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## AMENDED AND RESTATED MORTGAGE

THIS MORTGAGE made this 22nd day of January, 1987 by and between HARRIS TRUST AND SAVINGS BANK, not personally, but as Trustee under Trust Agreement dated September 24, 1986 and known as Trust No. 43770 (the "Mortgagor"), and CITICORP REAL ESTATE, INC., a Delaware corporation ("Mortgagee").

### WITNESSETH:

WHEREAS, Mortgagor and Leo Burnett Company, a Delaware corporation and owner of the beneficial interest in Mortgagor ("LBC") have executed and delivered to Mortgagee that certain Mortgage ("Mortgage") dated October 1, 1986, to secure a note dated October 1, 1986 in the principal amount of Twenty Million and No/100 Dollars (\$20,000,000.00); and

WHEREAS, the Mortgage was amended pursuant to that certain Amendment to Mortgage dated November 4, 1986, to secure that certain Interest Rate Exchange Agreement ("Interest Rate Exchange Agreement") dated November 4, 1986, by and among Mortgagor, LBC and Citibank, N.A. ("Citibank"); and

WHEREAS, Mortgagor, LBC and Mortgagee have entered into a certain Construction and Term Loan Agreement of even date herewith (the "Loan Agreement"); and

WHEREAS, pursuant to the Loan Agreement, Mortgagor has concurrently herewith executed and delivered to Mortgagee a mortgage note bearing even date herewith (the "Note") in the principal sum of TWO HUNDRED THIRTY MILLION and NO/100 DOLLARS (\$230,000,000.00) made payable to the order of Mortgagee, in and by which Note, Mortgagor promises to pay the said principal sum or so much thereof as has been advanced, and interest at the rate and in installments as provided in the Note, with a final payment of the outstanding principal balance and accrued and unpaid interest being due on or before JANUARY 22, 1997, unless extended pursuant to the terms of the Loan Agreement, but in no event later than one hundred forty-four months after the Loan Opening Date (as defined in the Loan Agreement). All of said principal and interest is made payable as the holder of the Note may from time to time, in writing appoint, and in the absence of such appointment, then by bank wire to the Mortgagee's account at Citibank, N.A., New York; and

THIS INSTRUMENT PREPARED BY AND MAIL TO:

Virginia L. Aronson  
Sidley & Austin  
One First National Plaza  
Chicago, Illinois 60603

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Also Registered as Doc # 3586005

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WHEREAS, Mortgagor and LBC have concurrently herewith executed and delivered to Mortgagee a certain Amendment to Interest Rate Exchange Agreement of even date herewith among Mortgagor, LBC and Citibank, whereby Mortgagor and LBC promise to make such payments as may be required pursuant to the terms thereof; and

WHEREAS, Mortgagor and Mortgagee desire to amend and restate the Mortgage as provided herein.

NOW, THEREFORE, Mortgagor, in consideration of the debt evidenced by the Note and to secure the timely payment of both principal and interest in accordance with the terms and provisions of the Note and in accordance with the terms, provisions and limitations of this mortgage, and to secure the performance of the covenants and agreements contained herein and in the Note, the Interest Rate Exchange Agreement, as amended, the Loan Agreement and any other documents evidencing and securing the loan secured hereby (collectively the "Loan Documents") to be performed by Mortgagor, does by these presents CONVEY, MORTGAGE AND WARRANT <sup>beneficiary of mortgagor</sup> unto Mortgagee, its successors and assigns, the real estate described in Exhibit A attached hereto and made a part hereof and all of its estate, right, title and interest therein, situated, lying, and being in the City of Chicago, County of Cook and State of Illinois, which, with the property hereinafter described, is referred to as the "premises" or as the "Project";

TOGETHER with all easements, rights of way, and rights used in connection therewith or to provide a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto pertaining or belonging, and all underground and overhead passageways and licenses in connection therewith;

TOGETHER with all rents, issues and profits thereof for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily);

TOGETHER with any and all buildings and improvements now or hereafter erected on the premises, with the exception of improvements to be demolished by Mortgagor, including, but not limited to, the fixtures, attachments, appliances, equipment, machinery, and other articles attached to said buildings and improvements and all tangible personal property owned by Mortgagor now or any time hereafter located on or at the premises and used in connection with the operation of the building, including, but not limited to, all goods, machinery, tools, equipment (including fire sprinklers and alarm systems, air conditioning, heating, boilers, refrigerating, electronic monitoring, water, lighting, power, sanitation, waste removal, entertainment, recreational, window or structural cleaning rigs, maintenance and all other equipment of every kind), lobby and all other indoor or outdoor furniture (including tables, chairs, planters, desks, sofas, shelves, lockers and cabinets), furnishings, appliances, inventory, rugs, carpets and other floor coverings, draperies, drapery rods and brackets, awnings, venetian blinds, partitions, chandeliers and other lighting fixtures, and all other fixtures, apparatus, equipment, furniture, furnishings, and articles used in connection with the operation of an office building on the premises, and excluding personal property used in the operation of the advertising

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business of LBC, it being understood that the enumeration of any specific articles of property shall in no wise result in or be held to exclude any items of property not specifically mentioned;

TOGETHER with all the estate, interest, right, title, other claim or demand, including claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Mortgagor now has or may hereinafter acquire in the premises, and any and all awards made for the taking of eminent domain, or by any proceedings or purchase in lieu thereof, or of the whole or any part of the premises, including without limitation any awards resulting from the change of grade of streets and awards for severance damages.

All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared to form a part and parcel of the real estate and to be appropriated to the use of the real estate, and shall for the purposes of this mortgage be deemed to be real estate and conveyed and mortgaged hereby.

Mortgagor covenants that it is lawfully seized of the premises, that the same are unencumbered except for the Permitted Exceptions (as defined in the Loan Agreement), and that it has good right, full power and lawful authority to convey and mortgage the same, and that it will warrant and forever defend said premises and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

TO HAVE AND TO HOLD the premises unto the said Mortgagee, its successors and assigns, forever, for the purposes and uses herein set forth.

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

Maintenance, Repair and Restoration of Improvements, Payment of Prior Liens, Etc.

