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

AMONG

AMERICAN NATIONAL BANK AND TRUST COMPANY  
OF CHICAGO, NOT PERSONALLY, BUT SOLELY AS TRUSTEE  
UNDER TRUST AGREEMENT DATED MAY 6, 1982  
AND KNOWN AS TRUST NUMBER 55185 and  
MALLERS-CHICAGO LIMITED PARTNERSHIP,  
AN ILLINOIS LIMITED PARTNERSHIP,  
collectively, the Mortgagor

66539390

AND

HELLER FINANCIAL, INC. Mortgagee

This document prepared by and  
after recordation, return to:

Ann Marie Sink, Esq.  
Katten Muchin & Zavis  
525 West Monroe Street  
Chicago, Illinois 60606

Loan No. 88-148C

Common Address of Premises: Property Index No. 17-15-101-017

5 South Wabash /  
67 East Madison  
Chicago, Illinois

**BOX 15**

NTS 234-16613-14/CIV

TROR 23884

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This document is a copy of the original document filed in the Cook County Clerk's Office.

Case No. 123456789  
Filed for Record on 01/15/2024  
Cook County Clerk's Office  
Chicago, Illinois 60601

Common Address: 1234 N. Dearborn St.  
Chicago, IL 60610  
Phone: (773) 555-1234

BOX 12

12/15/2023

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THIS MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS (this "Mortgage") is made as of November 21, 1988, by and among AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but as Trustee under Trust Agreement dated May 6, 1982 and known as Trust Number 55185, whose mailing address is 33 North LaSalle Street, Chicago, Illinois (the "Land Trustee") whose sole beneficiary is MALLERS-CHICAGO LIMITED PARTNERSHIP, an Illinois limited partnership whose mailing address is 105 West Adams Street, Chicago, Illinois 60603 (the "Beneficiary"); Land Trustee and Beneficiary are hereinafter collectively referred to as the "Mortgagor"), and HELLER FINANCIAL, INC., a Delaware corporation (the "Mortgagee") whose mailing address is 200 North LaSalle Street, 9th Floor, Chicago, Illinois 60601.

## W I T N E S S E T H:

WHEREAS the Mortgagor is justly indebted to the Mortgagee in the principal sum of SEVENTEEN MILLION SEVEN HUNDRED THIRTY SEVEN THOUSAND FIVE HUNDRED AND NO/100THS DOLLARS (\$17,737,500.00) which includes "Accrued Interest" (as defined in the "Note", as hereinafter defined) not to exceed \$1,237,500.00, as evidenced by one certain PROMISSORY NOTE of the Mortgagor of even date herewith, made payable to the order of and delivered to the Mortgagee, the final payment of which, if not sooner paid, shall be due on November 30, 1995 (the "Maturity Date"), (which Promissory Note, together with all notes issued in substitution or exchange therefor and/or as any of the foregoing may be amended, modified or supplemented from time to time hereafter, is hereinafter called the "Note"). The terms and provisions of the Note are hereby incorporated and made a part hereof by this reference thereto with the same force and effect as if set forth at length herein.

WHEREAS Mortgagee wishes to secure: (i) the prompt payment of the Note, together with interest and premiums, if any due thereon, and late charges and other amounts, if any, including, but not limited to, any "Release Fee" (as defined in the Note) due or to become due thereunder, in accordance with the terms of the Note, (ii) the payment of any and all other debts, claims, obligations, demands, monies, liabilities and/or indebtedness (of any and every kind or nature), including, without limitation, attorney's fees, costs and expenses, now and/or hereafter owing, arising, due or payable from Mortgagor to Mortgagee under and/or pursuant to the terms and provisions of this Mortgage ("Additional Liabilities"), (iii) the payment of any and all other debts, claims, obligations, demands, monies, liabilities and/or indebtedness (of any and every kind or nature) now and/or hereafter owing, arising, due or payable from Mortgagor

