until November 15, 1987 and at 203 North LaSalle Street, Chicago, Illinois 60601 thereafter, Attention: Paul Homer, Esq., (ii) Steven Bandolik, Hawthorn Realty Group, 10275 West Higgins Road, Rosemont, Illinois 60018 and (iii) Melvin Simon & Associates, Inc., Merchants Plaza, P.O. Box 7033, Indianapolis, Indiana 47207, Attention: Mr. Randy Foxworthy.

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SECTION 3.07. Mortgagor¹ and Mortgagee shall, upon their mutual agreement to do so, execute such documents as may be necessary in order to effectuate the modification of this Mortgage, including the execution of substitute mortgages, so as to create two or more liens on the Mortgaged Property in such amounts as may be mutually agreed upon but in no event to exceed, in the aggregate, the Mortgage Amount; in such event, Mortgagor² covenants and agrees to pay the reasonable fees and expenses of Mortgagee and its counsel in connection with any such modification.

SECTION 3.08. Mortgagor² recognizes that Mortgagee may sell and transfer interests in the loan to one or more participants and that all documentation, financial statements, appraisals and other data, or copies thereof, relevant to Mortgagor¹, any Guarantor or the loan, may be exhibited to and retained by any such participant or prospective participant.

SECTION 3.09. The information set forth on the cover hereof is hereby incorporated herein.

SECTION 3.10. This Mortgage is executed by La Salle National Bank, not personally but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said La Salle National Bank hereby warrants that it possesses full power and authority to execute this Mortgage), and that it is expressly understood and agreed that nothing herein or in the Note contained shall be construed as creating any liability on said La Salle National Bank personally to pay the Note or any interest that may accrue thereon, or any indebtedness accruing thereunder, or to perform any covenant either express or implied herein contained (it being understood and agreed that each of the provisions hereof, except the warranty hereinabove contained in this Section 3.10, shall constitute a condition and not a covenant or agreement, regardless of whether the same may be couched in language of a promise or covenant or agreement), all such liability, if any, being expressly waived by Mortgagee and by every person now or hereafter claiming any right or security hereunder, and that so far as said La Salle National Bank personally is concerned, the legal holder or holders of the Note and the owner or owners of any indebtedness accruing hereunder shall look solely, for the payment thereof in the manner herein and in the Note provided, to one or more of (1) the Mortgaged Property, (2) the assets of the Trust Estate held under the Trust Agreement, (3) any other security given to secure the Note or the obligations secured hereby or (4) the personal liability of any Guarantors, but this shall not be construed in any way so as to affect or impair the lien of this Mortgage or Mortgagee's right to the foreclosure hereof, or construed in any way so as to limit or restrict any of the rights or remedies of Mortgagee in any such foreclosure proceeding or other enforcement of the payment of the indebtedness secured hereby out of and from the security given therefor in the manner herein and in the Note provided, nor shall it be construed in any way so as to limit or restrict in any way the personal liability of Guarantors.

