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MORTGAGE, ASSIGNMENT OF RENTS AND LEASES  
AND SECURITY AGREEMENT

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## MORTGAGE, ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT

THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT ("Agreement") made as of June 18, 1987, by and between American National Bank and Trust Company of Chicago, a national banking association, not individually or personally, but solely as Trustee under a Trust Agreement dated April 28, 1984, and known as Trust No. 60954 (the "Borrower"), having an office at 33 North LaSalle Street, Chicago, Illinois 60690 and New York Life Insurance Company, a New York corporation (the "Lender"), having a principal office at 51 Madison Avenue, New York, New York 10010;

### WITNESSETH:

WHEREAS, Borrower has concurrently herewith executed and delivered a promissory note bearing even date herewith (the "Note") in the principal sum of TEN MILLION FIVE HUNDRED THOUSAND DOLLARS (\$10,500,000.00), made payable to Lender in and by which Note Borrower promises to pay out the assets of the trust estate held under the Trust Agreement, the said principal sum and interest thereon at the rate and in installments as provided in the Note, with a final payment of the balance due on the 10th day of June, 1992. All of said principal and interest are made payable at such place as the holder or holders of the Note (the "Holders") may, from time to time, in writing appoint, and in absence of such appointment, then at the office of Lender at 51 Madison Avenue, New York, New York 10010; and

WHEREAS, as additional security for the loan evidenced by the Note (the "Loan"), Borrower and the beneficiary of Borrower (the "Beneficiary"), are this date executing and delivering to Lender an Assignment of Lessor's Interest in Leases -- With Assignment of Rents, Income and Cash Collateral, a Security Agreement, UCC-1 and UCC-2 Financing Statements and a Guaranty; and

WHEREAS, this Mortgage is made pursuant to a commitment by Lender dated March 31, 1987, as amended on April 10, 1987, and May 1, 1987. The Mortgage, Note and the documents referred to in this preamble and the prior preamble and any other instruments now or hereafter given to evidence or further secure the payment and performance of any obligation secured by this Mortgage are hereinafter referred to as the "Loan Instruments" or "Loan Documents";

NOW, THEREFORE, Borrower in consideration of said debt and to secure the payment of both principal and interest thereof,

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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 herein and in the Note and in the other Loan Documents contained, to be performed by Borrower and/or Beneficiary, does by these presents MORTGAGE, GRANT, REMISE, RELEASE, ALIEN and CONVEY unto Lender, its successors and assigns:

## GRANTING CLAUSE ONE

All that tract or parcel of land situated in Northbrook, County of Cook, Illinois more particularly described in Schedule "A" hereto and made a part hereof (hereinafter called the "Land").

## GRANTING CLAUSE TWO

TOGETHER WITH, any and all buildings, improvements, tenements, fixtures and appurtenances thereto now or hereafter located or erected on the Land (which are pledged primarily and on a parity with the Land and not secondarily), including, without limitation, any and all machinery, apparatus, equipment and fixtures now or hereafter attached to, or used or procured for use in connection with the operation and/or maintenance of any building, structure or other improvement, including, but without limiting the generality of the foregoing, all refrigerators, shades, awnings, Venetian blinds, screens, screen doors, storm doors and windows, stoves and ranges, curtain fixtures, partitions, attached floor coverings and fixtures, apparatus, equipment or articles used to supply sprinkler protection and waste removal, laundry equipment, furniture, furnishings, office equipment, elevators, escalators, tanks, dynamos, motors, generators, switchboards, communication equipment, electrical equipment, television and radio systems, heating, plumbing, lifting and ventilating apparatus, air-cooling and air conditioning apparatus, gas and electric fixtures, fittings and machinery and all other equipment of every kind and description including (without restricting the foregoing) all other fixtures, apparatus, equipment, furniture, furnishings and articles used or useful in connection with the operation of an office building, and parking facilities now or hereafter located upon said premises, it being understood that the enumeration of any specific articles of property shall not result in or be held to exclude any items of property not specifically mentioned, and all renewals and replacements thereof and articles in substitution therefor used or procured for use in the operation of any and all such buildings, structures and improvements whether or not the same are attached to said buildings, structures or other improvements in any manner, same shall be deemed to be fixtures, part of the real estate and security for the

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Indebtedness, as hereinafter defined and covered by this Agreement (hereinafter collectively called the "Improvements"); the "Land" and "Improvements" are referred to collectively as the "Premises". All of the land, estate and property hereinabove described, real, personal and mixed, whether fixed 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 Agreement be deemed to be real estate and conveyed and mortgaged hereby. To the extent any of the Improvements are not deemed real estate under the laws of the State of Illinois, same shall be deemed personal property (hereinafter called "Personal Property") and this Agreement is hereby deemed to be as well a Security Agreement for the purposes of creating hereby a security interest under the Uniform Commercial Code of Illinois in Lender as Secured Party (as said term is defined in said Uniform Commercial Code) in the Personal Property as hereinafter provided.

## GRANTING CLAUSE THREE

TOGETHER WITH, all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, air rights and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to or above and below the Premises.

## GRANTING CLAUSE FOUR

TOGETHER WITH, all right, title and interest of Borrower, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, opened or proposed, adjoining the Premises, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Premises.

## GRANTING CLAUSE FIVE

TOGETHER WITH, all right, title and interest of Borrower in and to all options to purchase or lease the Premises or any portion thereof or interest therein, and any greater estate in the Premises owned or hereafter acquired by Borrower.

## GRANTING CLAUSE SIX

TOGETHER WITH, all accounts receivable, contract rights, interests, estate or other claims, both in law and in equity,

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which Borrower now has or may hereafter acquire in the Premises.

## GRANTING CLAUSE SEVEN

TOGETHER WITH, all the estate, interest, right, title, other claim or demand which Borrower now has or may hereafter acquire in any and all awards or payments made for the taking by eminent domain, together with interest thereon, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Premises, including, without limitation, any awards resulting from a change or grade of streets and awards for severance damages.

## GRANTING CLAUSE EIGHT

TOGETHER WITH, all proceeds of and any unearned premiums on any insurance policies covering the Premises, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Premises.

## GRANTING CLAUSE NINE

TOGETHER WITH, all the estate, interest, right, title and other claim or demand which Borrower now has or may hereafter acquire against anyone with respect to any damage to all or any part of the Premises, including, without limitation, damage arising from any defect in or with respect to the design or construction of all or any part of the Improvements and any damage resulting therefrom.

## GRANTING CLAUSE TEN

TOGETHER WITH, all deposits or other security or advance payments, including rental payments made by or on behalf of Borrower to others, with respect to (i) insurance policies relating to all or any part of the Premises, (ii) utility service for all or any part of the Premises, (iii) cleaning, maintenance, repair or similar services for all or any part of the Premises, (iv) refuse removal or sewer service for all or any part of the Premises, (v) rental of equipment, if any, used in the operation by or on behalf of Borrower of all or any part of the Premises, and (vi) parking or similar services or rights afforded to all or any part of the Premises.

## GRANTING CLAUSE ELEVEN

TOGETHER WITH, all remainders, reversions, leasehold estate, right, title and interest of Borrower in and to all leases or subleases covering the Premises or any portion thereof now or hereafter existing or entered into, and all

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right, title and interest of Borrower thereunder, including, without limitation, all cash or security deposits, advance rentals and deposits or payments of similar nature.

## GRANTING CLAUSE TWELVE

TOGETHER WITH, all rents, issues, profits, cash collateral, royalties, income and other benefits, including, without limitation, benefits accruing from all present and future oil, gas, and mineral leases and agreements derived from the Premises (collectively the "Rents"), subject to the right, power and authority hereinafter given to Borrower, to collect and apply such Rents prior to the occurrence of a default hereunder.

All of the foregoing Premises, Personal Property and rights therein, hereinabove described or mentioned in Granting Clauses 1-12 are hereinafter collectively referred to as the "Secured Property".

TO HAVE AND TO HOLD the Premises unto the said Lender, its successors and assigns, forever, for the purposes and uses herein set forth, subject only to such exceptions to title as are listed on Schedule A hereto.

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

## ARTICLE I

### COVENANTS AND AGREEMENTS

Borrower hereby covenants and agrees:

Section 1.01 Payment of Secured Obligations. To pay when due the principal of, and the interest on, the indebtedness evidenced by the Note, and all charges, fees and all other sums payable under the Loan Instruments, or any of them (hereinafter collectively called "Indebtedness").

Section 1.02 Payment of Taxes, Assessments, Etc.

A. Borrower shall pay when due and payable before any fine, penalty, interest or cost for the non-payment thereof may be added thereto, all taxes, assessments, water and sewer rents, rates, and charges, transit taxes, county taxes, charges and permit fees and other governmental charges, general and special, ordinary and extraordinary, unforeseen and foreseen, of any kind and nature whatsoever which at any time prior to or during the term of this Agreement, may be assessed, levied, confirmed, imposed upon or grow or become due and payable out of or in respect to, or become a lien on, the Secured Property

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or any part thereof or any appurtenance thereto, prior to or on a parity with the lien of this Agreement (all such taxes, assessments, water and sewer rents, rates and charges, transit taxes, county taxes, charges for public utilities, excises, levies, vault and all other license and permit fees and other governmental charges including penalties thereon being hereinabove collectively referred to as "Impositions," and any of the same being hereinafter referred to as an "Imposition").