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to Mortgagee (hereinafter referred to as "Future Advances") howsoever evidenced, created, incurred, acquired or owing, whether direct or contingent, and arising under and/or pursuant to the terms and provisions of the Standing Mortgage Loan Commitment dated September 14, 1988 from Mortgagee to and accepted by or on behalf of Mortgagor (the "Commitment") and any other agreements, security agreements, assignments of leases and rents, letters of credit, holdback or reserve agreements, guaranties, instruments and/or documents now and/or hereafter executed and/or delivered by or for Mortgagor to Mortgagee (hereinafter, together with the Commitment, referred to as the "Other Agreements"), it being contemplated that Mortgagor may hereafter become indebted to Mortgagee for Future Advances; provided, however, that the maximum amount of the "Indebtedness" (hereinafter defined) outstanding at any one time secured hereby shall not exceed \$35,500,000.00. As used in this Mortgage, the term "Indebtedness" means and includes the payment when due or declared due of the principal amount of the Note together with all interest, additional interest, late charges, prepayment premiums and any other amounts provided for therein together with the Additional Liabilities and the Future Advances, all as set forth in the Note, a copy of which is attached hereto as Exhibit "A" and made a part hereof.

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SECTION 1

GRANTING CLAUSE-I

NOW, THEREFORE, to secure the Indebtedness, and to secure the performance and observance by Mortgagor of the covenants, conditions and agreements contained in the Note, this Mortgage and/or the Other Agreements, and also in consideration of the sum of ONE DOLLAR (\$1.00) in hand paid, the receipt whereof is hereby acknowledged, Mortgagor does by these presents MORTGAGE, GRANT, BARGAIN, REMISE, RELEASE, ALIENATE AND CONVEY unto the Mortgagee and its successors and assigns forever, all of the following described property whether now owned or hereafter acquired by Mortgagor (which property is hereinafter sometimes individually and collectively referred to as the "Mortgaged Property"), to wit:

(a) the following described real estate and all of Mortgagor's present and hereafter-acquired estate, right, title and interest therein, situated, lying and being in the County of Cook and State of Illinois as more particularly described on EXHIBIT "B" attached hereto and made a part hereof (the "Premises");

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(b) All buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Premises (the "Improvements"), and all fixtures, fittings, building materials, machinery, equipment, furniture and furnishings and personal property of every nature whatsoever now or hereafter owned by the Mortgagor (or beneficiary of Mortgagor) and used or intended to be used in connection with or with the operation of said Premises and Improvements, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing, whether such fixtures, furnishings and personal property are actually located on or adjacent to the Premises and/or the Improvements or not and whether in storage or otherwise wheresoever the same may be located. Trade fixtures and personal property of tenants and property of Mortgagor's contractors are specifically excluded from this Mortgage:

(c) All easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, mineral rights, air rights and all development rights, estates, leases, rights, titles, interest, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the Premises and/or Improvements, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Mortgagor, and the reversion and reversions, remainder and remainders, rents, issues, profits thereof, and all estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of the Mortgagor of, in and to the same, including but not limited to:

(i) All leases, tenancies, licenses, concessions and other agreements affecting the use, enjoyment or occupancy of the Premises and/or Improvements now or hereafter entered into (the "Leases") and all rents, royalties, profits, issues and revenues from the Premises and/or Improvements from time to time accruing, whether under Leases, now existing or hereafter created (the "Rents"), reserving to Mortgagor, however, so long as no "Event of Default" (hereinafter defined) has occurred hereunder, the right to receive and apply the Rents in accordance with the terms and conditions of Section 11.1 hereof; and

(ii) All judgments, insurance proceeds, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Premises and/or the Improvements or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking, by casualty or otherwise) to the Premises and/or the Improvements or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets;

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(d) All proceeds of the conversion, voluntary or involuntary of subparagraphs (a) and (b) above into cash or liquidated claims;

(e) Any monies on deposit with or for the benefit of Mortgagee, including but not limited to deposits for the payment of real estate taxes or special assessments against the Premises, Improvements and/or Leases or for the payment of premiums on policies of fire and other hazard insurance for or with respect to the Premises, Improvements and/or Leases;

(f) All goodwill, trademarks, trade names, option rights, books and records, and general intangibles of the Mortgagor relating to the Premises, Improvements and/or Leases, and all accounts, contract rights, instruments, chattel paper and other rights of the Mortgagor for payment of money, for property sold or lent, for services rendered, for money lent, or for advances or deposits made relating to the Premises, Improvements and/or Leases, including, without limitation, all tax refunds and refunds of any other monies paid by or on behalf of Mortgagor relating to the Premises, Improvements and/or Leases;

(g) All rights of the Mortgagor to any and all plans and specifications, designs, drawings and other matters prepared for any construction on the Premises and/or Improvements;