1. , Borrower
2. and Borrower

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SECTION 3.11. Borrower, by its execution below, (a) joins in the Granting Clause of this Mortgage to the extent of all of its right, title and interest in and to the Mortgaged Property, as defined therein, but only to the extent of the items of personal property identified in clauses (iii) through (vii), inclusive, of said Granting Clause and (b) covenants and agrees for itself, its successors and assigns, to comply with, perform and assume all the covenants, conditions and agreements made by Mortgagor herein and be bound by and subject to all of the terms, covenants, conditions, definitions, agreements and provisions herein contained. Borrower's covenants or liabilities set forth herein or in any other instrument executed by Borrower in connection with the loan secured by this Mortgage shall in no way be affected, altered or diminished by the provisions of Section 3.10 of this Mortgage, nor shall Borrower, in the event it should acquire the fee interest in the Premises, be entitled to the limitation of any obligation or liability imposed in this Mortgage by reason of anything contained in said Section 3.10 but, in such event, Borrower shall continue to be bound by all the terms, conditions, covenants and agreements contained in this Mortgage. Notwithstanding the foregoing or any other provisions of this Mortgage to the contrary, however, Mortgagee agrees that, for payment of the Note, it will look solely to the Mortgaged Property and such other collateral, if any, as may now or hereafter be given to secure the payment of the Note, and no other property or assets of Borrower or Borrower's partners shall be subject to levy, execution or other enforcement procedure for the satisfaction of the remedies of Mortgagee or for any payment required to be made under the Note or under this Mortgage or for the performance of any of the covenants or warranties contained therein or herein; provided that the foregoing provisions of this Section shall not (i) constitute a waiver of any obligation evidenced by the Note or secured by this Mortgage, (ii) limit the right of Mortgagee to name Mortgagor as a party defendant in any action or suit for judicial foreclosure and sale under this mortgage so long as no judgment in the nature of a deficiency judgment shall be enforced against Mortgagor except to the extent of the Mortgage Property or such other collateral and (iii) affect in any way the validity of any guaranty (whether of payment or completion) or indemnity agreement given in connection with the loan secured hereby or (iv) constitute a waiver by Mortgagee of any rights to reimbursement for actual, or out-of-pocket, losses, costs or expenses, or any other remedy at law or equity, against Mortgagor by reason of (1) ~~gross negligence or fraudulent acts~~ or fraudulent omissions, (2) willful misapplication of any insurance proceeds, condemnation awards or tenant security deposits, or of any rental or other income which was required by this Mortgage or other loan documents to be paid or applied in a specified manner, arising, in any such case, with respect to the Mortgaged Property or (3) failure to deliver, promptly upon demand, tenant and other project files and original executed leases and other agreements relating to occupancy, construction or operation.

SECTION 3.12. Portions of the Premises may be released from the lien of this Mortgage in accordance with the provisions of the Building Loan Agreement.

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SECTION 3.13. This Mortgage is a "construction mortgage" as said term is defined in Section 9-313(1)(c) of the Illinois Uniform Commercial Code. Mortgagor represents and agrees that the obligations secured hereby: (a) constitute a business loan which comes within the purview of subparagraph (1)(c) of Section 4, and a loan secured by a mortgage on real estate which comes within the purview of subparagraph (1)(1) of Section 4, of "An Act in relation to the rate of interest and other charges in connection with sales on credit and the lending of money," approved by May 24, 1879, as amended (Ill. Rev. Stats., 1981 ed., Ch. 17, Sec. 6404(1)(c) and Sec. 6404(1)(1)) and (b) are exempted transactions under the Truth-in-Lending Act, 15 U.S.C. Sec. 1601, et seq.

SECTION 3.14. This Mortgage is given to secure not only existing indebtedness, but also such future advances, whether such advances are obligatory or are to be made at the option of Mortgagee, or otherwise, as are made within ten (10) years from the date hereof, to the extent (except as may be otherwise provided by applicable law) as if such future advances were made on the date of the execution of this Mortgage. The total amount of the indebtedness that may be secured hereby may decrease or increase from time to time, but the total unpaid balance so secured at any one time shall not exceed \$88,400,000. In addition, all advances and indebtedness arising and accruing under the Building Loan Agreement from time to time, whether or not the resulting indebtedness secured hereby may exceed the face amount of the Note, shall be secured hereby to the same extent as though said Building Loan Agreement were fully incorporated in this Mortgage.

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IN WITNESS WHEREOF, this Mortgage has been duly executed by Mortgagor.

Attest:

LA SALLE NATIONAL BANK, not personally but as Trustee under Trust Agreement dated November 7, 1983 and known as Trust No. 107291

[Signature]
Assistant Secretary

By [Signature]
Vice President

Witnesses:

[Signature]
[Signature]

HIGGINS-MANNHEIM PROPERTIES

By BNW-ROSEMONT Partnership,
an Illinois limited partnership

Witnesses:

[Signature]
[Signature]

By [Signature] [SEAL]
Joseph S. Beale, General Partner

Attest:

By Simon-Rosemont, Inc.

[Signature]

By [Signature]

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STATE OF INDIANA)
 : 99.:
COUNTY OF MARION)

The foregoing instrument was acknowledged before me this 13th day of November, 1987 by R. L. Foxworthy and J. A. Rosenfeld (Assistant) Secretary of SIMON-ROSEMONT, INC., an Indiana corporation, partner of HIGGINS-MANNHEIM PROPERTIES, an Illinois partnership, on behalf of said partnership.