Notwithstanding the provisions of this Section 1.02, Borrower may elect to contest such Imposition by appropriate legal proceedings diligently conducted in good faith which shall operate to prevent the collection of such Imposition so contested and the sale of the Secured Property or any part thereof to satisfy the same, if such contest would not cause Borrower to be in default under any other mortgage, lease, document or agreement to which it is a party or by which it is bound and if Borrower, on or before the due date thereof, shall (i) deposit or cause to be deposited with Lender a surety bond issued by a surety company of recognized responsibility acceptable to Lender conditioned upon and securing the payment of the same, plus all fines, interest, penalties or costs which may become due pending the determination of such contest, or (ii) deposit or cause to be deposited with Lender an amount equal to one hundred percent (100%) of such Imposition or any balance thereof and all interest, penalties, costs and charges accrued or accumulated thereon, remaining unpaid, and shall keep on deposit an amount so sufficient at all times, increasing such amount to cover additional penalties and interest whenever, in the judgment of Lender, such increase is advisable in order to keep in deposit at all such times an amount equal to one hundred percent (100%) of the Imposition remaining unpaid or (iii) furnish or cause to be furnished to Lender other security reasonably satisfactory to Lender. If such deposit is made or such security furnished and Borrower continues in good faith to contest the validity of such Imposition by appropriate legal proceedings, Borrower shall be under no obligation to pay such Imposition until such time as it has been finally determined to be a valid lien on the Secured Property. Upon termination of any such proceedings, Borrower shall pay the amount of such Imposition or part thereof as finally determined in such proceedings, the payment of which shall have been deferred during the prosecution of such proceedings together with any costs, fees, interest, penalties or other liabilities in connection therewith. Lender shall have the full power and authority to apply or require the application of any amounts so deposited, to payment of any unpaid Imposition, to prevent the sale or forfeiture of the Secured Property for non-payment thereof without liability, however, for any failure so to apply any amount so deposited unless Borrower or the person making such deposit in writing

requests the application of such amount to the payment of the particular Imposition with reference to which it was deposited. Any surplus remaining in the hands of the Lender after the Imposition for which the deposit was made has been paid in full shall be repaid to Borrower or the person making such deposit unless Borrower shall be in default in the payment of any monies or other charges required to be made under the provisions of this Agreement and in case of such default so much of such surplus shall be applied on account of such unpaid monies or other charges as shall be required to cure such default and the remainder of such surplus, if any, shall be repaid to Borrower or the person making such deposit.

B. Borrower, upon request of Lender, will furnish to Lender within thirty (30) days after the date when any Imposition would become delinquent, official receipts of the appropriate taxing authority, or other evidence reasonably satisfactory to Lender evidencing the payment thereof.

C. The certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition, or non-payment of such Imposition shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill.

D. If the Borrower shall fail to pay any Imposition in accordance with the provisions of this Section 1.02, Lender may, at its option (but shall be under no obligation to do so) pay such Imposition and Borrower will repay to Lender on demand any amount so paid by Lender, with interest thereon at the rate of five percent (5%) per annum greater than the interest rate applicable prior to maturity set forth in the Note (hereinafter called "Increased Rate") to the date of repayment and same shall be secured by this Agreement. In no event shall the Increased Rate be greater than the highest interest rate permissible by law.

E. In the event of the passage after the date of this Agreement of any law of the State of Illinois, deducting from the value of the Secured Property or any part thereof for the purpose of taxation or resulting in any lien thereon, or changing in any way the laws now in force for the taxation of this Agreement or the Indebtedness secured hereby for state or local purposes, or the manner of the operation of any such taxes so as to affect the interest of Lender, then, and in such event, Borrower shall bear and pay the full amount of such taxes, provided that if for any reason payment by Borrower of any such new or additional taxes would be unlawful or if the payment thereof would constitute usury or render the loan or Indebtedness secured hereby wholly or partially usurious under

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any of the terms or provisions of the Note, or the within Agreement, or otherwise unlawful, Lender may, at its option, declare the whole sum secured by this Agreement with interest thereon to be immediately due and payable, or Lender may, at its option, pay that amount or portion of such taxes as renders the loan or Indebtedness secured hereby unlawful or usurious, in which event Borrower shall concurrently therewith pay the remaining lawful and non-usurious portion or balance of said taxes.

F. Borrower covenants and agrees not to suffer, permit or initiate the joint assessment of the real estate and Personal Property, or any other procedure whereby the lien of the personal property taxes shall be assessed or levied or charged to the Secured Property as a single lien.

## Section 1.07 Insurance.

A. Borrower, at its sole cost and expense, shall keep the Personal Property and the Improvements insured during the term of this Agreement against loss or damage by fire and against loss or damage by other risks now embraced by "Extended Coverage," so called, in amounts, form, substance and from companies satisfactory to Lender.

B. Borrower at its sole cost and expense, shall also maintain:

(1) Personal injury and property damage liability insurance against claims for bodily injury, death or property damage, occurring on, in or about the Secured Property or in or about the adjoining streets, sidewalks and passageways; such insurance to afford protection, during the term of this Agreement in such amounts as Lender may require;

(2) Rent or business interruption insurance in an amount not less than one year's gross income from the Secured Property, less normal expenses and charges which do not continue during the period of untenability. Borrower hereby assigns to Lender the proceeds of such insurance to be held by Lender as security and for the payment of all sums due in connection with the Indebtedness and this Agreement as hereinafter provided;

(3) War risk insurance upon the building and other Improvements as and when such insurance is obtainable from the United States of America or any agency or instrumentality thereof for the maximum amount of insurance obtainable;

(4) Such other insurance, including, without limitation, extended coverage or all risk insurance on the Improvements and all Personal Property in such amounts and in form and substance as may from time to time be reasonably required by Lender against other insurable hazards, including, but not limited to, malicious mischief, vandalism, windstorm, earthquake, nuclear reaction or radioactive contamination, which at the time are commonly insured against and generally available in the case of premises similarly situated, due regard being or to be given, to the height and type of Improvements, their location, construction, use and occupancy;

(5) If the Improvements are located in a flood hazard area, flood insurance on the Improvements in an amount equal to the lesser of "full replacement cost" thereof or the maximum amount of insurance obtainable; and

(6) Insurance against loss or damage from (i) leakage of sprinkler systems and (ii) explosion of steam boilers, air conditioning equipment, pressure vessels or similar apparatus now or hereafter installed in or on the Premises in such amounts as Lender shall from time to time require.

C. Borrower shall not carry separate insurance, concurrent in kind or form and contributing, in the event of loss, with any insurance required hereunder. Borrower may, however, effect for its own account any insurance not required under the provisions of this Agreement but any such insurance effected by Borrower on the Secured Property whether or not required under this Section 1.03 shall be for the mutual benefit of Borrower and Lender, as their respective interests may appear and shall be subject to all other provisions of this Section 1.03.

D. All insurance provided for in this Section 1.03 shall be effected under valid and enforceable policies issued by financially responsible insurers authorized to do business in the State of Illinois, which are approved in writing by Lender. All such policies shall be deposited with and held by Lender and shall contain the standard non-contributory lender clause in favor of Lender and a waiver of subrogation endorsement, all in form and content satisfactory to Lender. All original policies shall contain a provision that such policies will not be cancelled or materially amended, which term shall include any reduction in the scope or limits of coverage, without at least thirty (30) days' prior written notice to Lender. Not less than thirty (30) days prior to the expiration dates of the expiring policies theretofore furnished pursuant to this Section 1.03, or any other article of this Agreement, originals of the policies bearing notations

evidencing the payment of premiums or accompanied by other evidence satisfactory to Lender of such payment, shall be delivered by Borrower to Lender. In the event of a change in ownership of the Secured Property immediate notice thereof shall be delivered to all insurers by Borrower.

E. In the event Borrower fails to provide, maintain, keep in force or deliver and furnish to Lender the original policies of insurance required by this Section 1.03, Lender may at its sole option procure such insurance and Borrower will pay all premiums thereon promptly upon demand by Lender with interest thereon at the Increased Rate to the date of repayment and the same shall be secured by this Agreement.

F. After the happening of any casualty to the Secured Property or any part thereof, Borrower shall give prompt written notice thereof to Lender.

(1) In the event of any damage or destruction of all or any part of the Secured Property, all proceeds of insurance shall be payable to Lender, and Borrower hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Lender. Lender is hereby authorized and empowered by Borrower to settle, adjust or compromise any claims for loss, damage or destruction in an amount in excess of \$1,000,000 under any policy or policies of insurance; in all other cases Borrower may settle, adjust or compromise such claims.

(2) In the event of any such damage or destruction, Lender shall have the option in its sole and absolute discretion and without regard to the adequacy of its security hereunder of applying all or part of the insurance proceeds (i) to any part of the indebtedness, whether or not then due, in the inverse order of maturity, or (ii) to the repair or restoration of the Improvement or (iii) to cure any then current default under this Agreement, or (iv) to reimburse the costs and expenses of Lender in connection with the recovery of such insurance proceeds.

(3) Nothing herein contained shall be deemed to excuse Borrower from repairing or maintaining the Secured Property as provided in Section 1.05 hereof or, so long as the insurance proceeds are made available by Lender to Borrower, restoring all damage or destruction to the Secured Property, regardless of whether any such proceeds are sufficient in amount.

G. In the event of foreclosure of this Agreement or other transfer of title or assignment of the Secured Property in extinguishment, in whole or in part, of the Indebtedness



secured hereby, all right, title and interest of Borrower in and to all policies of insurance required by this Section shall inure to the benefit of and pass to the successor in interest to Borrower or the purchaser or grantee of the Secured Property. In the event that prior to the extinguishment of the Indebtedness, any claim under any insurance policy has not been paid and distributed in accordance with the terms of this Agreement, and any such claim shall be paid after the extinguishment of the Indebtedness secured hereby, and the foreclosure of this Agreement, or other transfer of title to the Secured Property shall have resulted in extinguishing the Indebtedness secured hereby for an amount less than the total of the unpaid principal balance together with accrued interest plus costs and disbursement at the time of the extinguishment of the Indebtedness secured hereby, then and in that event that portion of the payment in satisfaction of the claim which is equal to the difference between the total amount above referred to and the amount theretofore paid to Lender shall belong to and be the property of the Lender and shall be paid to said Lender, and Borrower hereby assigns, transfers and sets over to the Lender all of the Borrower's right, title and interest in and to said sum. The balance, if any, shall be paid to Borrower.