(h) All rights of the Mortgagor under any contracts executed by the Mortgagor with any provider of goods or services for or in connection with any construction undertaken on or services performed or to be performed in connection with the Premises, Improvements and/or Leases;

(i) All rights of the Mortgagor as seller or borrower under any agreement, contract, understanding or arrangement pursuant to which the Mortgagor has obtained the agreement of any person or entity to pay or disburse any money for the Mortgagor's sale (or borrowing on the security) of the Premises, Improvements and/or Leases or any part thereof;

(j) To the extent assignable, any and all permits, certificates, approvals and authorizations, however characterized, issued or in any way furnished whether necessary or not, for the operation and use of the Premises, Improvements and/or Leases, including, without limitation, building permits, environmental certificates, licenses, certificates of operation, warranties and guarantees; and

(k) All of the "Deposits" and the "Collateral", which terms are defined in Section 2.1 hereof.

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TO HAVE AND TO HOLD the Mortgaged Property together with the rents, issues, profits and proceeds thereof, unto the Mortgagee, its successors and assigns, forever, free from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State or other jurisdiction in which the Premises are located (which rights and benefits are hereby expressly released and waived), for the uses and purposes herein set forth.

## SECTION 2

### GRANTING CLAUSE-II

2.1 Mortgagor and Mortgagee agree: (i) that this Mortgage shall constitute a Security Agreement within the meaning of the Uniform Commercial Code of the State in which the Premises are located (the "Code") with respect to all sums now or hereafter on deposit with the Mortgagee pursuant to Sections 4, 5, 7 and 8 hereof and any other Section of this Mortgage (the "Deposits") and with respect to any property included in the definition herein of the words "Mortgaged Property", which property may not be deemed to form a part of the real estate described in EXHIBIT "B" or may not constitute a "fixture" (within the meaning of Section 9-313 of the Code), and all replacements of such property, substitutions for such property, additions to such property, and the proceeds thereof (said property, replacements, substitutions, additions and the proceeds thereof being sometimes herein collectively referred to as the "Collateral"); and (ii) that a security interest in and to the Collateral and the Deposits is hereby granted to the Mortgagee; and (iii) that the Deposits and all of Mortgagor's right, title and interest therein are hereby assigned to the Mortgagee; all to secure payment of the Indebtedness and to secure performance by the Mortgagor of the terms, covenants and provisions hereof. The lien and security interest hereof will automatically attach without further act, to all after acquired Deposits and Collateral.

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SECTION 3

PAYMENT OF INDEBTEDNESS;  
COVENANT OF AUTHORITY AND OWNERSHIP; USE OF COLLATERAL;  
FURTHER ASSURANCES

3.1 The Mortgagor hereby covenants with the Mortgagee that Mortgagor will pay or cause to be paid when due or declared due, each item of Indebtedness secured by this Mortgage, in accordance with the terms of the Note, this Mortgage and the Other Agreements.

3.2 The Mortgagor hereby covenants with the Mortgagee and with the purchaser at any foreclosure sale: (i) that Mortgagor now has and hereafter shall maintain the standing, right, power and lawful authority to own the Mortgaged Property, to carry on the business of and operate the Mortgaged Property, to enter into, execute and deliver this Mortgage, the Note and the Other Agreements to Mortgagee, to encumber the Mortgaged Property to Mortgagee as provided herein or in the Other Agreements and to perform all of Mortgagor's obligations and to consummate all of the transactions described in or contemplated by this Mortgage, the Note and the Other Agreements; (ii) that the execution and delivery of this Mortgage, the Note and the Other Agreements by Mortgagor and/or the performance by Mortgagor of its obligations under the same shall not by the passage of time, the giving of notice or otherwise, constitute a violation of any applicable law or a breach of any provision contained in any agreement, instrument or document to which Mortgagor is now or hereafter shall become a party or by which it is or may become bound; and (iii) that at the execution and delivery hereof, Mortgagor owns the Mortgaged Property and has good, indefeasible estate therein, in fee simple; that the Mortgaged Property (including the Deposits and the Collateral) are free from all encumbrances whatsoever (and any claim of any other person thereto) other than the subordinated lien of Bank of America National Trust and Savings Association (the "Junior Lender") and such other encumbrances permitted by the Mortgagee in writing (the "Permitted Encumbrances"); that it has good and lawful right to sell, mortgage and convey the Mortgaged Property; and that Mortgagor and its successors and assigns shall forever defend the Mortgaged Property against all claims and demands whatsoever.