Notary Public

DONNA L. McLAUGHLIN
NOTARY PUBLIC STATE OF INDIANA
MORGAN CO.
MY COMMISSION EXPIRES JAN 30, 1991
ISSUED IN THE INDIANA NOTARY ASSOCIATION

Property of Cook County Clerk's Office

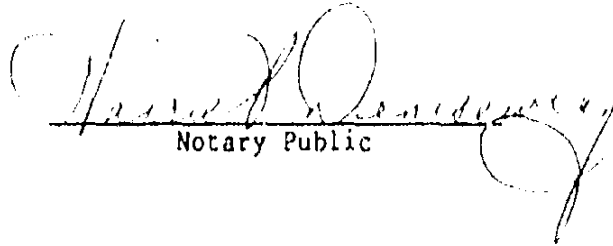
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UNOFFICIAL COPY

STATE OF ILLINOIS)

: ss.:
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 17 day of November, 1987 by Corinne Bek, Assistant (Vice) President, and Clifford-Scott, (Assistant) Secretary, of LA SALLE NATIONAL BANK, a national banking association, on behalf of the said national banking association.



Notary Public

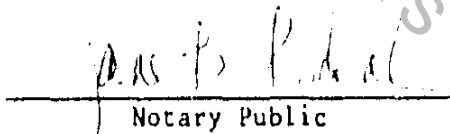
My Commission Expires:

October 30th, 1991

STATE OF ILLINOIS)

: ss.:
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 10 day of November, 1987 by Joseph S. Beale, general partner of BNW-ROSEMONT PARTNERSHIP, an Illinois limited partnership, partner of HIGGINS-MANNHEIM PROPERTIES, an Illinois partnership, on behalf of said partnership.



Notary Public

My Commission Expires:

6/29/90

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SCHEDULE A
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PARCEL 4:

THAT PART OF THE SOUTH WEST 1/4 OF SECTION 33, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF A LINE 50.00 FEET, AS MEASURED AT RIGHT ANGLES, NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTH WEST 1/4, WITH A LINE 449.69 FEET, AS MEASURED AT RIGHT ANGLES, EAST OF

AND PARALLEL WITH THE WEST LINE OF SAID SOUTH WEST 1/4 (THE WEST LINE OF SAID SOUTH WEST 1/4 HAVING AN ASSUMED BEARING OF NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST FOR THIS LEGAL DESCRIPTION); THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG SAID LAST DESCRIBED PARALLEL LINE 449.69 FEET TO AN INTERSECTION WITH THE SOUTHERLY LINE OF LAND CONDEMNED FOR THE WIDENING OF HIGGINS ROAD IN CASE NO. 65L8179, CIRCUIT COURT OF COOK COUNTY, ILLINOIS; THENCE SOUTH 72 DEGREES 34 MINUTES 18 SECONDS EAST ALONG SAID LAST DESCRIBED SOUTHERLY LINE AND ALONG THE SOUTHERLY LINE OF LAND CONDEMNED FOR THE WIDENING OF HIGGINS ROAD IN SAID CASE NO. 65L7109 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, 18.61 FEET TO THE EAST LINE OF LAND CONDEMNED FOR HIGGINS ROAD IN SAID CASE NUMBER 65L7109; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG THE SAID LAST DESCRIBED EAST LINE, 6.29 FEET TO AN INTERSECTION WITH THE SOUTHERLY LINE OF HIGGINS ROAD, BEING A LINE 50.00 FEET AS MEASURED AT RIGHT ANGLES, SOUTHERLY OF AND PARALLEL WITH THE CENTER LINE OF SAID HIGGINS ROAD; THENCE SOUTH 72 DEGREES 34 MINUTES 18 SECONDS EAST ALONG SAID LAST DESCRIBED SOUTHERLY LINE, 36.19 FEET; THENCE SOUTH 39 DEGREES 39 MINUTES 24 SECONDS WEST, 27.09 FEET TO AN INTERSECTION WITH A LINE 484.69 FEET, AS MEASURED AT RIGHT ANGLES, EAST OF AND PARALLEL WITH THE WEST LINE OF SAID SOUTH WEST 1/4; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST ALONG SAID LAST DESCRIBED PARALLEL LINE, 837.28 FEET TO AN INTERSECTION WITH A LINE 50.00 FEET AS MEASURED AT RIGHT ANGLES, NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTH WEST 1/4; THENCE SOUTH 87 DEGREES 19 MINUTES 06 SECONDS WEST ALONG SAID LAST DESCRIBED PARALLEL LINE, 35.03 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS

PARCEL 5:

THAT PART OF THE SOUTH WEST 1/4 OF SECTION 33, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF A LINE 50.00 FEET, AS MEASURED AT RIGHT ANGLES, NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTH WEST 1/4 WITH A LINE 484.69 FEET, AS MEASURED AT RIGHT ANGLES, EAST OF AND PARALLEL WITH WEST LINE OF SAID SOUTH WEST 1/4 (THE WEST LINE OF SAID SOUTH WEST 1/4 HAVING AN ASSUMED BEARING OF NORTH 00 DEGREES, 00 MINUTES, 00 SECONDS EAST FOR THIS LEGAL DESCRIPTION); THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG SAID LAST DESCRIBED PARALLEL LINE, 154.55 FEET TO A POINT FOR A PLACE OF BEGINNING; THENCE CONTINUING NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG SAID LAST DESCRIBED PARALLEL LINE, 272.71 FEET; THENCE NORTH 90 DEGREES, 00 MINUTES, 00 SECONDS EAST, 219.46 FEET;

THENCE SOUTH 00 DEGREES, 00 MINUTES, 00 SECONDS WEST, 191.06 FEET;
THENCE SOUTH 45 DEGREES, 00 MINUTES, 00 SECONDS WEST, 46.47 FEET;
THENCE SOUTH 90 DEGREES, 00 MINUTES, 00 SECONDS WEST, 97.39 FEET;
THENCE SOUTH 00 DEGREES, 00 MINUTES, 00 SECONDS WEST, 48.79 FEET;
THENCE SOUTH 90 DEGREES, 00 MINUTES, 00 SECONDS WEST, 89.21 FEET;
TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS

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17, 27, 37, 5

PARCEL 6:

THAT PART OF THE SOUTH WEST 1/4 OF SECTION 33, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF A LINE 50.00 FEET, AS MEASURED AT RIGHT ANGLES, NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTH WEST 1/4 WITH A LINE 484.69 FEET, AS MEASURED AT RIGHT ANGLES, EAST OF

AND PARALLEL WITH THE WEST LINE OF SAID SOUTH WEST 1/4 (THE WEST LINE OF SAID SOUTH WEST 1/4 HAVING AN ASSUMED BEARING OF NORTH 00 DEGREES, 00 MINUTES, 00 SECONDS EAST FOR THIS LEGAL DESCRIPTION); THENCE NORTH 00 DEGREES, 00 MINUTES, 00 SECONDS EAST ALONG SAID LAST DESCRIBED PARALLEL LINE, 427.26 FEET TO A POINT FOR A PLACE OF BEGINNING; THENCE CONTINUING NORTH 00 DEGREES, 00 MINUTES, 00 SECONDS EAST ALONG SAID LAST DESCRIBED PARALLEL LINE, 251.92 FEET; THENCE NORTH 45 DEGREES, 00 MINUTES, 00 SECONDS EAST, 32.53 FEET; THENCE NORTH 90 DEGREES, 00 MINUTES, 00 SECONDS EAST, 53.70 FEET; THENCE SOUTH 72 DEGREES, 34 MINUTES, 18 SECONDS EAST, 149.63 FEET; THENCE SOUTH 00 DEGREES, 00 MINUTES, 00 SECONDS WEST, 230.11 FEET; THENCE SOUTH 90 DEGREES, 00 MINUTES, 00 SECONDS WEST, 219.46 FEET; TO THE POINT OF BEGINNING IN COOK COUNTY, ILLINOIS;

PARCEL 7:

THAT PART OF THE SOUTH WEST 1/4 OF SECTION 33, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF A LINE 50.00 FEET, AS MEASURED AT RIGHT ANGLES, NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTH WEST 1/4 WITH A LINE 484.69 FEET, AS MEASURED AT RIGHT ANGLES, EAST OF AND PARALLEL WITH THE WEST LINE OF SAID SOUTH WEST 1/4 (THE WEST LINE OF SAID SOUTH WEST 1/4 HAVING AN ASSUMED BEARING OF NORTH 00 DEGREES, 00 MINUTES, 00 SECONDS EAST FOR THIS LEGAL DESCRIPTION); THENCE NORTH 00 DEGREES, 00 MINUTES, 00 SECONDS EAST ALONG SAID LAST DESCRIBED PARALLEL LINE, 154.55 FEET;