Section 1.04 Escrow Deposits. To further secure the payment of the Impositions and the premiums for the insurance hereinbefore referred to, the Borrower will deposit with the Lender, or its designee, on the due date of each monthly installment of principal and interest under the Note, a sum which shall be equal to the Impositions and insurance premiums next due on the Secured Property, all as estimated by the Lender, less all sums already paid theretofore, divided by the number of months to elapse before one month prior to the date when such Impositions and insurance premiums shall become due and payable; said deposits to be held by the Lender, or its designee without obligation for the payment of interest thereon to Borrower and free of any liens or claims on the part of creditors of the Borrower and as a part of the security of the Lender, and shall be used by the Lender, or its designee, to pay current Impositions and insurance premiums as the same accrue and are payable. Said deposits shall not be, nor be deemed to be, trust funds but may be commingled with general funds of the Lender, or its designee. If said deposits are insufficient to pay the Impositions and insurance premiums in full as the same become payable, the Borrower will deposit with the Lender, or its designee, within ten (10) days after demand therefor but in no case less than five (5) days prior to the due date of the applicable Imposition or insurance premium, such additional sum or sums as may be required in order for the Lender or its designee, to pay such Impositions and insurance premiums in full. It shall be the responsibility of the

Borrower to furnish Lender with bills in sufficient time to pay the Impositions and insurance premiums before any penalty attaches and before the policies lapse. Upon any default in the provisions of this Agreement or the Note, the Lender may, at its option, in its sole and absolute discretion and without regard to the adequacy of its security hereunder, apply any money in the fund resulting from said deposits to the payment of the Indebtedness secured hereby in such manner as it may elect. Transfer of legal title to the Secured Property shall automatically transfer to the new owner the beneficial interest in all sums deposited under the provisions of this paragraph.

## Section 1.05 Care and Use of Premises.

A. Borrower, at its sole cost and expense, will take good care of the Secured Property and the sidewalks and curbs adjoining the Secured Property and will keep the same in good order and condition, and make all necessary repairs thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, and unforeseen and foreseen and will not commit or suffer to be committed any waste of the Secured Property and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Secured Property or any part thereof.

B. The necessity for and adequacy of repairs to the Improvements pursuant to Section 1.05A hereof shall be measured by the standard which is appropriate for a first-class office building and related facilities of similar construction and class, provided that Borrower shall in any event make all repairs necessary to avoid any structural damage to the Improvements and to keep the Improvements in a proper condition for their intended use.

C. Borrower, at its sole cost and expense, shall keep the Personal Property in good condition and repair. Borrower will notify Lender promptly of any damage to the Secured Property in excess of \$10,000.00.

D. When used in this Section 1.05A, the terms "repair" and "repairs" shall include all necessary renewals and replacements. All repairs made by Borrower shall be made with first-class materials and in a good, substantial and workmanlike manner and shall be equal or better in quality and class than the original work.

E. The Borrower shall have the right, at any time and from time to time, to remove and dispose of equipment which may have become obsolete or unfit for use or which is no longer useful in the operation of the Secured Property. The Borrower will promptly replace any such equipment so disposed or removed

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with other equipment of equal value and serviceability, free of superior title, liens and claims; except that, if by reasons of technological or other developments in the operation and maintenance of buildings of the general character of the Improvements now or hereafter constituting a portion of the Secured Property, no replacement of the building equipment so removed or disposed of is necessary or desirable in the proper operation or maintenance of said Improvements, the Borrower shall not be required to replace the same. All such replacements or additional equipment shall be covered by the security interest herein granted.

F. Borrower shall promptly comply with all present and future laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, courts, departments, commissions, boards and officers, any national or local Board of Fire Underwriters, including, without limitation, all zoning, building code, environmental protection and equal employment opportunity statutes, ordinances, regulations, orders and restrictions, foreseen or unforeseen, ordinary as well as extraordinary, which may be applicable to the Secured Property and the sidewalks and curbs adjoining the Secured Property or to the use or manner of use of the Secured Property whether or not such law, ordinance, order, rule, regulation or requirement shall necessitate structural changes or improvements.

G. Borrower shall have the right, after prior notice to Lender, to contest by appropriate legal proceedings diligently conducted in good faith, without cost or expense to Lender, the validity or application of any law, ordinance, order, rule or regulation or requirement of the nature referred to in Section 1.05F hereof, and which does not subject the Lender to any civil or criminal liability, subject to the following:

(1) If by the terms of any such law, ordinance, order, rule, regulation or requirement, compliance therewith pending the prosecution of any such proceeding may legally be delayed without incurring of any lien or charge of any kind against the Secured Property, Borrower may delay compliance therewith until the final determination of such proceeding.

(2) If any lien or charge against the Secured Property would be incurred by reason of any such delay, Borrower, nevertheless, may contest as aforesaid and delay as aforesaid, provided Borrower (i) furnishes to Lender security, satisfactory to Lender, against any loss or injury by reason of such contest or delay, and (ii) prosecutes the contest with due diligence.

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Anything in this Section 1.05F and G to the contrary notwithstanding, if the contesting of the validity or legality of any such law, ordinance, rule, regulation or requirement shall cause a breach of any of the terms, conditions, or covenants of any Lease on Borrower's part, as lessor therein, to be performed, then Borrower shall not have the right to contest the same as herein provided but compliance therewith must be made pursuant to Section 1.05F hereof.

H. Borrower will promptly perform and observe, or cause to be performed or observed, all of the terms, covenants and conditions of all instruments of record affecting the Secured Property, non-compliance with which may affect the priority of the lien of this Agreement, or which may impose any duty or obligation upon the Borrower or any lessee or other occupant of the Secured Property or any part thereof, and the Borrower shall do or cause to be done all things necessary to preserve intact and unimpaired any and all easements, appurtenances and other interests and rights in favor of or constituting any portion of the Secured Property.

I. The Borrower will not demolish, remove, construct, restore, add to or alter any Improvement included in the Secured Property or any extension thereof, nor consent to or permit any such demolition, removal, construction, restoration, addition or alteration without Lender's prior written consent.

J. The Borrower will grant no parking rights in the Secured Property other than those provided for in existing Leases as hereinafter defined except with Lender's prior written consent. The Secured Property shall contain at all times not less than approximately 448 on-site parking spaces for standard-size American automobiles, said parking spaces to be located upon the Secured Property. If any part of the automobile parking areas included within said Secured Property is taken by condemnation or before said areas are otherwise reduced, Borrower will provide parking facilities in kind, size and location to comply with all leases, and before making any contract therefor will furnish to Lender satisfactory assurance of completion thereof free of liens and in conformity with all governmental zoning ordinances and regulations.

K. The Lender or its representative is hereby authorized to enter upon and inspect the Secured Property at all reasonable times.

L. Nothing in this Agreement contained shall be deemed or construed in any way as constituting the consent or request of Lender, express or implied by inference or otherwise to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for

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any specific Improvement, alteration to or repair of the Secured Property or any part thereof.

M. The Borrower will discharge, pay, or bond, or cause to be discharged, or paid or bonded, 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 Secured Property or any part thereof, or on the revenues, rents, issues, income and profits arising therefrom, and Borrower will do or cause to be done everything necessary so that the lien of this Agreement shall be fully preserved, at the cost of the Borrower, without expense to the Lender.

N. Borrower will use, or cause to be used, the Secured Property principally and continuously as and for a first-class office building, with related parking facilities. Borrower shall not use, or permit the use of, the Secured Property for any other principal use without the prior written consent of Lender.

O. Borrower shall not suffer or permit the Secured Property, or any portion thereof, to be used by the public as such, without restriction or in such manner as might impair Borrower's title to the Secured Property or any portion thereof, or in such manner as might make possible a claim or claims or adverse usage or adverse possession by the public, or of implied dedication of the Secured Property or any portion thereof.

## Section 1.06 Audits.

A. The Borrower will keep and maintain or cause the Beneficiary to keep and maintain complete and accurate books and records of the earnings and expenses of the Secured Property, and without expense to Lender, furnish to Lender, within one hundred twenty (120) days after the end of each fiscal year of the Beneficiary, an annual audit prepared and certified by an independent certified public accountant reasonably satisfactory to Lender, in accordance with generally accepted accounting principles relating to real estate of this type consistently applied, which shall include: (1) a statement of the assets and liabilities of Beneficiary with respect to the Secured Property, (2) a statement of the source and application of funds by the Beneficiary with respect to the Secured Property, (3) a detailed profit and loss statement relating to the ownership and operation of the Secured Property, including, without limitation, all rents and other income derived therefrom and all expenses paid or incurred in connection therewith, and (4) such interim balance sheets and profit and loss statements and income and expense reports as may be required by Lender.

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B. Lender or its representative shall have the right to examine and make copies of such books and records and all supporting vouchers and data at the Premises or at Beneficiary's principal place of business.

## Section 1.07 Condemnation.

A. In the event that the Secured Property, or any part thereof, shall be taken in condemnation proceedings or by exercise of any right of eminent domain (hereinafter called, collectively, "Condemnation Proceedings"), Lender shall have the right to participate in any such Condemnation Proceedings and all awards that may be made in any such Condemnation Proceedings or the proceeds thereof are hereby assigned to Lender and shall be deposited with the Lender and disbursed in the manner set forth in this Section 1.07. Borrower will give Lender immediate notice of the actual or threatened commencement of any Condemnation Proceedings affecting all or any part of the Secured Property including severance and consequential damage and change in grade in streets, and will deliver to Lender copies of any and all papers served in connection with any such proceedings.