1. Mortgagor shall (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the premises which may become damaged or be destroyed (with the exception of the improvements to be demolished by Mortgagor); (b) keep the premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien not expressly subordinated to the lien hereof; provided, however, that Mortgagor shall have the right to contest in good faith and with reasonable diligence the validity of any such lien or claim upon furnishing (i) to the title insurance company approved by Mortgagee such security or indemnity, subject to the approval of Mortgagee, as it may require to induce said title insurance company to issue its title insurance commitments or its mortgage title insurance policies insuring against all such claims or liens, or (ii) to Mortgagee such other security with respect to such claim as may be acceptable to Mortgagee; Mortgagee agrees that it will not refuse to approve a title indemnity agreement with the issuer of the mortgage title insurance policy provided: the matter giving rise to the title indemnity is one which can be completely cured by the payment of a sum of

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money; a legitimate dispute exists as to the payment of said sum of money; the matter is one which is customarily insured over by a title insurer in this fashion; the title insurer is prepared to issue its policy free and clear of such matter or to "endorse over" such matter; and provided further that Mortgagor deposits or causes to be deposited with the title insurer money, a letter or letters of credit, undertakings, or security sufficient to induce the title insurer to deliver to the Mortgagee a written instrument wherein the title insurer agrees that in the event of receipt of notice from the Mortgagee of the existence of an event of default under any of the Loan Documents, the title insurer will, irrespective of the sufficiency or insufficiency, liquidity, or collectibility of the deposit aforementioned, pay upon the written direction of the Mortgagee such sums of money as are necessary in order to obtain the discharge and release of any claim or matter on account of which or with respect to which the title indemnity shall have been created, and notwithstanding either the existence of any action pending to contest the validity of the claim or matter insured against by the title insurer, or the right of any person, firm or corporation to commence any action to contest the validity of such claim or matter; (c) pay when due any indebtedness which may be secured by a lien or charge on the premises on a parity with or superior to the lien hereof and comply with all requirements of all Loan Documents evidencing or securing such indebtedness, and, upon request, exhibit satisfactory evidence of the discharge of such prior lien to Mortgagee; (d) complete in accordance with the terms of the Loan Agreement any building or buildings or any improvements now or at any time in the process of erection upon the premises and any renovation of existing buildings, including but not limited to the Construction (as defined in the Loan Agreement); (e) comply with all requirements of law, municipal ordinances or restrictions of record with respect to the premises and the use thereof; (f) initiate or acquiesce in no zoning variation or reclassification without Mortgagee's written consent; (g) pay each item of indebtedness secured by this mortgage when due according to the terms hereof or of the Note; and (h) suffer or permit no change in the general nature of the occupancy of the premises without Mortgagee's written consent.

#### Payment of Taxes

2. Mortgagor shall pay before any penalty attaches all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges and other charges against the premises when due and shall, upon written request, furnish to Mortgagee duplicate receipts therefor. To prevent default hereunder, Mortgagor shall pay in full under protest, in the manner provided by statute, any tax or assessment which Mortgagor may decide to contest.

#### Tax Deposits

3. Mortgagor covenants and agrees to deposit at such place as Mortgagee may from time to time in writing appoint, and in the absence of such appointment, then at the office of Citicorp Real Estate, Inc. in Chicago, Illinois, a sum equal to one-twelfth of the last total annual taxes and assessments for the last ascertainable year (general and special) on the premises (unless said taxes are based upon assessments which exclude the improvements or any part thereof now constructed, or to be constructed, in which event

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the amount of such deposits shall be based upon Mortgagee's reasonable estimate as to the amount of taxes and assessments to be levied and assessed). Mortgagor, concurrently with the first monthly deposit of taxes required hereunder, will also deposit with Mortgagee an amount, based upon the taxes and assessments so ascertainable or so estimated by Mortgagee, as the case may be, for taxes and assessments on said premises, so that when combined with the monthly deposit and future monthly deposits, the deposited funds will be sufficient to pay taxes when due plus a reserve amount as deemed required by Mortgagee. Such deposits are to be held without any allowance of interest and are to be used for the payment of taxes and assessments (general and special) on the premises next due and payable when they become due. If the funds so deposited are insufficient to pay any such taxes or assessments (general and special) for any year when the same shall become due and payable, Mortgagor shall, within ten (10) days after receipt of demand therefor from Mortgagee, deposit such additional funds as may be necessary to pay such taxes and assessments (general and special) in full. If the funds so deposited exceed the amount required to pay such taxes and assessments (general and special) for any year, the excess shall be applied toward a subsequent deposit or deposits due from Mortgagor. Notwithstanding anything to the contrary herein, Mortgagor shall not be required to make such deposits with Lender for real estate taxes if (a) there are Reserves allocated in the Budget for real estate taxes, or (b) the City of Chicago waives its requirements under the Redevelopment Agreement concerning deposits and further provided there has been no default hereunder.

#### Insurance and Premium Deposits

4. (a) Mortgagor shall maintain casualty, liability and other policies of insurance relating to the premises as required pursuant to Section 3.1(e) of the Loan Agreement. All policies of insurance to be furnished hereunder shall be in forms, companies and amounts satisfactory to Mortgagee, with mortgagee clauses attached to all policies in favor of and in form satisfactory to Mortgagee, including a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without thirty (30) days prior written notice to Mortgagee. Mortgagor shall deliver all policies, including additional and renewal policies, or certified copies of all such policies, together with evidence of payment of premiums thereon, to Mortgagee, and in the case of all insurance about to expire, shall deliver renewal policies not less than thirty (30) days prior to their respective dates of expiration.

Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon under a standard, non-contributory mortgagee clause acceptable to Mortgagee. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee the original policy or policies of such insurance.

Within ninety (90) days following the end of each fiscal year of Mortgagor, at the request of Mortgagee, Mortgagor agrees to furnish evidence of replacement costs, without cost to Mortgagee, such as are regularly and ordinarily made by insurance companies to determine the then replacement

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cost of the building(s) and other improvements on the premises.

(b) Mortgagor covenants and agrees to deposit at such place as Mortgagee may from time to time in writing appoint, and in the absence of such appointment, then at the office of Citicorp Real Estate, Inc. in Chicago, Illinois, an installment of the premium or premiums that will become due and payable to renew the insurance as required in Section 4(a) hereof. Each of such installments shall be in an amount which, by the payment of approximately equal installments, will result in there accumulating in the hands of the depository a sufficient amount to pay renewal premiums upon such policies of insurance, at least one month prior to the expiration date or dates of the policy or policies to be renewed; such deposits to be held without any allowance of interest and to be used for renewal of such insurance policies. If the funds so deposited are insufficient to pay all premiums for such renewals, Mortgagor shall within ten (10) days after receipt of demand therefor from Mortgagee, deposit such additional funds as may be necessary to pay such premiums. If the funds so deposited exceed the amount required to pay such premiums, the excess shall be applied toward a subsequent deposit or deposits due from Mortgagor. Notwithstanding anything to the contrary herein, Mortgagor shall not be required to make such deposits with Lender for premiums if (a) there are sufficient Reserves allocated in the Budget for such premiums, or (b) the City of Chicago waives its requirements under the Redevelopment Agreement concerning deposits and provided there has been no default hereunder.