THENCE NORTH 90 DEGREES, 00 MINUTES, 00 SECONDS EAST, 89.21 FEET;

THENCE NORTH 00 DEGREES, 00 MINUTES, 00 SECONDS EAST, 48.79 FEET;

THENCE NORTH 90 DEGREES, 00 MINUTES, 00 SECONDS EAST, 97.39 FEET;

THENCE 45 DEGREES, 00 MINUTES, 00 SECONDS EAST, 46.47 FEET;

THENCE NORTH 00 DEGREES, 00 MINUTES, 00 SECONDS EAST, 141.06 FEET; TO A POINT 447.18 FEET NORTH AND 704.15 FEET EAST OF THE SOUTH WEST CORNER

OF THE SOUTH WEST 1/4 OF SAID SECTION 33, AS MEASURED ALONG THE WEST LINE OF SAID SOUTH WEST 1/4 AND ALONG A LINE AT RIGHT ANGLES THERETO;

THENCE NORTH 90 DEGREES, 00 MINUTES, 00 SECONDS EAST 260.00 FEET TO

THE WESTERLY RIGHT OF WAY LINE OF THE MINNEAPOLIS ST. PAUL AND SAULT STE. MARIE RAILROAD (FORMERLY THE CHICAGO AND WISCONSIN RAILROAD);

THENCE SOUTH 14 DEGREES, 51 MINUTES, 36 SECONDS EAST ALONG SAID LAST DESCRIBED WESTERLY LINE, 365.99 FEET TO AN INTERSECTION WITH A LINE

50.00 FEET, AS MEASURED AT RIGHT ANGLES, NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTH WEST 1/4; THENCE SOUTH 87 DEGREES, 39

MINUTES, 06 SECONDS WEST ALONG SAID LAST DESCRIBED PARALLEL LINE,

573.81 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS

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WEST LINE OF SAID SOUTH WEST 1/4 AND ALONG A LINE AT RIGHT ANGLES
THERETO; THENCE NORTH 00 DEGREES, 00 MINUTES, 00 SECONDS EAST, 280.11
FEET; THENCE NORTH 72 DEGREES, 34 MINUTES, 18 SECONDS WEST, 149.63
FEET; THENCE SOUTH 90 DEGREES, 00 MINUTES, 00 SECONDS WEST, 53.70
FEET; THENCE SOUTH 45 DEGREES, 00 MINUTES, 00 SECONDS WEST, 32.53
FEET; TO A POINT ON A LINE 484.69 FEET, AS MEASURED AT RIGHT ANGLES,
EAST OF AND PARALLEL WITH THE WEST LINE OF SAID SOUTH WEST 1/4, SAID
POINT BEING 679.18 FEET, AS MEASURED ALONG SAID PARALLEL LINE, NORTH OF
THE AFOREDESCRIBED POINT OF COMMENCING; THENCE NORTH 00 DEGREES, 00
MINUTES, 00 SECONDS EAST ALONG SAID LAST DESCRIBED PARALLEL LINE,
158.10 FEET; THENCE NORTH 39 DEGREES, 39 MINUTES, 24 SECONDS EAST,
27.09 FEET TO AN INTERSECTION WITH THE SOUTHERLY LINE OF HIGGINS ROAD,
BEING A LINE 50.00 FEET, AS MEASURED AT RIGHT ANGLES, SOUTHERLY OF AND
PARALLEL WITH THE CENTER LINE OF SAID ROAD; THENCE SOUTH 72 DEGREES,
34 MINUTES, 18 SECONDS EAST ALONG SAID LAST DESCRIBED SOUTHERLY LINE,
382.55 FEET TO AN INTERSECTION WITH THE WESTERLY RIGHT OF WAY LINE OF
THE MINNEAPOLIS, ST. PAUL AND SAULT STE. MARIE RAILROAD (FORMERLY THE
CHICAGO AND WISCONSIN RAILROAD); THENCE SOUTH 14 DEGREES, 51 MINUTES,
36 SECONDS EAST ALONG SAID LAST DESCRIBED WESTERLY LINE, 378.97 FEET;
THENCE SOUTH 90 DEGREES, 00 MINUTES, 00 SECONDS WEST, 260.00 FEET TO
THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