Notwithstanding the foregoing, Lender is hereby authorized, at its option, to commence, appear in and prosecute in its own or Borrower's name any action or proceeding relating to any such condemnation and to settle or compromise any claim in connection therewith. No settlement for the damages sustained thereby shall be made by Borrower without Lender's prior written approval thereof. The Borrower agrees to execute any and all further documents that may be required in order to facilitate the collection of any award or awards and the making of any such deposit.

B. If at any time title or temporary title to the whole or any part of Secured Property shall be taken in Condemnation Proceedings or pursuant to any agreement between Borrower, Lender and those authorized to exercise the right to condemnation, Lender, at its sole option in its sole and absolute discretion and without regard to the adequacy of its security hereunder, shall have the right to apply such award or proceeds which it receives pursuant to Section 1.07A hereof to payment of the Indebtedness secured by the Agreement in inverse order of maturity. In the event that all or substantially all of the Secured Property is taken and the amount of the award or proceeds received by the Lender shall not be sufficient to pay the then unpaid balance of said Indebtedness, with the interest accrued thereon, then, the balance of said Indebtedness shall, at the option of the Lender, become immediately due and payable, and Borrower shall, within ten (10) days after the application of the award or proceeds as aforesaid, pay such

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deficiency to the Lender. "Substantially all of the Secured Property" shall be deemed to have been taken if the remainder of the Secured Property (i) in the sole opinion of an architect or registered engineer selected by Lender cannot be capable of being restored to a self-contained and architecturally complete unit or units or (ii) in the sole opinion of Lender the balance of the Secured Property as restored will not be economically viable and capable of supporting all carrying charges and operation and maintenance expenses.

C. In the case of any taking covered by the provisions of this Section 1.07, Lender (to the extent that Lender has not been reimbursed therefor by Borrower) shall be entitled, as a first priority, to the reimbursement out of any award or awards for all reasonable costs, fees, reimbursements to Lender and expenses incurred in the determination and collection of any such awards.

D. Notwithstanding any taking by Condemnation Proceedings, Borrower shall continue to pay the monthly installments due under the Note as well as all other sums secured by this Agreement at the rate provided in the Note until any such award or payment shall have been actually received by Lender and applied to the principal sum as provided in this Section 1.07, if it is to be applied under this Section 1.07. Any reduction in the principal sum resulting from Lender's application of such award or payment as hereinabove set forth shall be deemed to take effect only on the date of such receipt. If prior to Lender's receipt of such award or payment the Secured Property shall have been sold on foreclosure of this Agreement, the Lender shall have the right to receive said award or payment to the extent of any portion of the Indebtedness still unpaid after application of the proceeds of the foreclosure sale, with interest thereon at the Increased Rate plus reasonable counsel fees, costs, and disbursements incurred by Lender in connection with the collection of such award or payment and in establishing the deficiency.

E. The application of condemnation proceeds to the obligations secured by this Agreement, whether or not then due or payable, shall not postpone, abate or reduce any of the periodic installments of principal and/or interest thereafter to become due under this Agreement until the obligations secured under the Note and this Agreement are paid in full.

## Section 1.08 Leases.

A. Borrower, as Lessor, has entered and will enter into leases with occupancy tenants, as lessees, for parts or all of the Secured Property (all such leases for parts or all of the



Secured Property are hereinafter referred to collectively as "Leases" or "Lease" and the lessees under such Leases are hereinafter referred to collectively as "Lessee"). Borrower shall faithfully perform the Lessor's covenants under any subsisting and future Leases affecting the Secured Property, and neither do, nor neglect to do, nor permit to be done, anything other than pursue the enforcement of the terms of such Leases in the exercise of the Lessor's remedies thereunder following a default on the part of any Lessee in the performance of its prescribed obligations, which may cause the modification or termination of any of said Leases, or of the obligations of any Lessee or any other person claiming through such Lessee, or which may diminish or impair the value of any Lease or the rents provided for therein, or the interest of the Lessor or of Lender therein or thereunder.

B. Borrower will give Lender immediate notice as provided in Section 5.09 herein, by certified mail, of any notice of default or notice of cancellation received by any Lessee.

C. Borrower hereby covenants that (i) all the representations made by it or Beneficiary in the Leases are true; (ii) except as heretofore disclosed in writing to Lender, all Improvements and the leased space demised and let pursuant to such Lease covering the whole or any part of the Secured Property have been completed to the satisfaction of Lessee; (iii) except as heretofore disclosed in writing to Lender, Lessee has accepted possession of such leased space; (iv) except as heretofore disclosed in writing to Lender, Lessee is in occupancy; (v) all rents and other charges due and payable under any such Leases have been paid; (vi) no rent has been prepaid, except as expressly described under such Lease; (vii) there is no existing default or breach of any covenant or condition on the part of Lessee and Lessor under any such Lease; (viii) there are no options to purchase or renew by Lessee except as stated; and (ix) there are no amendments or modifications except as stated.

D. Borrower covenants that neither it nor Beneficiary will, without the prior written consent of the Lender obtained in each instance:

(1) lease to any person, firm or corporation, except for actual occupancy by such person, firm, or corporation, all or any part of the space in any building now or hereafter constituting a portion of the Secured Property;

(2) cancel, terminate or accept a surrender or suffer or permit any cancellation, termination, or surrender of any Lease;

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(3) modify any Lease so as to reduce the term thereof or the rent payable thereunder, or to change any renewal provisions contained therein;

(4) commence any summary proceeding or other action to recover possession of any space demised pursuant to any Lease, other than a proceeding brought in good faith by reason of a default of any Lessee;

(5) lease or extend any present Lease other than in the manner presently provided for therein, or enter into any future Lease with any person, firm or corporation, except on the best terms reasonably obtainable, under Leases which shall in all respects be satisfactory to the Lender as to the form and substance thereof and the credit standing of the respective lessee thereunder;

(6) receive or collect or permit the receipt or collection of any rental payments of more than one monthly installment of rent under any Lease in advance of the due dates of such rental payments;

(7) take any action with respect to any Lease which would tend to impair the security of the Lender under this Agreement;

(8) execute an agreement or create or permit a lien which may be or become superior to any existing Leases affecting the Secured Property; and

(9) execute, sell, assign, transfer, mortgage, pledge or otherwise dispose of or encumber, whether by operation of law or otherwise, any Lease or any rentals under any Lease or any rents, income, issues, profits or cash collateral issuing from the Secured Property.

## Section 1.09 Assignment of Leases, Rents, Income, Issues, Profits and Cash Collateral.

A. Borrower does hereby bargain, sell, assign and set over unto Lender, all Leases, rents, income, issues, profits, and any and all cash collateral which, whether before or after foreclosure or during any period of redemption, shall accrue and be owing for the use or occupation of said Secured Property and of the buildings and fixtures thereon, or any part thereof. For the purpose aforesaid, the Borrower does hereby authorize Lender to receive, collect, and receipt for all sums due or owing for such use and occupation, as the same accrue, and out of the amount so collected, the Lender, its successors and assigns, are hereby authorized (but not obligated) to pay and discharge all obligations of the Borrower hereunder,



including, but not being limited to, the obligation to pay the Indebtedness secured by this Agreement (and including any accelerated Indebtedness) in such order as the Lender, its successors or assigns, may determine and whether due or not, and to pay the remainder, if any, to the Borrower but neither this assignment nor any such action shall constitute Lender as a lender in possession. The assignments of Leases, rents, income, issues, profits and any and all cash collateral of the Secured Property in this Section 1.09 is intended to be an absolute assignment from Borrower to Lender and not merely the passing of a security interest. The Leases, rents, income, issues, profits and all cash collateral are hereby assigned absolutely by Borrower to Lender.

B. Lender at its sole option shall have the right to enter and take possession of the Secured Property and manage and operate the same as further provided in Section 4.01C, including, without limitation, the right to enter into leases and new agreements extending said termination dates beyond the maturity set forth in the Note and take any action which, in Lender's judgment, is necessary or proper to conserve the value of the Secured Property. The expense (including any receiver's fees, counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby. Lender shall not be liable to account to Borrower for any action taken pursuant hereto other than to account for any rents actually received by Lender.

C. So long as there shall exist no default hereunder, the Borrower shall have the license to manage and operate the Secured Property, including, without limitation, the right to enter into Leases and new agreements extending said termination dates beyond the maturity date set forth in the Note, and collect, as they accrue, all such rents, income, issues, profits and cash collateral. Borrower agrees to use such rents, income, issues, profits and all cash collateral in payment of principal and for interest payable pursuant to the Note and in payment of all taxes, assessments, water rates, sewer rents, insurance premiums and other charges on or against the Secured Property. Any excess after payment of such items may be distributed from time to time by Borrower to Beneficiary or its partners.

D. Borrower will, as requested from time to time by the Lender, assign to the Lender or its nominee by specific or general assignment, any Leases now or hereafter made upon said Secured Property, such assignments to be in form and content acceptable to Lender. For the aforesaid purposes, Borrower agrees to deliver to Lender within 30 days after Lender's request a duplicate original of every Lease which is at the time of such request outstanding upon the said Secured Property

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and in addition thereto shall supply Lender at its request a complete list of each and every Lease certified by a general partner of the Beneficiary showing unit number, type, name of Lessee, monthly rental, date to which paid, term of Lease, date of occupancy, date of expiration and any and every special provision, concession or inducement granted to Lessee.