#### Mortgagee's Interest in and Use of Deposits

5. In the event of a default in any of the provisions contained in this mortgage, the Note, or the Loan Documents, Mortgagee may, at its option, without being required to do so, apply any money at the time on deposit pursuant to any provision of this mortgage, as any one or more of the same may be applicable, on any of Mortgagor's obligations herein or in the Note or Loan Documents contained, in such order and manner as Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the premises. Such deposits are hereby pledged as additional security for the indebtedness hereunder and shall be held to be irrevocably applied by the depository for the purposes for which made hereunder and shall not be subject to the direction or control of Mortgagor; provided, however, that neither Mortgagee nor said depository shall be liable for any failure to apply to the payment of taxes and assessments or insurance premiums any amount so deposited unless Mortgagor, while not in default hereunder, shall have requested said depository in writing to make application of such funds to the payment of the particular taxes or assessments or the payment of the particular insurance premiums as the case may be for payment of which they were deposited, accompanied by the bills for such taxes and assessments or insurance premiums.

#### Adjustment of Losses with Insurer and Application of Proceeds of Insurance

6. In case of loss, any insurance claim filed for more than \$500,000 shall be adjusted and settled by Mortgagee

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and any claim filed for \$500,000 or less shall be adjusted and settled by Mortgagor. Mortgagee is at all times authorized to collect and receipt for any insurance money subject to the terms of the Loan Agreement. Such insurance proceeds shall be applied in accordance with Article 13 of the Loan Agreement. If Mortgagee can and does elect to apply such proceeds in payment of reduction of the indebtedness secured hereby, whether due or not, and if the same are insufficient to pay such amount in full, then Mortgagee may at its option declare the balance remaining unpaid on the Note and this mortgage to be due and payable forthwith and avail itself of any of the remedies provided herein or in the Note as in the case of a default. In case Mortgagee does not elect to apply the insurance proceeds to the indebtedness as set forth in the preceding sentence, such insurance proceeds shall be used to reimburse Mortgagor for the cost of rebuilding or restoration of the premises, subject to Section 13.2 of the Loan Agreement. The premises shall be so restored or rebuilt as to be of at least equal value and quality and substantially the same character as the premises were prior to such damage or destruction (if the Construction was completed prior to such damage or destruction) or as the premises would have been after completion of the Construction (if the Construction was not completed prior to the damage or destruction). In the event Mortgagee elects to reimburse Mortgagor out of insurance proceeds, such proceeds shall be made available, from time to time, upon Mortgagee's being furnished with satisfactory evidence of the estimated cost of completion thereof and with such architect's certificates, waivers of lien, contractors' sworn statements and other evidence of cost and of payments as Mortgagee may require and approve and upon Mortgagor being otherwise in compliance with the provisions of the Loan Agreement applicable to disbursement of loan proceeds. If the estimated cost of the work exceeds ten per cent (10%) of the original principal amount of the indebtedness secured hereby, Mortgagee shall also be furnished with all plans and specifications for such rebuilding or restoration as the Mortgagee may require and approve. All payments made prior to final completion of the work shall be subject to all limitations of disbursements contained in the Loan Agreement that would have applied if such disbursements were to be made for the Construction. The undisbursed balance of insurance proceeds, together with undisbursed proceeds, if any, of the Loan allocated for the cost of Construction, and available contingencies under the Loan Agreement, shall at all times be sufficient to pay for the cost of completion of the Construction free and clear of liens and if such proceeds are insufficient, Mortgagor shall deposit the amount of such deficiency with Mortgagee prior to the disbursement of any proceeds.

In case of loss after foreclosure proceedings have been instituted, the proceeds of any such insurance policy or policies, if not applied as aforesaid in rebuilding or restoring the buildings or improvements, shall be applied in payment or reduction of the indebtedness secured hereby or in payment or reduction of the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid to the owner of the equity of redemption if it shall then be entitled to the same or as the court may direct. In case of the foreclosure of this mortgage, the court in its decree may provide that the mortgagee's clause attached to each of said insurance policies may be cancelled and that the decree creditor may cause a new loss clause to be attached to each

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of said policies making the loss thereunder payable to said decree creditor; and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statute in such case made and provided, then and in every such case, each successive redelector may cause the preceding loss clause attached to each insurance policy to be cancelled and a new loss clause to be attached thereto, making the loss thereunder payable to such redelector. In the event of foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as Mortgagee may deem advisable, to cause the interest of such purchaser to be protected by any of the said insurance policies.

Stamp Tax

7. If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over Mortgagor, any tax is due or becomes due in respect of the issuance of the Note, or recording of this mortgage, Mortgagor covenants and agrees to pay such tax in the manner required by any such law. Mortgagor further covenants to hold harmless and agrees to indemnify Mortgagee, its successors or assigns, against any liability incurred by reason of the imposition of any tax on the issuance of the Note, or recording of this mortgage.

Prepayment Privilege

8. Mortgagor shall have the privilege of making prepayment on the principal of the Note in whole or in part, in accordance with the terms and conditions set forth in the Note.

Effect of Extensions of Time

9. If the payment of the indebtedness secured by this mortgage or any part thereof be extended or varied or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in the premises, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse, if any, against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation or release.

Effect of Changes in Laws Regarding Taxation

10. In the event of the enactment after this date of any law of the State of Illinois deducting from the value of land for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the property, or the manner of collection of taxes, so as to adversely affect this mortgage or the debt secured hereby or the Holders, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor; provided, however, that if in the opinion of counsel for Mortgagee (a) it might be unlawful to

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require Mortgagor to make such payment or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable ninety (90) days from the giving of such notice.

## Mortgagee's Performance of Defaulted Acts; Subrogation

11. In case Mortgagor fails to perform any of its covenants and agreements herein or in the Note or any Loan Documents, Mortgagee may, but need not, make any payment or perform any act herein or therein required of Mortgagor, in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the premises or contest any tax or assessment. Unless an Event of Default exists hereunder, Mortgagee agrees to give Mortgagor reasonable notice before so acting. All moneys paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other moneys advanced by Mortgagee to protect the premises and the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the Post Maturity Rate (as such term is defined in Section 28 hereof). Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor. Should the proceeds of the Note or any part thereof, or any amount paid out or advanced hereunder by Mortgagee, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the premises or any part thereof on a parity with or prior or superior to the lien hereof, then as additional security hereunder, the Mortgagee shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, however remote, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

## Mortgagee's Reliance on Tax Bills, Etc.

12. Mortgagee in making any payment hereby authorized: (a) relating to taxes and assessments may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so, after consulting with Mortgagor as to the validity or amount of the claim for lien, unless an Event of Default exists hereunder in which event Mortgagee may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

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## Acceleration of Indebtedness in Case of Default

13. Any of the following events shall be deemed an Event of Default hereunder:

(a) default shall be made with respect to covenants, agreements and obligations of Mortgagor hereunder involving the payment of money and shall continue for five (5) business days in case of default in the payment of interest or principal due under the Note or ten (10) days after written notice thereof in case of other unscheduled monetary obligations; or