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PARCEL ^(A)

45,6,7,9

EASEMENT FOR THE BENEFIT OF OF PARCEL A AFORESAID AS CREATED BY EASEMENT AGREEMENT DATED NOVEMBER 7, 1984 AND RECORDED NOVEMBER 27, 1984 AS DOCUMENT 27350220 MADE BY AND BETWEEN LASALLE NATIONAL BANK AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 7, 1983 AND KNOWN AS TRUST NUMBER 107291 ("DEVELOPER"), LASALLE NATIONAL BANK AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 27, 1984 AND KNOWN AS TRUST NUMBER 108833 ("ADJOINING OWNER"), HOLIDAY INNS, INC., (EMBASSY SUITES DIVISION), A TENNESSEE CORPORATION ("HOLIDAY") AND LASALLE NATIONAL BANK AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 1, 1984 AND KNOWN AS TRUST NUMBER 108520 ("HOLIDAY'S ASSIGNEE") FOR INGRESS AND EGRESS OF VEHICULAR AND PEDESTRIAN TRAFFIC OVER AND UPON ALL ROADS, STREETS, SIDEWALKS, WALKWAYS AND OTHER RIGHTS OF WAY FROM TIME TO TIME DESIGNED OR INTENDED FOR VEHICULAR AND/OR PEDESTRIAN TRAFFIC NOW OR HEREAFTER INSTALLED OR CONSTRUCTED WITHIN ANY PART OF THE FOLLOWING DESCRIBED PARCEL OF LAND, TO WIT:

THAT PART OF THE SOUTHWEST 1/4 OF SECTION 33, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE EAST LINE OF MANNHEIM ROAD, BEING A LINE 33.0 FEET, AS MEASURED AT RIGHT ANGLES, EAST OF AND PARALLEL WITH THE WEST LINE OF SAID SOUTHWEST 1/4, WITH A LINE 50.0 FEET, AS MEASURED AT RIGHT ANGLES, NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTHWEST 1/4 (THE WEST LINE OF SAID SOUTHWEST 1/4 HAVING AN ASSUMED BEARING OF NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST FOR THIS LEGAL DESCRIPTION); THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG SAID EAST LINE OF MANNHEIM ROAD; 276.87 FEET TO AN INTERSECTION WITH THE SOUTH LINE OF LAND CONDEMNED FOR THE WIDENING OF MANNHEIM ROAD IN CASE NO. 65L7109, CIRCUIT COURT OF COOK COUNTY, ILLINOIS; THENCE NORTH 87 DEGREES 35 MINUTES 31 SECONDS EAST ALONG SAID LAST DESCRIBED SOUTH LINE, 11.01 FEET TO THE EAST LINE OF LAND CONDEMNED FOR THE WIDENING OF MANNHEIM ROAD IN SAID CASE NO. 65L7109; THENCE NORTH 00 DEGREES 13 MINUTES 18 SECONDS EAST ALONG SAID LAST DESCRIBED LINE, 248.60 FEET TO A POINT ON A LINE 575.5 FEET, AS MEASURED AT RIGHT ANGLES, NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTHWEST 1/4, SAID POINT BEING 45.0 FEET EAST OF THE INTERSECTION OF SAID LAST DESCRIBED PARALLEL LINE WITH THE WEST LINE OF SAID SOUTHWEST 1/4; THENCE NORTH 01 DEGREES 36 MINUTES 37 SECONDS EAST ALONG THE EAST LINE OF LAND CONDEMNED FOR THE WIDENING OF MANNHEIM ROAD IN CASE NO. 65L8179, CIRCUIT COURT OF COOK COUNTY, 45.86 FEET TO A POINT FOR A PLACE OF BEGINNING; THE FOLLOWING FOUR COURSES ARE ALONG THE EAST, SOUTHEAST OR SOUTHWESTERLY LINE OF LAND CONDEMNED FOR THE WIDENING OF HIGGINS ROAD AND MANNHEIM ROAD IN SAID CASE NO. 65L8179; THENCE NORTH 01 DEGREES 36 MINUTES 37 SECONDS EAST, 153.41 FEET; THENCE NORTH 03 DEGREES 40 MINUTES 18 SECONDS EAST, 187.38 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, 48.26 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY ALONG A CURVED LINE CONVEX NORTHWESTERLY, HAVING A RADIUS OF 50.0 FEET AND BEING TANGENT TO SAID LAST DESCRIBED LINE AT SAID LAST DESCRIBED POINT, AN ARC DISTANCE OF 93.75 FEET TO A POINT OF TANGENCY (THE CHORD OF SAID ARC BEARS NORTH 53 DEGREES 42 MINUTES 51 SECONDS EAST, 80.61 FEET); THENCE SOUTH 72 DEGREES 34 MINUTES 18 SECONDS EAST, 338.24 FEET TO AN INTERSECTION WITH A LINE 449.69 FEET, AS MEASURED AT RIGHT ANGLES, EAST OF AND PARALLEL WITH THE WEST LINE OF SAID SOUTHWEST 1/4; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST ALONG SAID LAST DESCRIBED PARALLEL