E. Notwithstanding anything to the contrary as set forth in Section 1.09, to the extent permitted by law and except for willful and wanton misconduct of Lender, Borrower agrees that in the exercise of the rights of Lender contained in Section 1.09, no liability shall be asserted against Lender, all such liability being expressly waived and released by Borrower. Borrower hereby holds Lender harmless from and against any and all claims, liabilities and expenses of any kind or nature against or incurred by Lender arising out of such management, operation or maintenance of the Secured Property or the collection and disposition of rents, income, profits or cash collateral therefrom.

## Section 1.10 Further Assurances.

A. At any time and from time to time, upon request by the Lender, the Borrower will make, execute, and deliver or cause to be made, executed and delivered to the Lender, any and all other instruments, certificates and other documents as may, in the opinion of the Lender, be necessary or desirable in order to effectuate, complete, perfect or to continue and preserve the obligations of the Borrower under the Note and the Loan Instruments. Upon any failure by the Borrower so to do, the Lender may make, execute and record any and all such instruments, certificates and documents for and in the name of the Borrower and the Borrower hereby irrevocably authorizes the Lender so to do. The Borrower will reimburse the Lender for any sums expended by Lender in making, executing and recording such instruments, certificates and documents.

B. The Borrower from time to time, upon ten (10) days' prior written notice, shall furnish the Lender with a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Indebtedness secured hereby and whether or not any set-offs or defenses exist against such principal and interest, and, if so, the particulars thereof.

C. The Borrower shall from time to time, within fifteen (15) days after request by Lender, execute, acknowledge and deliver to Lender such chattel mortgages, security agreements or other similar security instruments, in form and substance satisfactory to Lender, covering all property of any kind whatsoever owned by Borrower or in which Borrower may have any interest which, in the sole opinion of Lender, is essential to

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the operation and maintenance of the Secured Property. Borrower shall further from time to time, within fifteen (15) days after request by Lender, execute, acknowledge and deliver any financing statement, renewal, affidavit, certificate, continuation statement or other document as Lender may request in order to perfect, preserve, continue, extend or maintain the security interest under, and the priority of, this Agreement or such chattel mortgage or other security instrument. Borrower further agrees to pay to Lender on demand all costs and expenses incurred by Lender in connection with the preparation, execution, recording, filing and refiling of any such instrument or document, including the charges for examining title and the attorney's fee for rendering an opinion as to the priority of this Agreement and of such chattel mortgage or other security instrument as a valid first and subsisting lien. However, neither a request so made by Lender nor the failure of Lender to make such a request shall be construed as a release of such property, or any part thereof, from the lien of this Agreement, it being understood and agreed that this covenant and any such chattel mortgage, security agreement or other similar security instrument delivered to Lender are cumulative and given as additional security.

D. Borrower covenants that all Improvements and Personal Property now or hereinafter affixed, placed or used by Borrower are and will hereafter be owned by Borrower free from any prior liens or encumbrances; provided, however, that if any of the foregoing Improvements or Personal Property shall be subject to a conditional bill of sale, chattel mortgage or other agreement creating a security interest, then all of the right, title and interest of Borrower in and to such Improvements and Personal Property together with the benefits of any deposits or payments now or hereafter made thereon shall be covered within this Agreement.

E. This Agreement shall constitute a security agreement under Article 9 of the Uniform Commercial Code of Illinois with respect to the Personal Property covered by this Agreement. The Borrower hereby authorizes the Lender to execute and file on its behalf any financing statements, continuation statements or other statements in connection therewith which Lender deems necessary or reasonably advisable to preserve and maintain the priority of the lien hereof, or to extend the effectiveness thereof, under the Uniform Commercial Code or any other laws which may hereafter become applicable. This power, being coupled with an interest, shall be irrevocable so long as any part of the Indebtedness remains unpaid. The Borrower shall pay to the Lender, from time to time, upon demand, any and all costs and expenses incurred by the Lender in connection with the filing of any such statements including, without limitation, reasonable attorneys' fees and all disbursements,

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and such amounts shall be part of the Indebtedness secured by the lien of this Agreement.

F. Each of the Borrower and the Beneficiary shall do all things necessary to preserve and keep in full force and effect its existence, franchise, rights and privileges under the laws of the state of its formation and the state in which the Secured Property is located, if required by the laws of such state and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental or quasi-governmental authority or court applicable to it.

G. In addition to any other indemnities to the Lender specifically provided for in this Agreement, the Borrower hereby indemnifies and saves the Lender harmless from and against any and all losses, liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges, and expenses, including, without limitation, reasonable architect's, engineer's and attorney's fees and all disbursements which may be imposed upon, incurred or asserted against the Lender by reason of: (1) the construction of the Improvements, (2) any capital improvements, other work or thing done in, on or about the Secured Property or any part thereof, (3) any use, non-use, misuse, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Secured Property or any part thereof or any street, drive, sidewalk, curb, passageway or space comprising a part thereof or adjacent thereto, (4) any negligence on the part of the Borrower, Beneficiary, any lessee under a lease or their agents, contractors, servants, employees, licensees or invitees, (5) any accident, injury (including death) or damage to any person or property occurring in, on or about the Secured Property or any part thereof or in, on or about any street, drive, sidewalk, curb, passageway or space adjacent thereto, (6) any default or Event of Default as hereinafter defined, (7) any lien or claim which may be alleged to have arisen on or against the Secured Property or any part thereof under the laws of the local or state government or any other governmental or quasi-governmental authority or any liability asserted against the Lender with respect thereto, (8) any tax attributable to the execution, delivery, filing or recording of this Agreement, the Note, any lease, or any Loan Instruments, or (9) any contest permitted pursuant to the provisions of this Agreement.

The obligations of the Borrower under this Section 1.10G shall not in any way be affected by the absence in any case of covering insurance, by the amount of the insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Secured Property. If any claim, action or proceeding is made or brought against the Lender by reason of any event as to

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which the Borrower is obligated to indemnify, then, upon demand by the Lender, the Borrower, at its sole cost and expense, shall resist or defend such claim, action or proceeding in the Lender's name, if necessary, by the attorneys for the Borrower's insurance carrier (if such claim, action or proceeding is covered by insurance), otherwise by such attorneys as the Lender shall approve. Notwithstanding the foregoing, the Lender may engage its own attorneys in its reasonable discretion to defend it or to assist in its defense and the Borrower shall pay the reasonable fees and disbursements of such attorneys.

H. Except as set forth in Exhibit 1 attached hereto, there are no actions, suits, investigations or proceedings pending or, to the knowledge and belief of the Borrower, threatened against or affecting the Borrower, the Beneficiary, or the business, operations, properties or assets of the Borrower or the Beneficiary, or before or by any governmental department, commission, board, regulatory authority, bureau, agency, or instrumentality, domestic, foreign, federal, state or municipal (herein collectively called "governmental agency"), or any court, arbitrator or grand jury, which may result in any material adverse change in the business, operations, properties or assets or in the condition, financial or otherwise, of the Borrower or the Beneficiary, or in the ability of the Borrower to perform this Agreement. Neither the Borrower nor the Beneficiary is, to the knowledge and belief of the Borrower, in default with respect to any judgment, order, writ, injunction, decree, demand, rule or regulation of any court, arbitrator, grand jury or of any governmental agency, default under which might have consequences which would materially and adversely affect the business, operations, properties or assets or the condition, financial or otherwise, of the Borrower or the Beneficiary.

I. The execution and delivery by the Borrower and Beneficiary of this Agreement and/or the other Loan Instruments to which it is a party and the compliance by the Borrower and Beneficiary with the terms and conditions hereof and thereof have been duly and validly authorized by all necessary action. Neither the execution and delivery by the Borrower or Beneficiary of this Agreement or any of the other Loan Instruments to which it is a party nor the consummation of the transactions contemplated herein or therein, nor compliance with the terms and conditions hereof or thereof, to the best of the Borrower's knowledge will conflict with or result in a breach of, or constitute a default under, any of the terms, obligations, covenants, conditions or provisions of any corporate restriction or of any indenture, mortgage, deed of trust, pledge, bank loan or credit agreement, corporate charter, by-law or any other agreement or instrument to which

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the Borrower or Beneficiary is now a party or by which its properties may be bound or affected, or any judgment, order, writ, injunction, decree or demand of any court, arbitrator, grand jury, or governmental agency, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any property or asset of the Borrower or Beneficiary under the terms or provisions of any of the foregoing. Neither the Borrower nor the Beneficiary is in default in the performance, observance or fulfillment of any of the terms, obligations, covenants, conditions or provisions contained in any indenture or other agreement creating, evidencing or securing indebtedness of the Borrower or Beneficiary or pursuant to which the Borrower or Beneficiary is a party or by which the Borrower or Beneficiary or its properties may be bound or affected.

J. Each of the Borrower and Beneficiary has, to the best of the knowledge and belief of the Borrower, complied with all applicable statutes, rules, regulations, orders and restrictions of any domestic or foreign government or any instrumentality or agency thereof, in respect of the conduct of its business and ownership of its properties (including, without limitation, applicable statutes, rules, regulations, orders and restrictions relating to equal employment opportunities or environmental standards or controls). No governmental orders, permissions, consents, approvals or authorizations are required to be obtained and no registrations or declarations are required to be filed in connection with the execution and delivery or performance of this Agreement or any of the Loan Instruments.

## Section 1.11 Further Sales or Encumbrances.

A. Borrower acknowledges that the continuous ownership of the Secured Property, and the continuous management and/or control of the operation of same, by the Borrower is of a material nature to the transaction and the making of the loan evidenced by the Note and secured by the Loan Instruments.