(b) default shall be made, with respect to non-monetary covenants, agreements and obligations, of Mortgagor hereunder and shall continue uncured for twenty (20) days after notice thereof from Mortgagee; provided, however, the time limit for curing such non-monetary covenant, agreements and obligations shall be extended for a period of not more than an additional thirty (30) days, if the ability to cure the subject default within the specified time limit is not within the reasonable control of Borrower, and provided Borrower promptly and in good faith undertakes the curing of such default and diligently thereafter in good faith pursues the curing thereof to completion, to be extended for an additional period not to exceed thirty (30) days if Mortgagor has met the above conditions and can also prove that the lien of this Mortgage and the security given under any of the Loan Documents shall not be impaired thereby; or

(c) any default shall have occurred under the Note, Loan Agreement, or any Loan Documents and the default shall not have been cured within the applicable grace period provided therefor, if any; or

(d) Mortgagor or LBC shall file a petition in voluntary bankruptcy or under any provision of the Federal Bankruptcy Act or any similar law, state or federal, whether now or hereafter existing, or an answer admitting insolvency or inability to pay its debts or fail to obtain a vacation or stay of involuntary proceeding within ninety (90) days, as hereinafter provided; or

(e) Mortgagor or LBC shall be adjudicated a bankrupt, or a trustee or a receiver shall be appointed for Mortgagor or any Affiliated Person or for all of its property or the major part thereof in any involuntary proceeding, or any court shall have taken jurisdiction of the property of Mortgagor or any Affiliated Person or the major part thereof in any involuntary proceeding for the reorganization, dissolution, liquidation or winding up of Mortgagor or any Affiliated Person, and such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within ninety (90) days; or

(f) Mortgagor or LBC 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 trustee or liquidator of all of its property or the major part thereof; or

(g) Any unpermitted transfer of title described in Section 31 hereof shall occur, except that with respect

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to any unpermitted transfer of title which is an involuntary transfer, Mortgagor shall have thirty (30) days from the date of the transfer to cure such default.

Upon the occurrence of any Event of Default hereunder, the whole of said principal sum hereby secured shall, at once, at the option of Mortgagee, become immediately due and payable, together with accrued interest thereon, without any presentment, demand, protest or notice of any kind to Mortgagor, except as otherwise required herein or in the Loan Documents.

Foreclosure; Expense of Litigation; Indemnification

14. If an Event of Default has occurred hereunder, or when the indebtedness hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof.

It is further agreed that if default be made in the payment of any part of the secured indebtedness, as an alternative to the right of foreclosure for the full secured indebtedness after acceleration thereof, Mortgagee shall have the right to institute partial foreclosure proceedings with respect to the portion of said indebtedness so in default, as if under a full foreclosure, and without declaring the entire secured indebtedness due (such proceeding being hereinafter referred to as a "partial foreclosure"), and provided that if foreclosure sale is made because of default of a part of the secured indebtedness, such sale may be made subject to the continuing lien of this mortgage for the unmatured part of the secured indebtedness; and it is agreed that such sale pursuant to a partial foreclosure, if so made, shall not in any manner affect the unmatured part of the secured indebtedness, but as to such unmatured part this mortgage and the lien thereof shall remain in full force and effect just as though no foreclosure sale had been made under the provisions of this Section. Notwithstanding the filing of any partial foreclosure or entry of a decree of sale therein, Mortgagee may elect at any time prior to a foreclosure sale pursuant to such decree, to discontinue such partial foreclosure and to accelerate the secured indebtedness by reason of any uncured default or defaults upon which such partial foreclosure was predicated or by reason of any other defaults, and proceed with full foreclosure proceedings. It is further agreed that several foreclosure sales may be made pursuant to partial foreclosure without exhausting the right of full or partial foreclosure sale for any unmatured part of the secured indebtedness, it being the purpose to provide for a partial foreclosure sale of the secured indebtedness for any matured portion of the secured indebtedness without exhausting the power to foreclose and to sell the premises pursuant to any such partial foreclosure for any other part of the secured indebtedness whether matured at the time or subsequently maturing, and without exhausting any right of acceleration and full foreclosure.

In connection with any foreclosure of the lien hereof or any action to enforce any other remedy of Mortgagee under this mortgage or the Note, Mortgagor agrees to pay all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees,

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appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and similar data and assurances with respect to title 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 and the right to such fees and expenses shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment. All expenditures and expenses of the nature in this Section mentioned, and such reasonable expenses and fees as may be incurred in the protection of the premises and the maintenance of the lien of this mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this mortgage, the Note or the premises (including without limitation the occupancy thereof or any construction work performed thereon), including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding whether or not an action is actually commenced (if a default has actually occurred), shall be immediately due and payable by Mortgagor, with interest thereon at the Post Maturity Rate (as hereinafter defined) and shall be secured by this mortgage.

Without limiting the liability of Mortgagor as set forth above, Mortgagor shall indemnify Mortgagee and hold it harmless from and against all claims, injury, damage, loss and liability of any and every kind to any persons or property by reason of (i) the Construction (as defined in the Loan Agreement) or other work contemplated by the Loan Agreement; (ii) the operation or maintenance of the premises; or (iii) any other action or inaction by, or matter which is the responsibility of, Mortgagor, its agents or employees.

#### Application of Proceeds of Foreclosure Sale

15. The proceeds of any foreclosure sale of the premises shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings including all such items as are mentioned in the preceding Section hereof; second, all other items which under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the Note; and fourth, any overplus to Mortgagor, its successors or assigns, as their rights may appear.

#### Appointment of Receiver

16. Upon, or at any time after the filing of a complaint to foreclose this mortgage, the court in which such complaint is filed may appoint a receiver of the premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the premises or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder or any Holders may be appointed as such receiver. Such receiver shall have

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power: (a) to collect the rents, issues and profits of the premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits; (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 hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a 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 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 mortgage indebtedness, 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: (a) 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; and (b) the deficiency in case of a sale and deficiency.

Assignment of Rents and Leases

17.(a) To further secure the indebtedness secured hereby, Mortgagor hereby sells, assigns and transfers unto Mortgagee all the rents, issues and profits now due and which may hereafter become due under or by virtue of any lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the premises or any part thereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by Mortgagee under the powers herein granted, it being the intention hereby to establish an absolute transfer and assignment of all such leases and agreements, and all the avails thereunder, to Mortgagee and not merely the passing of a security interest. Mortgagor hereby irrevocably appoints Mortgagee its true and lawful attorney in its name and stead (with or without taking possession of the premises as provided in Section 19 hereof) to (after the occurrence of an Event of Default) rent, lease or let all or any portion of the premises to any party or parties at such rental and upon such terms as said Mortgagee shall, in its discretion, determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due or that may hereafter become due under each and every of the leases and agreements, written or verbal, or other tenancy existing, or which may hereafter exist on the premises, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Mortgagee would have upon taking possession pursuant to the provisions of Section 21 hereof.