3.3 The Mortgagor agrees that, without the written consent of the Mortgagee, the Mortgagor will not remove or permit to be removed from the Mortgaged Property any of the Collateral except that so long as no Event of Default exists hereunder, Mortgagor shall be permitted to sell or otherwise dispose of the Collateral when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Mortgaged Property,

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but only upon replacing the same or substituting for the same other Collateral at least equal in value and utility to the initial value and utility of that disposed of and in such manner that said replacement or substituted Collateral shall be subject to the security interest created hereby and that the security interest of the Mortgagee shall be perfected and first in priority, it being expressly understood and agreed that all replacements, substitutions and additions to the Collateral shall be and become immediately subject to the security interest of this Mortgage and covered hereby.

3.4 Mortgagor, promptly upon request by Mortgagee, at Mortgagor's sole expense, will or will cause to be made, executed and delivered to Mortgagee, in form and substance acceptable to Mortgagee, all "Documents" (as hereinafter defined) that Mortgagee is advised are and/or reasonably deems necessary or appropriate to evidence, document or conclude the transactions described in and/or contemplated by this Mortgage, the Note or the Other Agreements or required to perfect or continue perfected, as valid encumbrances, the encumbrances granted herein or in the Other Agreements by Mortgagor to Mortgagee upon the Mortgaged Property. As used in this Section "Documents" means any mortgage, deed of trust or similar instrument, assignment of leases, assignment of rents, note, indemnification agreement, security agreement, financing statement, affidavit, assignment of insurance, loss payable clause, mortgage title insurance policy, letters of opinion, waiver letter, estoppel letter, consent letter, non-offset letter, insurance certificate, appraisal, survey and any other similar such agreements, instruments or documents.

3.5 The Mortgagor and the Mortgagee agree, to the extent permitted by law, that with respect to all of the goods described within the definition of the words "Mortgaged Property" herein which are or are to become fixtures on the Premises described in EXHIBIT "B", this instrument, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of Sections 9-313 and 9-402 of the Code. Mortgagor is a record owner of the Premises described in EXHIBIT "B".

## SECTION 4

### MAINTENANCE AND RESTORATION; PAYMENT OF LIENS; INDEMNITY; INSPECTION RIGHT:

4.1 Mortgagor shall: (a) promptly repair, restore or rebuild any Improvements now or hereafter on the Premises which may become damaged or destroyed so as to be of equal value and substantially of the same character as prior to such damage or

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destruction, subject to the then current zoning law, but without regard to the availability or adequacy of any casualty insurance proceeds or eminent domain awards; (b) keep the Mortgaged Property in good condition and repair, without waste; (c) keep the Mortgaged Property free from mechanics' liens or other liens or claims for lien (collectively called "Liens"), subject however to the rights of the Mortgagor set forth in Section 4.2 below; (d) immediately pay when due any indebtedness which may be secured by a Lien or charge on the Mortgaged Property (no such Lien to be permitted hereunder, other than the Permitted Encumbrances), and upon request, exhibit satisfactory evidence of the discharge of such Lien to Mortgagee; (e) complete within a reasonable time any building(s) or other Improvements now or at any time in process of erection upon the Mortgaged Property; (f) comply with all federal, state and local requirements of law, regulations, ordinances, orders and judgments and all covenants, easements and restrictions of record with respect to the Mortgaged Property and the use thereof; (g) make no alterations in the Mortgaged Property nor permit any excavation, construction, earth work, site work, or any other mechanics lienable work, (except for tenant improvements and normal and customary repair and maintenance thereon) without Mortgagee's prior written consent (which consent shall not be unreasonably refused or withheld); (h) suffer or permit no change in the use of the general nature of the occupancy of the Mortgaged Property without Mortgagee's prior written consent (which Mortgagee shall have no obligation to give); (i) not initiate or acquiesce in any zoning variation or reclassification without Mortgagee's prior written consent (which Mortgagee shall have no obligation to give); and (j) observe and comply with all conditions and requirements (if any) necessary to preserve and extend all rights, licenses, permits (including without limitation zoning variations and any nonconforming uses and structures), privileges, franchises and concessions applicable to the Mortgaged Property or contracted for in connection with any present or future use of the Mortgaged Property.