B. Without the prior written consent of Lender being first had and obtained, which consent may be granted or denied in Lender's sole discretion, Borrower shall not voluntarily or involuntarily, by operation of law or otherwise, transfer or dispose of, or suffer any third party to transfer or dispose of, all or any portion of the Secured Property or any interest therein (including, without limitation, all or any part of the beneficial interest therein) or the management and/or operation by Borrower or Beneficiary of the Secured Property. For purposes of this Section, a transfer or disposition of the Secured Property or any part thereof or interest therein shall include, without limitation, execution of a contract to sell or

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option to purchase all or any portion of the Secured Property or any interest therein, any lease for space in any Improvements on the Secured Property for purposes other than occupancy by the tenant, any lease for space in any Improvements on the Secured Property containing an option to purchase, or any direct or indirect sale, assignment, conveyance, transfer (including a transfer as a result of or in lieu of condemnation), or other alienation of all or any portion of the Secured Property or any interest therein, including, but not limited to, the creation of a lien or other encumbrance on the Secured Property or any part thereof or interest therein, and further including any assignment, pledge, grant of security interest in, conditional sale, or the execution of a title retention agreement with regard to any personalty included in the Secured Property. For purposes of this Section, "Borrower" shall mean any and all of the Borrower, the Beneficiary and the general partners of the Beneficiary.

If Borrower takes or permits any such action without the prior written consent of Lender, Lender may, without limiting any other right or remedy available to Lender at law, in equity or by agreement with Borrower, and in Lender's absolute discretion and without regard to the adequacy of its security, accelerate the maturity of the Note and require the payment of the then existing outstanding principal balance and all other sums due under the Note and under this Agreement, including, but not limited to, the prepayment charge, if any, provided in Section 4.04 herein. The giving of consent by Lender to the transfer or disposition of all or any part of the Secured Property or any interest therein in any one or more instances shall not limit or waive the need for such consent in any other or subsequent instances.

C. Should the Secured Property at any time be or become subject to the lien of any so-called "wraparound" agreement, deed of trust or mortgage in connection with which payments on account of the Indebtedness secured hereby are to be made directly or indirectly by or through the lender under such agreement, deed of trust or mortgage or such lender's beneficiary, regardless of whether payment of the Indebtedness secured hereby is assumed by such lender or lender's beneficiary, the whole of the principal sum and interest and other sums hereby secured, at the option of the Lender, shall immediately become due and payable.

D. Should the legal title to the Secured Property, or the beneficial ownership thereof, be conveyed for condominium ownership or become vested in more than four (4) persons, the whole of the Indebtedness at the option of the Lender shall immediately become due and payable.



Section 1.12 Expenses. The Borrower will pay or reimburse the Lender for all reasonable attorney's fees, costs and expenses incurred by the Lender in any proceedings involving the estate of a decedent or an insolvent, or in any action, legal proceeding or dispute of any kind in which the Lender is made a party, or appears as party plaintiff or defendant, affecting the Indebtedness or the interest created therein, or the Secured Property, including, but not limited to, any judicial foreclosure as set forth in this Agreement, any condemnation action involving the Secured Property or any action to protect the security hereof or upon the reasonable concern of the Lender with the condition of the Secured Property, and any such amounts paid by the Lender shall be added to the Indebtedness and secured by this Agreement. If this Agreement is referred to attorneys for collection, foreclosure or for any cause set forth in Article III hereof, the Borrower shall pay all expenses incurred by the Lender, including reasonable attorneys' fees, interest, all costs of collection, litigation costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring title insurance commitments and policies, and similar assurances with respect to title and value as Lender may deem reasonably necessary together with all statutory costs, with or without the institution of an action or proceeding. All such sums with interest thereon at the rate set forth in the Note shall be deemed to be secured by this Agreement.

## ARTICLE II

### WARRANTIES AND REPRESENTATIONS

Borrower makes the following representations:

Section 2.01 Borrower represents, covenants and agrees that (i) it is lawfully seized and possessed of the Secured Property, in fee simple, subject to no mortgage, lien, charge or encumbrance, except as specifically set forth in the title insurance policy issued to Lender upon recordation of this Agreement, (ii) it has full power and lawful authority to grant, bargain, sell, convey, assign, transfer and mortgage the Secured Property in the manner and form hereby mortgaged and conveyed, (iii) it is the fee owner of the Improvements, and (iv) it will defend the title to the Secured Property against all claims and demands whatsoever.

Section 2.02 The Borrower covenants that the Loan Instruments are valid and enforceable obligations of the Borrower in accordance with the terms thereof and hereof and that the Loan Instruments do not nor does the performance or observance by the Borrower of any of the matters in the Loan Instruments provide for or contravene any covenant in any indenture or agreement affecting the Borrower or Beneficiary.

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## ARTICLE III

### DEFAULTS

Section 3.01 Events of Default. Any of the following events shall be deemed an Event of Default hereunder:

(1) if default shall be made in the payment of any installment of the principal of, or interest on, the Indebtedness secured by this Agreement or any other sum which is payable hereunder as and when the same shall become due and payable as in the Note or herein provided and such default continues for five (5) days following notice thereof from Lender to Beneficiary; or

(2) if the Borrower fails to perform or observe any term, provision, covenant or agreement contained in the Note, this Agreement or in any other Loan Instruments executed in connection with this loan transaction and such failure continues for thirty (30) days after notice thereof from Lender to Beneficiary; provided, however, if by the nature of such failure it is not susceptible of cure within such thirty (30) day period so long as Borrower commences to cure such default within such thirty (30) day period and thereafter diligently pursues such cure, such failure shall not be deemed an Event of Default hereunder so long as it is cured within ninety (90) days after the giving of such notice; or

(3) if any warranty, representation, certification, financial statement or other information made or furnished at any time pursuant to the terms of this Agreement or otherwise, by Borrower, Beneficiary, or by any person or entity in connection with the loan transaction, shall prove to be materially false; or

(4) if Borrower or Beneficiary shall:

(a) apply for, consent to or acquiesce in the appointment of a receiver, trustee or liquidator of it or of all or a substantial part of its assets, or the Secured Property or any interest in any part thereof (the term "acquiesce" includes, but is not limited to the failure to file a petition or motion to vacate or discharge any order, judgment or decree providing for such appointment within ten (10) days after the appointment); or

(b) file a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they come due; or

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(c) make a general assignment for the benefit of creditors; or

(d) file a petition or an answer seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief for itself under the present or any future federal bankruptcy act or any other statute or law relative to bankruptcy, insolvency, or other relief for debtors; or

(e) file an answer admitting the material allegations of, or consent to, or default in answering, a petition filed against it in any bankruptcy, reorganization or insolvency proceeding; or

(5) if an order for relief shall be entered against Borrower or Beneficiary by a court of competent jurisdiction under any present or future bankruptcy law; provided, however, that if such order is appealable, such order shall not be deemed an Event of Default unless such order shall continue unstayed and in effect for any period of sixty (60) consecutive days; or

(6) if an order, judgment or decree shall be entered by any court of competent jurisdiction, adjudicating Borrower or Beneficiary insolvent, approving a petition seeking reorganization or arrangement of Borrower or Beneficiary, or appointing a receiver, trustee or liquidator of it or of all or a substantial part of its assets, and such order, judgment or decree shall continue unstayed and in effect for any period of sixty (60) consecutive days; or

(7) if Borrower or Beneficiary has defaulted in any of the terms, conditions or covenants in any Assignment of Lessor's Interest in Lease, Assignment of Rents, or Security Agreement and such default has not been within any applicable cure period contained therein, or if Borrower or Beneficiary has assigned or purports to assign the whole or any part of the rents, income or profits arising from the Secured Property, without the prior written consent of Lender.

#### ARTICLE IV

##### REMEDIES

Section 4.01 List of Remedies. Upon the happening of any one or more of the Events of Default, the entire unpaid balance of the principal Indebtedness, interest accrued thereon, and all of the sums secured by this Agreement shall, at the sole option of the Lender, become immediately due and payable

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without notice or demand, and, in any such event, Lender may forthwith and without further delay undertake any one or more of the following:

A. Institute an action to foreclose this Agreement or take such other action as the law may allow, at law or in equity, for the enforcement hereof and realization on the Secured Property or any other security which is herein or elsewhere provided for, and proceed thereon to final judgment and execution thereon for the entire Indebtedness, with interest, at the rate specified in this Agreement to the date of default and thereafter at the Increased Rate, together with all other sums secured by the Agreement, all costs of suit, interest at the Increased Rate on any judgment obtained by Lender from and after the date of any sale of the Secured Property (which may be sold in one parcel or in such parcels, manner or order as Lender shall elect) until actual payment is made of the full amount due Lender, and an attorney's fee for collection, without further stay, any law, usage or custom to the contrary notwithstanding.

B. As an alternative to the right of foreclosure for the full Indebtedness after acceleration thereof, Lender 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 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 Indebtedness, such sale may be made subject to the continuing lien of this Agreement for the unmatured part of the 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 Indebtedness, but as to such unmatured part this Agreement 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 subsection. Notwithstanding the filing of any partial foreclosure or entry of a decree of sale therein, Lender may elect, at any time prior to a foreclosure sale pursuant to such decree to discontinue such partial foreclosure and to accelerate the 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 foreclosures without exhausting the right of full or partial foreclosure sale for any unmatured part of the 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

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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.