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(b) Mortgagor represents and agrees that no rent has been or will be paid by any person in possession of any portion of the premises for more than one installment in advance and that, except as authorized in the Loan Agreement, the payment of none of the rents to accrue for any portion of the said premises will be waived, released, reduced, discounted or otherwise discharged or compromised by Mortgagor, except as may be approved in writing by Mortgagee. As between Mortgagor and Mortgagee, Mortgagor waives any rights of set off against any person in possession of any portion of the premises. If any lease provides for the abatement of rent during repair of the premises demised thereunder by reason of fire or other casualty, Mortgagor shall furnish to Mortgagee rental insurance, the policies to be in amount and form and written by such insurance companies as shall be satisfactory to Mortgagee. Mortgagor agrees that it will not further assign any of the rents or profits of the premises.

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

(d) Mortgagor further agrees to assign and transfer to Mortgagee all future leases upon all or any part of the premises and to execute and deliver, at the request of Mortgagee, all such further assurances and assignments in the premises as Mortgagee shall from time to time reasonably require.

(e) Although it is the intention of the parties that the assignment contained in this Section 17 shall be a present absolute assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Mortgagee shall not exercise any of the rights or powers conferred upon it by this Section until an Event of Default shall have occurred under this mortgage, the Note, the Loan Agreement, the Loan Documents or any other instrument evidencing or securing the indebtedness secured hereby or delivered pursuant to the Loan Agreement.

#### Observance of Lease Assignment

18. Mortgagor expressly covenants and agrees that if the lessee or any of the lessees under any lease or leases assigned and transferred unto Mortgagee under Section 17 herein shall fail to perform and fulfill any term, covenant, condition or provision in said lease or leases, or any of them, on its or their part to be performed or fulfilled, at the times and in the manner in said lease or leases provided, and such action materially adversely affects the value of the premises, or Mortgagor, as lessor therein, shall fail to perform and fulfill any material term, covenant, condition or provision in any lease or leases assigned and transferred unto Mortgagee under Section 17, or any of them, on its part to be performed or fulfilled, at the times and in the manner in said lease or leases provided, or if Mortgagor shall suffer or permit to occur any breach or default by Mortgagor under the provisions of any assignment of any lease or leases of the premises given as additional security for the payment of the indebtedness secured hereby and such default shall not have been

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cured within the applicable grace period provided therefor, if any, then and in any such event, such breach or default shall constitute a default hereunder and at the option of Mortgagee, and after twenty (20) days notice to Mortgagor, all unpaid indebtedness secured by this mortgage shall, notwithstanding anything in the Note or in this mortgage to the contrary, become due and payable as in the case of other defaults. As to failure to perform by a lessee under any of such leases, which failure materially adversely affects the value of the premises, or Mortgagor, as lessor therein, Mortgagor's cure period as provided hereinabove shall be extended if Mortgagor has diligently proceeded to enforce such lease, provided, however in no event shall such cure period exceed ninety (90) days.

Mortgagee's Right of Possession in Case of Default

19. In any case in which under the provisions of this mortgage Mortgagee has a right to institute foreclosure proceedings, whether before or after the whole principal sum secured hereby is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, Mortgagor shall forthwith, upon demand of Mortgagee, surrender to Mortgagee and Mortgagee shall be entitled to take actual possession of, the premises or any part thereof, personally, or by its agent or attorneys. In such event Mortgagee in its discretion may, with or without force and with or without process of law, as permitted by law, enter upon and take and maintain possession of all or any part of said premises, together with all documents, books, records, papers and accounts of Mortgagor or then owner of the premises relating thereto, and may exclude Mortgagor, its agents or servants, wholly therefrom and may, as attorney in fact or agent of Mortgagor, or in its own name as Mortgagee and under the powers herein granted, hold, operate, manage and control the premises and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, and with full power: (a) to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same; (b) to elect to disaffirm any lease or sublease which is then subordinate to the lien hereof; (c) 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 hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a 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 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 mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; (d) to enter into any management, leasing or brokerage agreements covering the premises; (e) to

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make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the premises as to it may seem judicious; (f) to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; and (g) to receive all of such avails, rents, issues and profits; hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Mortgagor.

Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases. Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur by reason of its performance of any action authorized under this Section 19 and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements of Mortgagor, provided, however, that once Mortgagee has obtained possession and control of the Project, Mortgagor shall not be required to indemnify and hold Mortgagee harmless of and from any liability, loss or damage which may arise as a consequence of Mortgagee's negligence or misconduct. Should Mortgagee incur any such liability, loss or damage, by its performance or nonperformance of actions authorized by this Section, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest on any such amount at the Post Maturity Rate (as that term is hereinafter defined) shall be secured hereby, and Mortgagor shall reimburse Mortgagee therefor immediately upon demand.

#### Application of Income Received by Mortgagee

20. Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it by Section 17 and Section 19 hereof, shall have full power to use and apply the avails, rents, issues and profits of the premises to the payment of or on account of the following, in such order as Mortgagee may determine:

(a) to the payment of the operating expenses of the premises, including cost of management and leasing thereof (which shall include reasonable compensation to Mortgagee and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

(b) to the payment of taxes and special assessments now due or which may hereafter become due on the premises;

(c) to the payment of all maintenance, repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of the premises, and of placing the premises

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in such condition as will, in the judgment of Mortgagee, make it readily rentable;

(d) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale; and

(e) the excess, if any, to Mortgagor.

Mortgagee's Right of Inspection

21. Mortgagee shall have the right to inspect the premises at all reasonable times upon reasonable notice to Mortgagor and access thereto shall be permitted for that purpose.

Condemnation

22. A. Mortgagor hereby assigns, transfers and sets over unto Mortgagee its entire interest in the proceeds (the "Condemnation Proceeds") of any award or any claim for damages for any of the premises taken or damaged under the power of eminent domain or by condemnation or any transaction in lieu of condemnation ("Condemnation"). Mortgagee shall have the right, at its option, to apply the Condemnation Proceeds upon or in reduction of the indebtedness secured hereby, whether due or not, and if the same are insufficient to pay such amount in full, Mortgagee may at its option declare the balance remaining unpaid on the Note and this mortgage to be due and payable forthwith and avail itself of any of the remedies provided herein or in the Note as in the case of a default. If the Condemnation Proceeds are used to rebuild or restore the buildings and other improvements, the Condemnation Proceeds shall be paid out in the same manner as is provided in Section 6 hereof for the payment of insurance proceeds toward the cost of rebuilding or restoration of such buildings and other improvements. Any surplus which may remain out of the Condemnation Proceeds after payment of such cost of rebuilding or restoration shall, at the option of Mortgagee, be applied on account of the indebtedness secured hereby or be paid to any other party entitled thereto.