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4.2 Anything in Sections 4.1(c) or 4.1(d) of this Mortgage to the contrary notwithstanding, Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any Lien(s) and defer payment and discharge thereof during the pendency of such contest, provided: (i) that such contest stays the enforcement or collection of any such Lien(s); (ii) that, within ten (10) days after Mortgagor has been notified of the assertion of any such Lien(s), Mortgagor shall have notified Mortgagee in writing of Mortgagor's intention to contest such Lien(s); (iii) that to the extent the amount of such Lien(s) plus all costs of discharging the same, including interest and penalties thereon is (and remains) equal to or less than \$50,000.00, in the aggregate, Mortgagor shall have provided Mortgagee an endorsement to its title insurance policy in form

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acceptable to Mortgagee insuring Mortgagee against any claims, loss or damage on account of such Lien; and (iv) to the extent the amount of such Lien(s) plus all costs of discharging the same, including interest and penalties thereon ever exceeds \$50,000.00, in the aggregate, Mortgagor shall (in addition to providing the aforesaid title endorsement) have deposited with Mortgagee, or provided for, at such place as Mortgagee may from time to time in writing appoint, a sum of money, or an equivalent bond or title indemnity which shall be adequate and sufficient in the judgment of Mortgagee to pay in full such Lien(s) plus all costs of discharging the same, including interest and penalties which might become due thereon, and shall keep on deposit an amount so sufficient at all times, increasing such amount, on demand, to cover additional costs, interest and penalties whenever, in the reasonable judgment of Mortgagee, such increase is advisable. Such deposits shall be held in an interest-bearing account, if held by Mortgagee. Prior to an Event of Default hereunder, the interest earned thereon shall be deemed earned by Mortgagor and shall be added to the deposits to be disbursed as set forth herein. If Mortgagor shall fail to prosecute such contest with reasonable diligence or shall fail to pay the amount of the Lien(s) plus any interest finally determined to be due upon the conclusion of such contest, to the extent such amount exceeds the amount which Mortgagee will pay as provided below, or if Mortgagor shall fail to maintain sufficient funds on deposit as hereinabove provided, Mortgagee may, at its option, apply the money so deposited in payment of or on account of such Lien(s), or that part thereof then unpaid, together with all interest and penalties thereon. If the amount of money so deposited shall be insufficient for the payment in full of such Lien(s), together with all interest and penalties thereon, Mortgagor shall forthwith, upon demand, deposit with Mortgagee a sum which, when added to the funds then on deposit, shall be sufficient to make such payment in full. Provided no Event of Default has occurred hereunder, Mortgagee shall, upon the final disposition of such contest (the date of such final disposition to be determined by Mortgagee in its reasonable discretion), apply the money so deposited in full payment of such Lien(s) or that part thereof then unpaid, together with all interest and penalties thereon when so requested in writing by Mortgagor and when furnished by Mortgagor with sufficient funds to make such payment in full and with evidence satisfactory to Mortgagee of the amount of the payment to be made. Any deposits made by Mortgagor in excess of the payments required to be paid shall be returned to Mortgagor. The rights granted to Mortgagor in this Section 4.2 shall not apply to Liens arising for and securing the payment of general and special taxes and assessments, and/or water and sewer charges and nothing contained herein shall excuse Mortgagor from fully complying with Section 5.1 of this Mortgage.

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4.3 At all times, Mortgagor shall appear in and defend any suit, action or proceeding that might in any way in the reasonable judgment of Mortgagee affect the value of the Mortgaged Property, the priority of the lien and security interest created by this Mortgage or the rights and powers of Mortgagee hereunder or under any document given at any time to secure the Indebtedness. Mortgagor shall at all times, indemnify, hold harmless and reimburse Mortgagee on demand for any and all loss, damage, expense or cost, including cost of evidence of title and reasonable attorneys' fees, costs and expenses, arising out of or incurred in connection with any such suit, action or proceeding, and the sum of such expenditures shall be secured by this Mortgage, and shall bear interest from and after five (5) days written demand at the default rate specified in the Note and such interest shall be secured hereby and shall be due and payable on demand.

4.4 Mortgagee shall have the right to inspect the Mortgaged Property at all reasonable times and access thereto shall be permitted for that purpose.