C. Enter into and upon all or any part of the Secured Property, personally, or by its agents or attorneys, and each and every part thereof, and may exclude the Borrower, its agents and servants wholly therefrom without liability for trespass, damages or otherwise, and Borrower agrees to surrender possession to Lender on demand after the happening of any Event of Default; and having and holding the same Lender may use, operate, manage and control the Secured Property and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receivers; and, upon each such entry, the Lender, at the expense of the Borrower from time to time, either by purchase, repairs or construction, may maintain and restore the Secured Property; may complete the construction of the Improvements and in the course of such completion may make such changes in the contemplated or completed buildings, structures and improvements as it may deem desirable and may insure the same; and likewise, from time to time, at the expense of the Borrower the Lender may make all necessary or proper repairs, renewals and replacements and such alterations, additions, betterments and improvements thereto and thereon as it may deem advisable; and in every such case the Lender shall have the right to manage and operate the Secured Property and to carry on the business thereof and exercise all rights and powers of the Borrower with respect thereto either in the name of the Borrower or otherwise as it shall deem best.

D. Collect and receive all earnings, revenues, rents, issues, profits and income derived from the Secured Property and every part thereof, and after deducting the expenses of conducting the business thereof and of all maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvements, the amounts necessary to pay for taxes, assessments, insurance and liens or other charges upon the Secured Property or any part thereof, as well as just and reasonable compensation for the services of the Lender and for all attorneys, counsel, agents, clerks, servants, and other employees by it properly engaged and employed the Lender shall apply the moneys arising as aforesaid, first, to the payment of the unpaid Indebtedness secured by this Agreement 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 the Borrower hereunder.

E. Institute proceedings to have a receiver appointed to enter into possession of the Secured Property, collect the earnings, revenues, rents, issues, profits and income therefrom



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and apply the same as the court may direct. Lender shall be entitled to the appointment of a receiver as a matter of right without notice and without the necessity of proving either the inadequacy of the security or the insolvency of the Borrower or any other person who may be legally or equitably liable to pay money secured by this Agreement and the Borrower and each such person shall be deemed to have waived such proof and to have consented to the appointment of such receiver. Should the Lender or any receiver collect earnings, revenues, rents, issues, profits or income from the Secured Property, the moneys so collected shall not be substituted for payment of the Indebtedness nor can they be used to cure an Event of Default, without the prior written consent of the Lender. Lender shall be liable to account only for earnings, revenues, rents, issues, profits and income actually received by Lender.

F. Institute an action for specific performance of any covenant contained herein or in aid of the execution of any power herein granted.

Lender shall be entitled in its sole discretion to exercise all or any of the rights and remedies herein or in the Loan Instruments provided, or which may be given by statute, law or equity, or otherwise in such order and manner as Lender shall elect without impairing Lender's lien in, or rights to, any of such Loan Instruments and without affecting the liability of any person, firm, corporation, or other entity for the sums secured by the Loan Instruments.

Lender, in its sole discretion, shall have the right to release for such consideration as Lender may require any portion of the Secured Property without, as to the remainder of the Secured Property, in any way impairing or affecting the lien of this Agreement, or the priority thereof or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Indebtedness secured by this Agreement shall have been reduced by the actual monetary consideration, if any received by Lender for such release; and shall have the right to accept by assignment or pledge any other property in place thereof as Lender may require without being accountable for so doing to any other lienor.

Section 4.02 Costs and Expenses. Lender shall have the right to remedy any default or appear in, defend, or bring any action or proceeding to protect its interest in the Secured Property or to foreclose this Agreement or collect the Indebtedness, and the costs and expenses thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section shall be paid by the Borrower to the Lender upon demand. All such costs and expenses incurred by Lender in remedying such default or

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appearing in, defending, or bringing any such action or proceeding shall be paid by Borrower to Lender upon demand after notice from Lender with interest at the Increased Rate, from the date that such costs and expenses were incurred to the date of payment to Lender. All such costs and expenses incurred by Lender pursuant to the terms of this Agreement, with interest, shall be secured by this Agreement.

Section 4.03 Waiver of Statutory Rights. Borrower hereby waives and releases (a) all benefits that might accrue to Borrower by virtue of any present or future laws excepting the Secured Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale under execution from civil process, or extension of time for payment; (b) all benefits that might accrue to Borrower from requiring valuation or appraisal of any part of the Secured Property levied or sold on execution of any judgment recovered for the Indebtedness secured by this Agreement; (c) all notices not herein elsewhere specifically required of Borrower's default or of Lender's exercise, or election to exercise, any option under this Agreement; and (d) Borrower's right of redemption pursuant to Section 12-125 and Section 15-1601(b) of the Illinois Code of Civil Procedure and any other similar provision hereinafter enacted. Borrower 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 and any exemption from execution or sale of the Secured Property or any part thereof, whenever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Agreement; 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 Secured 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, and to the extent permitted by law, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the property so sold, or any part thereof, and the Borrower hereby expressly waives all benefits or advantages of any such law or laws, and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to the Lender, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. The Borrower, for itself and all who may claim under it, waives and releases, to the extent that it lawfully may, all right to have the Secured Property marshaled. In case of a sale of the Secured Property, the same may be sold in one parcel, as an entirety, or in such parcels, manner or order as Lender in its sole discretion may decide, any provision of law to the contrary notwithstanding.

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Section 4.04 Prepayment Privilege and Prepayment Charge.

A. After July 10, 1989, Borrower shall have the right to make prepayment of the entire principal balance on the Note in accordance with the provisions of the Note.

B. Borrower hereby agrees to pay the charge provided in the Note for prepayment of any Indebtedness secured hereby, if for any reason any of said Indebtedness shall be paid prior to the stated maturity date thereof, even if and notwithstanding that an Event of Default shall have occurred and Lender, by reason thereof, shall have declared said Indebtedness or all sums secured hereby immediately due and payable, and whether or not said payment is made prior to or at any sale held under or by virtue of this Article IV. Borrower acknowledges that Lender, in making the loan evidenced by the Note and entering into this Agreement, is relying on Borrower's creditworthiness and its agreement to repay the Indebtedness in strict accordance with the terms set forth in the Note. Borrower acknowledges that Lender would not make the loan without full and complete assurance by Borrower of its agreement to make regular payments of principal and interest under the Note and its further agreement not to prepay all or any part of the principal of the Note prior to the final maturity date thereof, except on the terms expressly set forth herein and in the Note. Accordingly, in recognition of the foregoing and in consideration of Lender making the loan secured by this Agreement at the interest rate and for the term set forth in the Note, Borrower hereby expressly (a) waives any and all rights it may have under applicable law to prepay without charge or premium all or any part of the Note, either voluntarily or upon an acceleration of the maturity date of the Note on account of any default of Borrower, including, but not limited to, the making or suffering by Borrower of any transfer or disposition prohibited by Section 1.11 of this Agreement, and (b) agrees that if, for any reason, whether due to the voluntary acceptance by Lender of a prepayment tendered by Borrower or the acceleration by Lender of the maturity date of the Note, as aforesaid, on account of any such default by Borrower, a prepayment of all or any part of the principal of the Note is made by or on behalf of Borrower, or is otherwise made or occurs in connection with any reinstatement of the Loan Instruments under any foreclosure proceedings, or any right of redemption exercised by the Borrower or any other party having the right to redeem or to prevent any foreclosure of this Agreement, or upon the consummation of any foreclosure sale, then Borrower or any other party making any such prepayment shall be obligated to pay, concurrently therewith, as a prepayment premium, the greater of the applicable sum set forth below or, if such prepayment occurs prior to July 10, 1989, ten percent (10%) of the outstanding principal balance of the Note

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immediately prior to such prepayment, and the payment of such premium shall be a condition to the making of such prepayment and shall be secured by this Agreement. Without limiting the scope of the foregoing provisions, the provisions of this Section shall constitute both a waiver of any right the Borrower may have to prepay the loan without charge and an agreement by the Borrower to pay the aforesaid prepayment premium or charge upon any prepayment, whether voluntary or pursuant to any such acceleration or otherwise, and the Borrower hereby declares that the Lender's agreement to make the loan to Borrower at the interest rate and for the term set forth in the Note constitutes adequate consideration for this waiver and agreement by the Borrower.

Such prepayment premium or charge shall be computed as follows, and shall be paid without prejudice to the right of the holder to collect any other amounts provided to be paid or to declare a default hereunder:

The prepayment charge shall be equal to the product obtained by multiplying (x) the difference obtained by subtracting from 8.625% per annum the yield rate of U.S. Treasury Notes due nearest to June 10, 1992 (the "Maturity Date") as such yield rate is reported in the Wall Street Journal or similar publication on the fifth business day preceding the prepayment date times (y) the number of whole and fractional years remaining between the prepayment date and the Maturity Date times (z) the principal amount outstanding under the Note immediately prior to such prepayment. If the yield rate described in clause (x) of the preceding sentence exceeds 8.625% per annum, there shall be no prepayment charge under the preceding sentence.

#### ARTICLE V

#### MISCELLANEOUS

Section 5.01 Non-Waiver. The failure of Lender to insist upon strict performance of any term of this Agreement shall not be deemed to be a waiver of any term of this Agreement. Borrower shall not be relieved of its obligation to pay the Indebtedness at any time and in the manner provided for its payment in the Note and this Agreement by reason of (i) failure of Lender to comply with any request of Borrower to take any action to foreclose this Agreement or otherwise enforce any of the provisions of this Agreement or of the Note or any other agreement, instrument or document evidencing, securing or guaranteeing payment of the Indebtedness or any portion thereof, (ii) the release, regardless of consideration, of the whole or any part of the Secured Property or any other security for the Indebtedness, or (iii) any agreement or stipulation

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between Lender and any subsequent owner or owners of the Secured Property or other person extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Agreement or any Loan Instrument securing or guaranteeing the Indebtedness or any portion thereof, without first having obtained the consent of Borrower, and, in the latter event, Borrower shall continue to be obligated to pay the Indebtedness at the time and in the manner provided in the Note and this Agreement, as so extended, modified and supplemented, unless expressly released and discharged by Lender. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien, encumbrance, right, title or interest in or to the Secured Property, Lender may release any person at any time liable for the payment of the Indebtedness or any portion thereof or any part of the security held for the Indebtedness and may extend the time of payment or otherwise modify the terms of the Note, Agreement or other Loan Instruments, including, without limitation, a modification of the interest rate payable on the principal balance of the Note, without in any manner impairing or affecting the Loan Instruments or the lien thereof or the priority of this Agreement, as so extended and modified, as security for the Indebtedness over any such subordinate lien, encumbrance, right, title or interest. Lender may resort for the payment of the Indebtedness to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Indebtedness, or any portion thereof, or to enforce any covenant of this Agreement without prejudice to the right of Lender thereafter to foreclose this Agreement. Lender shall not be limited exclusively to the rights and remedies stated in this Agreement but shall be entitled to every additional right and remedy now or hereafter afforded by law. The rights of Lender under this Agreement shall be separate, distinct and cumulative, and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision of this Agreement to the exclusion of any other provision.