B. Notwithstanding anything contained herein to the contrary, it is hereby understood, covenanted and agreed that the Mortgagee, at the request of Mortgagor, shall make the proceeds available for the restoration of the improvements subject to the following conditions:

(i) That Mortgagor is not then in default under any of the terms, covenants and conditions hereof or under any of the Loan Documents;

(ii) That the Mortgagee shall first be given satisfactory proof that such improvements have been restored or that by the expenditure of such money will be restored, free and clear of all liens except as to the lien of this Mortgage, and such restoration shall be in compliance with all then applicable laws and ordinances.

(iii) That if the proceeds of condemnation (and the undisbursed available Loan proceeds for Construction, if the condemnation occurred prior to completion of Construction) are, in the Mort-

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gagee' reasonable judgment, insufficient to (i) maintain the Loan in balance in accordance with the provisions of Article 8 of the Loan Agreement, or (ii) complete the repair and restoration of the buildings, structures and other improvements on the Project if the damage occurs thereto after the Construction is completed, and defray for the re-leasing period all anticipated operating deficits including, but not limited to, leasing commissions, all as determined by the Mortgagee, then Mortgagor shall promptly deposit with the Mortgagee the amount of such insufficiency.

(iv) That the Mortgagee shall be given satisfactory proof that such improvements, when fully restored, will constitute an economically viable project in the reasonable judgment of the Mortgagee.

(v) The Mortgagee shall have the right (but not the obligation) to settle, collect and retain such proceeds, and after deduction of all expenses of collection and settlement, including attorneys' fees and expenses, to release the same to Mortgagor provided that Mortgagor shall expeditiously repair and restore the portion of the Project in question, including completion of the Construction if such condemnation shall have occurred prior to completion, so that the Project will be completed in accordance with modified Plans and Specifications, such modification to be subject to Mortgagee's approval.

(vi) If such condemnation shall have occurred on the Project during the Construction period, and the Mortgagee elects to permit restoration, then all proceeds of condemnation and funds held by the Mortgagee shall first be fully disbursed before the disbursement of any further proceeds of the Loan.

Any request by Mortgagor for a disbursement by the Mortgagee of condemnation proceeds and funds deposited by Mortgagor pursuant to Section B(iii) above shall be treated by the Mortgagee as if such request were for an advance of the Loan, and the disbursement thereof shall be in the manner and conditioned upon Mortgagor's compliance with and satisfaction of the same conditions precedent as would be applicable under the Loan Agreement for an advance of the Loan.

## Release

23. If Mortgagor shall fully pay all principal and interest on the Note, and all other indebtedness secured hereby and comply with all of the other terms and provisions hereof to be performed and complied with by Mortgagor, then this mortgage and the other Loan Documents shall be released. Mortgagee shall release this mortgage and the lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby and payment of any filing fee in connection with such release. Mortgagee acknowledges that Mortgagor intends to sell a portion of the Premises defined in the Loan Agreement as the Hotel Land. Mortgagee agrees to issue a release of the lien of this mortgage on the Hotel

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Land provided that the proceeds from the sale of the Hotel Land are applied as provided for in the Loan Agreement.

## Giving of Notice

24. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given if hand delivered or if mailed (effective three days after deposit thereof at any main or branch United States Post Office) by United States registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Mortgagor:

Leo Burnett Company, Inc.  
Prudential Plaza  
Chicago, Illinois 60601  
Attn: Michael E. Breslin  
John C. Kraft

with a copy to:

Coffield, Ungaretti, Harris & Slavin  
Suite 3500  
Three First National Plaza  
Chicago, Illinois 60602  
Attn: Richard Ungaretti

and a copy to:

The John Buck Company  
200 S. Wacker Drive  
Chicago, Illinois 60606  
Attn: John Iberle

If to Mortgagee:

Citicorp Real Estate, Inc.  
200 South Wacker Drive  
Chicago, Illinois 60606  
Attn: Regional Manager

with a copy to:

Sidley & Austin  
One First National Plaza  
Chicago, Illinois 60603  
Attn: Virginia L. Aronson

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice.

## Remedies Not Exclusive

25. Mortgagee shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this mortgage or other agreement or any laws now or hereafter in force, notwithstanding some or all of the said indebtedness and obligations secured hereby may now or hereafter be

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otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this mortgage nor its enforcement, whether by court action or other powers herein contained, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this mortgage and any other remedy herein or by law provided or permitted, but each 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. Every power or remedy given hereby to Mortgagee or to which it may be otherwise entitled, may be exercised, concurrently or independently, from time to time, and as often as it may be deemed expedient by Mortgagee and Mortgagee may pursue inconsistent remedies. No waiver of any default of the Mortgagor hereunder shall be implied from any omission by the Mortgagee or Holders to take any action on account of such default if such default persists or be repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. No acceptance of any payment or any one or more delinquent installments which does not include interest at the penalty or Post Maturity Rate from the date of delinquency, together with any required late charge, shall constitute a waiver of the right of Mortgagee or Holders at any time thereafter to demand and collect payment of interest at such Post Maturity or penalty rate or of late charges, if any.

#### Waiver of Statutory Rights

26. To the extent permitted by law, Mortgagor hereby agrees that it shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this mortgage, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the premises sold as an entirety. Mortgagor hereby waives any and all rights of redemption from sale under any order or decree of foreclosure of this mortgage on its behalf and on behalf of each and every person, except decree or judgment creditors of Mortgagor, acquiring any interest in or title to the premises subsequent to the date of this mortgage. The foregoing waiver of right of redemption is made pursuant to Ill. Rev. Stat. ch. 77, § 18a (1981).

#### Furnishing of Financial Statements to Mortgagee

27. Mortgagor covenants and agrees to furnish to Mortgagee financial statements in accordance with the terms of the Loan Agreement.

#### Post Maturity Rate

28. "Post Maturity Rate" as used herein shall mean interest at the Post Maturity Rate defined in the Note.

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## Binding on Successors and Assigns

29. This mortgage and all provisions hereof, shall be binding upon Mortgagor and all persons claiming under or through Mortgagor, and shall inure to the benefit of the Holders from time to time and of the successors and assigns of the Mortgagee.

## Definitions of "Mortgagor," "Mortgagee" and "Affiliated Persons"

30. The word "Mortgagor" when used herein shall include: (a) the original Mortgagor named in the preambles hereof; (b) said original Mortgagor's successors and assigns; and (c) all owners from time to time of the premises. The words "Holders" and "Mortgagee" when used herein shall include all successors and assigns of the original Holders and Mortgagee identified in the preambles hereof.

## Maintenance of Mortgagor's and Affiliated Persons' Interests

31. In determining whether or not to make the loan secured hereby, Mortgagee examined the credit-worthiness of LBC, owner of the beneficial interest in Mortgagor, found it acceptable and relied and continues to rely upon same as the means of repayment of the loan. Mortgagor was ably represented by a licensed attorney at law in the negotiation and documentation of the loan secured hereby and bargained at arm's length and without duress of any kind for all of the terms and conditions of the loan, including this provision. Mortgagor recognizes that Mortgagee is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than the original Mortgagor. Mortgagor further recognizes that any secondary or junior financing placed upon the premises (a) may divert funds which would otherwise be used to pay the Note secured hereby; (b) could result in acceleration and foreclosure by any such junior encumbrancer which would force Mortgagee to take measures and incur expenses to protect its security; (c) would detract from the value of the premises should Mortgagee come into possession thereof with the intention of selling same; and (d) impair Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the premises.