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LINE, 335.0 FEET; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST,
404.0 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS;

PARCEL 18

45, 6, 7 + 9

EASEMENT FOR THE BENEFIT OF PARCEL 1 AFORESAID AS SET FORTH IN THE
EASEMENT AGREEMENT DATED NOVEMBER 7, 1984 AND RECORDED NOVEMBER 27,
1984 AS DOCUMENT 27350220 MADE BY AND BETWEEN LASALLE NATIONAL BANK AS
TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 7, 1983 AND KNOWN AS
TRUST NUMBER 107291 ("DEVELOPER"), LASALLE NATIONAL BANK AS TRUSTEE
UNDER TRUST AGREEMENT DATED AUGUST 27, 1984 AND KNOWN AS TRUST NUMBER
108833 ("ADJOINING OWNER"), HOLIDAY INNS, INC. (EMBASSY SUITES
DIVISION), A TENNESSEE CORPORATION ("HOLIDAY") AND LASALLE NATIONAL
BANK AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 1, 1984 AND KNOWN AS
TRUST NUMBER 108520 ("HOLIDAY'S ASSIGNEE") AND AS CREATED BY
RECIPROCAL EASEMENT AGREEMENT DATED MARCH 1, 1985 AND RECORDED MAY 29,
1985 AS DOCUMENT 85038933 MADE BY AND BETWEEN LASALLE NATIONAL BANK AS
TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 7, 1983 AND KNOWN AS
TRUST NUMBER 107291 ("DEVELOPER"), LASALLE NATIONAL BANK AS TRUSTEE
UNDER TRUST AGREEMENT DATED AUGUST 27, 1984 AND KNOWN AS TRUST NUMBER
108833 ("ADJOINING OWNER") AND LASALLE NATIONAL BANK AS TRUSTEE UNDER
TRUST AGREEMENT DATED JUNE 1, 1984 AND KNOWN AS TRUST NUMBER 108520
("HOLIDAY'S ASSIGNEE") TO CONSTRUCT, INSTALL, USE, MAINTAIN, REPAIR
AND REPLACE SUCH WATER AND GAS MAINS, SANITARY SEWER AND STORM SEWER
LINES, LATERALS, FEEDERS AND BASINS, LIGHTING POLES AND APPARATUS,
ELECTRICAL CONDUITS AND TRANSFORMERS AND THE ACCESSORY FACILITIES
RELATING TO ALL OF THE FOREGOING AS SHALL BE NECESSARY OR REQUIRED BY
LAW TO SERVE PARCEL 1 AFORESAID WITH WATER, SEWER, GAS, ELECTRICAL,
TELEPHONE COMMUNICATION AND OTHER UTILITY SERVICES IN, UNDER, OVER AND
UPON A 20 FOOT STRIP CONTIGUOUS TO THE PERIMETER OF THE LAND
HERETOFORE DESCRIBED IN PARCEL 3 AFORESAID

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N.E. CORNER of MANNING & OLSON
EXHIBIT, IL

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