Section 5.02 Sole Discretion of Lender. Wherever, pursuant to this Agreement, the Lender's consent or approval is required, the decision as to whether or not to consent or approve shall be in the sole discretion of Lender and Lender's decision shall be final and conclusive, unless otherwise expressly provided herein.

Section 5.03 Recovery of Sums Required To Be Paid. Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Indebtedness as same shall become due, without regard to whether the balance of the Indebtedness shall be due, and

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without prejudice to the right of the Lender thereafter to bring an action of foreclosure or any other action for a default or defaults by the Borrower existing at the time such earlier action was commenced.

Section 5.04 Covenants Run With the Land. All of the covenants herein shall run with the Land.

Section 5.05 Place of Payment. All payments of principal, interest and any and all other payments required or provided herein shall be paid in lawful money of the United States of America which shall be legal tender in payment of all debts and dues, public and private, at the time of payment, at the office of the Lender or at such other place either within or without the State of Illinois as Lender may from time to time designate.

Section 5.06 No Merger. If both the lessor's and lessee's estates under any lease or any portion thereof which constitutes a part of the Secured Property shall at any time become vested in one owner, this Agreement and the lien created hereby shall not be destroyed or terminated by the application of the doctrine of merger and, in such event, Lender shall continue to have and enjoy all of the rights and privileges of the Lender as to the separate estates. In addition, upon the foreclosure of the lien created by this Agreement on the Secured Property pursuant to the provisions hereof, any leases or subleases then existing and created by Borrower shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Lender or any purchaser at any such foreclosure sale shall so elect. No act by or on behalf of the Lender or any such purchaser shall constitute a termination of any lease or sublease unless Lender or such purchaser shall give written notice thereof to such lessee or sublessee.

Section 5.07 Return to Former Positions. In case Lender shall have proceeded to enforce any right under this Agreement by foreclosure, sale or entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely, then, in every such case, the Borrower and the Lender shall be restored to their former positions and rights hereunder with respect to the Secured Property subject to the lien hereof.

Section 5.08 Headings. The headings of the sections, paragraphs and subdivisions of this Agreement are for the convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

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Section 5.09 Notice to Parties. All notices and demands 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 certified or registered mail with return receipt requested to any party hereto or sent by overnight courier at the following addresses:

If to Borrower: American National Bank and Trust  
Company of Chicago,  
as Trustee of Trust No. 60954  
33 North LaSalle Street  
Chicago, Illinois 60690 .  
Attn: Trust Department

If to Lender: c/o New York Life Insurance Company  
51 Madison Avenue  
New York, New York 10010  
Attn: Real Estate Mortgage  
Loan Department

or at such other address of which written notification has been given to the other party.

Section 5.10 Successors and Assigns Included In Parties. Whenever in this Agreement one of the parties hereto is named or referred to, the heirs, legal representatives, successors and assigns of such party shall be included and all covenants and agreements contained in this Agreement by or on behalf of the Borrower or by or on behalf of the Lender shall bind and inure to the benefit of their respective heirs, legal representatives, successors and assigns, whether so expressed or not.

Section 5.11 Number and Gender. Whenever the singular or plural number, masculine or feminine or neuter gender is used herein, it shall equally include the other.

Section 5.12 Changes and Modifications. This Agreement cannot be changed except by an agreement in writing, signed by the party against whom enforcement of any change or modification is sought.

Section 5.13 Applicable Law. The Note and this Agreement securing shall be construed and enforced according to the laws of the State of Illinois.

Section 5.14 Invalid Provisions to Affect No Others. The unenforceability or invalidity of any provision or provisions of this Agreement as to any persons or circumstances shall not render that provision or those provisions unenforceable or invalid as to any other persons or circumstances, and all

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provisions hereof, in all other respects, shall remain valid and enforceable.

**Section 5.15 Usury Savings Clause.** It is the intention of the Borrower and Lender to conform strictly to the usury laws now or hereafter in force in the State of Illinois and any interest payable under the Note, this Agreement, and/or any of the other Loan Instruments executed by the Borrower shall be subject to reduction to the amount not in excess of the maximum non-usurious amount allowed under the usury laws of the State of Illinois as now or hereafter construed by the courts having jurisdiction over such matters. The aggregate of all interest (whether designated as interest, service charges, points or otherwise) contracted for, chargeable, or receivable under the Note, this Agreement, or any other document executed in connection with this loan transaction shall under no circumstances exceed the maximum legal rates upon the unpaid principal balance of this Note remaining unpaid from time to time. In the event such interest does exceed the maximum legal rate, it shall be deemed a mistake and such excess shall be cancelled automatically and, if theretofore paid, rebated to the Borrower or credited on the principal amount of this Note, or, if the Note has been repaid, then such excess shall be rebated to the Borrower.

**Section 5.16 Waivers.** The pleading of any statute of limitations as a defense to any and all obligations secured by this Agreement is hereby waived to the full extent permissible by law.

**Section 5.17 Late Charges.** In the event that any installment of principal, interest, or escrow deposit shall become overdue, a "late charge" of four cents for each dollar (\$1.00), or part thereof so overdue, may be charged to the Borrower by the Lender for the purpose of defraying the Lender's expenses incident to handling such delinquent payment. This charge shall be in addition to and not in lieu of any other remedy the Lender may have and is in addition to any reasonable fees and charges of any agents or attorneys which the Lender is entitled to employ on any default hereunder whether authorized herein or by law. Such "late charges", if not previously paid shall, at the option of the Lender, be added to and become part of the succeeding monthly payment to be made under the Note and secured by this Agreement.

**Section 5.18 Additional Advances and Security.** This Agreement shall cover any and all advances made pursuant to the Loan Instruments, rearrangements and renewals of the Indebtedness and all extensions in the time of payment thereof, even though such advances, extensions or renewals be evidenced by new promissory notes or other instruments hereafter executed

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and irrespective of whether filed or recorded; provided, however, that such additional advances shall never exceed 150% of the original principal amount of the Note. Likewise, the execution of this Agreement shall not impair or affect any other security which may be given to secure the payment of the Indebtedness, and all such additional security shall be considered as cumulative. The taking of additional security, execution of partial releases of the security, or any extension of time of payment of the Indebtedness shall not diminish the force, effect or lien of this Agreement and shall not affect or impair the liability of any maker, surety, or endorser for the payment of the Indebtedness.

Section 5.19 Business Loan Recital. Borrower 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 in 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 May 24, 1878, as amended (Ill. Rev. Stats., 1981 ed., Ch. 17, Sec. 6404(1)(c)); and (b) is an exempted transaction under the Truth-in-Lending Act, 15 U.S.C. Sec. 1601 et seq.

Section 5.20 Trustee Exculpation. This Agreement is executed by American National Bank and Trust Company of Chicago, 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 Corporation hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein or in said Note contained shall be construed as creating any liability on Borrower or on said Corporation or on Beneficiary, personally to pay the said 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 execution clause, 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 Lender and by every person now or hereafter claiming any right or security hereunder, and that so far as Borrower and its successors and said Corporation and Beneficiary personally are concerned, the Holders and the owner or owners of any indebtedness accruing hereunder shall look solely to any one or more of: (1) the premises and the rents,

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issues and profits thereof, for the payment thereof, by the enforcement of the lien hereby created, in the manner herein and in the Note provided; (2) assets of the Trust Estate held under the Trust Agreement; (3) any other security given to secure said indebtedness; or (4) the personal liability of the guarantor, if any.

Section 5.21 Use of Loan Proceeds. Borrower and Beneficiary shall not invest or otherwise use the proceeds of the Note in violation of any Federal, state or local law and/or regulation.

IN WITNESS WHEREOF, American National Bank and Trust Company of Chicago, not personally but as Trustee as aforesaid, has caused these presents to be signed by its VP, and its corporate seal to be hereunto affixed and attested by its ASST SCTR the day and year first above written.

American National Bank and Trust Company of Chicago  
not personally, but as Trustee as aforesaid

By. [Signature]  
Its VP

ATTEST:

[Signature]  
Its ASST SCTR

This instrument was prepared by

Linda D. White  
Sonnenschein Carlin Nath  
& Rosenthal  
8000 Sears Tower  
Chicago, Illinois 60606

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## Schedule A

### Legal Description

LOT 9 IN NORTHBROOK COURT OFFICE PLAZA, BEING A SUBDIVISION OF THE PART OF THE NORTH WEST 1/4 OF SECTION 2, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

### Permitted Exceptions

Those exceptions to title set forth on Chicago Title Insurance Company Policy # C67-66-31 dated June 11, 1987.

Address: 60 Revere Dr.

Northbrook, IL

PIN: 04-02-100-021

CD Ogan

Property of Cook County Clerk's Office

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