In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security, both of repayment by Mortgagor and of value of the premises; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; (iii) allowing Mortgagee to raise the interest rate and/or collect assumption fees; and (iv) keeping the premises free of subordinate financing liens, Mortgagor agrees that if this paragraph be deemed a restraint on alienation, that it is a reasonable one and that any sale, conveyance, assignment, further encumbrance or other transfer of title to the premises or any interest therein (whether voluntary or by operation of law) without the Mortgagee's prior written consent shall be an Event of Default hereunder. For the purpose of, and without limiting the generality of, the preceding sentence, it shall be deemed to be an unpermitted transfer of title to the premises and therefore an Event of Default hereunder, giving Mortgagee the right at its

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election under Section 13 hereof, to declare immediately due and payable the entire indebtedness secured hereby, if without Mortgagee's prior written consent and except as otherwise set forth in the Loan Agreement:

(a) Mortgagor shall, directly or indirectly, transfer, sell, assign, encumber or otherwise dispose, by operation of law or otherwise, (collectively, a "Transfer") all or any portion of the Project, the beneficial interest in the Mortgagor, or any legal or equitable interest in the Project or Mortgagor regardless of form; or

(b) If there is any other Transfer in violation of the terms and provisions set forth in the Loan Agreement.

Any consent by the Mortgagee, or any waiver of an Event of Default, under this paragraph shall not constitute a consent to, or waiver of any right, remedy or power of the Mortgagee upon a subsequent Event of Default under this paragraph.

### Captions

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

### Disbursement of Loan Proceeds for Construction of Improvements

33. This is a construction mortgage, as said term is defined in Section 9-313(1)(c) of the Uniform Commercial Code, and additionally shall secure the Term Loan pursuant to the terms of the Loan Agreement. Mortgagor further covenants and agrees that the loan secured hereby is a construction loan and a term loan and that the proceeds of the loan secured hereby are to be disbursed by Mortgagee to Mortgagor in accordance with the provisions contained in a certain Loan Agreement of even date herewith between Mortgagor and Mortgagee. Said Loan Agreement is referred to herein as the "Loan Agreement", and is incorporated herein by express reference. All advances and indebtedness arising and accruing under the Loan Agreement, or under any of the Loan Documents, 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 Loan Agreement were fully incorporated in this mortgage, and the occurrence of any event of default under said Loan Agreement shall constitute a default under this mortgage entitling Mortgagee to all of the rights and remedies conferred upon Mortgagee by the terms of this mortgage. In the event of any conflict or inconsistency between the terms of this mortgage and the Loan Agreement, the terms and provisions of the Loan Agreement shall in each instance govern and control.

It is understood and agreed, however, that with respect to subsequent purchasers and mortgagees without actual notice, none of the advances or indebtedness arising or accruing under the Loan Agreement shall result in an increase of the indebtedness secured and to be secured hereby over the face amount of the Note beyond one hundred per cent (100%) of such face amount.

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All capitalized terms used in this Mortgage which are not expressly defined herein shall have the meanings assigned to such terms in the Loan Agreement.

## Security Agreement and Financing Statements

34. Mortgagor and Mortgagee agree: (i) that this mortgage shall constitute a Security Agreement within the meaning of the Uniform Commercial Code (the "Code") of the State in which the premises are located with respect to all sums on deposit with the Mortgagee pursuant to Sections 3 and 4 hereof ("Deposits") and with respect to any property included in the definition herein of the word "premises", which property may not be deemed to form a part of the real estate described in Exhibit A or may not constitute a "fixture" (within the meaning of Section 9-313 of the Code), and all replacements of such property, substitutions for such property, additions to such property, and the proceeds thereof (said property, replacements, substitutions, additions and the proceeds thereof being sometimes herein collectively referred to as the "Collateral"); and (ii) that a security interest in and to the Collateral and the Deposits is hereby granted to the Mortgagee; and (iii) that the Deposits and all of Mortgagor's right, title and interest therein are hereby assigned to the Mortgagee; all to secure payment of the indebtedness and to secure performance by the Mortgagor of the terms, covenants and provisions hereof.

If an Event of Default occurs under this mortgage, Mortgagee, pursuant to the appropriate provisions of the Code, shall have an option to proceed with respect to both the real property and Collateral in accordance with its rights, powers and remedies with respect to the real property, in which event the default provisions of the Code shall not apply. The parties agree that if the Mortgagee shall elect to proceed with respect to the Collateral separately from the real property, Mortgagee shall have all remedies available to a secured party under the Code and five (5) days notice of the sale of the Collateral shall be reasonable notice. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by Mortgagee shall include, but not be limited to, attorneys' fees and legal expenses incurred by Mortgagee. Mortgagor agrees that, without the written consent of Mortgagee, Mortgagor will not remove or permit to be removed from the premises any of the Collateral except that so long as the Mortgagor is not in default hereunder, Mortgagor shall be permitted to sell or otherwise dispose of the Collateral when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the premises, but only upon replacing the same or substituting for the same other Collateral at least equal in value and utility to the initial value and utility of that disposed of and in such a manner that said replacement or substituted Collateral shall be subject to the security interest created hereby and that the security interest of Mortgagee shall be perfected and first in priority, it being expressly understood and agreed that all replacements, substitutions and additions to the Collateral shall be and become immediately subject to the security interest of this mortgage and covered hereby. Mortgagor covenants and represents that all Collateral now is, and that all replacements thereof, substitutions therefor or additions thereto, unless the Mortgagee otherwise consents,

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will be free and clear of liens, encumbrances, title retention devices and security interests of others.

Mortgagor and Mortgagee agree, to the extent permitted by law, that: (i) all of the goods described within the definition of the word "premises" herein are or are to become fixtures on the land described in Exhibit A; (ii) this instrument, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of Sections 9-313 and 9-402 of the Code; and (iii) Mortgagor is the record owner of the land described in Exhibit A.

Mortgagor, upon request by Mortgagee from time to time, shall execute, acknowledge and deliver to Mortgagee, or cause any Affiliated Person to so execute, acknowledge and deliver to Mortgagee, a separate Security Agreement, Financing Statement or other similar security instruments, in form satisfactory to Mortgagee, covering all property of any kind whatsoever owned by Mortgagor or such Affiliated Person, as the case may be, which in the sole opinion of Mortgagee is essential to the operation of the premises and which constitutes goods within the meaning of the Code or concerning which there may be any doubt whether the title to same has been conveyed by or security interest perfected by this mortgage under the laws of the state in which the premises are located, and will further execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any financing statement, affidavit, continuation statement or certificate or other document as Mortgagee may request in order to perfect, preserve, maintain, continue and extend the security interest under and the priority of this mortgage and such security instrument. Mortgagor further agrees to pay to Mortgagee on demand all costs and expenses incurred by Mortgagee in connection with the preparation, execution, recording, filing and re-filing of any such document. Mortgagor shall from time to time, on request of Mortgagee, deliver to Mortgagee an inventory of the Collateral in reasonable detail.

#### Partial Invalidity; Maximum Allowable Rate of Interest

35. Mortgagor and Mortgagee intend and believe that each provision in this mortgage and the Note comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this mortgage or the Note is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this mortgage and the Note to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of Mortgagor and Mortgagee that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this mortgage and the Note shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Mortgagor and Mortgagee under the remainder of this mortgage and the Note shall continue in full force and effect. All agreements herein and in the Note are expressly limited so that in no contingency or event what-

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soever, whether by reason of advancement of the proceeds hereof, acceleration of maturity of the unpaid principal balance of the Note, or otherwise, shall the amount paid or agreed to be paid to the Holders for the use, forbearance or detention of the money to be advanced hereunder exceed the highest lawful rate permissible under applicable usury laws. If, from any circumstances whatsoever, fulfillment of any provision hereof or of the Note or any other agreement referred to herein, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity and if from any circumstance the Holders shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due under the Note and not to the payment of interest.

Mortgagee's Lien for Service Charge and Expenses

36. At all times, regardless of whether any loan proceeds have been disbursed, this mortgage secures (in addition to any loan proceeds disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by Mortgagee in connection with the loan to be secured hereby; provided, however, that in no event shall the total amount of loan proceeds disbursed plus such additional amounts exceed one hundred fifty per cent (150%) of the face amount of the Note.

Applicable Law

37. This mortgage, the Note and all other instruments evidencing and securing the loan secured hereby shall be construed, interpreted and governed by the laws of the State of Illinois.

Business Loan Recital

38. Mortgagor represents and agrees that the obligations secured hereby: (a) constitute a business loan which comes within the purview of Ill. Rev. Stat., § 4(1)(c), as amended; and (b) is an exempt transaction under the Truth-in-Lending Act, 15 U.S.C., § 1601 et seq.

Interest Rate Exchange Agreement

39. Pursuant to the Interest Rate Exchange Agreement as amended, Mortgagor is required to make certain payments to Citibank as provided in such Agreement. Mortgagor acknowledges that Citicorp will reimburse Citibank in the event of a failure by Mortgagor to make Mortgagor's required payments pursuant to the Interest Rate Exchange Agreement. In the event of such payment by Citicorp, Mortgagor agrees that such payments required pursuant to the Interest Rate Exchange Agreement shall be payable by Mortgagor to Citicorp on demand to reimburse Citicorp for such payments made to Citibank, and the amount of such payments shall constitute additional indebtedness under the Note and payment of such amount shall be secured by this Mortgage. In the event of foreclosure, proceeds of the foreclosure proceeding shall be

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applied in the following priority: first, to all obligations under the Construction Loan and Term Loan and all of the supporting Loan Documents, and second, to all obligations under the Interest Rate Exchange Agreement.

Redevelopment Agreement

40. Mortgagor and Mortgagee hereby acknowledge the terms of that certain Redevelopment Agreement dated March 11, 1986 made by and between the City of Chicago and Buck-Wexler Associates and recognize the City's options to pay the debt secured hereby or cure a default under this Mortgage, upon certain conditions as more specifically set forth in such Redevelopment Agreement.

Notwithstanding anything herein to the contrary, this Mortgage is executed by Harris Trust and Savings 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 it is expressly understood and agreed that nothing herein or in the Note contained shall be construed as creating any liability on said Bank personally to pay such Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained, all such liability, if any, being expressly waived by Lender and by every person now or hereafter claiming any right or security hereunder, and that so far as said Bank and its successors personally are concerned, the legal holder or holders of such Note and the owner or owners of any indebtedness accruing hereunder shall look solely to the premises, the collateral and any other security and any guaranty for the payment thereof.

IN WITNESS WHEREOF, Mortgagor has caused its corporate seal to be hereunto affixed and these presents to be signed by its president or vice-president and attested by its secretary or assistant secretary on the day and year first above written, pursuant to authority given by resolutions duly passed by the Board of Directors of said corporation.

HARRIS TRUST AND SAVINGS BANK,  
not personally, but  
as Trustee of Trust No. 43770

By: [Signature]  
Its \_\_\_\_\_

ATTEST: [Signature]

Property Address:  
35 S. Wacker  
Chicago, Illinois

PIN: 17-09-425-001; 17-09-425-014; 17-09-425-022;  
17-09-425-027; 17-09-425-030; 17-09-425-031;  
17-09-426-001; 17-09-426-002; 17-09-426-003;  
17-09-426-004; 17-09-426-005; 17-09-426-006;  
17-09-426-007; 17-09-426-008; 17-09-426-028;  
17-09-426-029.

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2011-11-11

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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that \_\_\_\_\_ of \_\_\_\_\_ who is

Catherine Murphy

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, \_\_\_\_\_ a Notary Public, in and for said County, in the State aforesaid, Do Hereby Certify, that

HERMAN A. KOLE

\_\_\_\_\_ Vice President of the Harris Trust and Savings Bank and \_\_\_\_\_

KENNETH E. PIEKUT

Assistant Secretary of said Bank, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice-President, and Assistant Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Bank, as Trustee as aforesaid, for the uses and purposes therein set forth; and the said Assistant Secretary then and there acknowledged that he, as custodian of the corporate seal of said Bank, did affix the corporate seal of said Bank to said instrument as his own free and voluntary act and as the free and voluntary act of said Bank as Trustee as aforesaid, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 22<sup>nd</sup> day of Jan A.D. 19 87

Catherine Murphy  
Notary Public

X-4704 (N-12-74)

My Commission Expires March 6, 1988

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EXHIBIT A

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## LEGAL DESCRIPTION

A tract of land consisting of all lots and all streets and alleys within Block 16 of Original Town of Chicago in the East part of the South East 1/4 of Section 9, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois, together with a strip of land lying East of and adjoining said Block 16 and West of the West line of State Street as established by an Act of the Legislature of the State of Illinois, approved March 3, 1845.

Bounded as follows: Beginning at the convergence of the North line of Lake Street and East line of Dearborn Street; thence North along the East line of Dearborn Street to the South line of Wacker Drive; thence East along such South line to the West line of State Street; thence South along said West line to the North line of Lake Street; thence West along the such North line to the place of beginning; together with all rights and appurtenances pertaining thereto, including the rights of as owner thereof to abutting public streets and alleys.

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 #0968 #A \* 87-047113  
 COOK COUNTY RECORDER

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Return to  
Box 77