4.5 Upon the occurrence of an Event of Default hereunder, the Mortgagee may, at its option but without being required so to do, apply any monies at the time on deposit pursuant to this Section 4 against any of the Indebtedness in such order and manner as the Mortgagee may elect. When the Indebtedness has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the Mortgaged Property as the same appear on the records of the Mortgagee.

SECTION 5

PAYMENT OF TAXES; TAX DEPOSITS;  
RELIANCE ON TAX BILLS; LIEN CLAIMS:

5.1 Mortgagor shall pay or cause to be paid all general taxes before any penalty or interest attaches, and shall pay special taxes, special assessments, water charges, sewer service charges, and all other charges against the Mortgaged Property of any nature whatsoever when due, and shall, upon written request, furnish to Mortgagee duplicate receipts therefor within thirty (30) days following the date of payment. Provided that tax deposits are made by Mortgagor pursuant to Section 5.2 below, Mortgagee shall make such deposits available to Mortgagor for payments required to be paid pursuant to this Section. Mortgagor shall pay in full "under protest" any tax or assessment which Mortgagor may desire to contest, in the manner provided by applicable law.

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5.2 Mortgagor shall deposit with the Mortgagee or such other entity ("Depositary") as the Mortgagee may from time to time in writing appoint, commencing on the date of disbursement of the proceeds of the Note secured hereby and on the first day of the second month following the month in which said disbursement occurs, a sum which, when added to the initial deposit and the subsequent deposits required to be made, will be sufficient to satisfy the tax and assessment payment next due upon or for the Mortgaged Property (the amount of such taxes next due to be based upon the Mortgagee's reasonable estimate from time to time as to the amount of taxes and assessments to be levied and assessed) reduced by the amount, if any, then on deposit with the Mortgagee or the Depositary, divided by the number of months to elapse before one month prior to the date when such taxes and assessments will become due and payable. Such deposits shall be held in an interest-bearing account, and, absent an Event of Default hereunder, the interest earned thereon shall be deemed earned by Mortgagor. Absent an Event of Default, such deposits and the interest earned thereon are to be used for the payment of taxes and assessments (general and special) on the Mortgaged Property next due and payable when they become due. If the funds so deposited are insufficient to pay any such taxes or assessments (general or special) when the same become due and payable, the Mortgagor shall, within ten (10) days after receipt of demand therefor from the Mortgagee or Depositary, deposit such additional funds as may be necessary to pay such taxes and assessments (general and special) in full. If the funds so deposited exceed the amount required to pay such taxes and assessments (general and special) for any year, the excess shall be credited against the next succeeding deposit or deposits to be made by Mortgagor for taxes and assessments. Said deposits need not be kept separate and apart from any other funds of the Mortgagee or the Depositary.

5.3 If any such taxes or assessments (general or special) shall be levied, charged, assessed or imposed upon or for the Mortgaged Property, or any portion thereof, and if such taxes or assessments shall also be a levy, charge, assessment or imposition upon or for any other premises not encumbered by the lien of this Mortgage, then the computation of any amount to be deposited under this Section 5 shall be based upon the entire amount of such taxes or assessments, and Mortgagor shall not have the right to apportion the amount of any such taxes or assessments for the purposes of such computation.

5.4 Upon the occurrence of an Event of Default hereunder, the Mortgagee may, at its option but without being required to do so, apply any monies at the time on deposit pursuant to this Section 5 against any of the Indebtedness in such order and manner as the Mortgagee may elect. When the Indebtedness has been fully paid, any remaining deposits shall be

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paid to Mortgagor or to the then owner or owners of the Mortgaged Property as the same appear on the records of the Mortgagee. In the absence of an Event of Default hereunder, all monies on deposit pursuant to this Section 5 shall be applied by the Mortgagee or Depository for the purposes for which made under this Section 5 and shall not be subject to the direction or control of the Mortgagor; provided, however, that neither the Mortgagee nor the Depository shall be liable for any failure to pay, when due, any such taxes or assessments unless Mortgagor, prior to the occurrence of an Event of Default hereunder, shall have requested Mortgagee in writing to pay the same and delivered to Mortgagee the bills for such taxes or assessments.

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

#### SECTION 6

#### INSURANCE

6.1 Mortgagor shall keep the Mortgaged Property insured with such coverage as Mortgagee shall now and hereafter reasonably require, including without limitation, a policy or policies (i) insuring the Improvements on the Premises against fire, lightning, windstorm, civil commotion, vandalism, malicious mischief and other risks insured against by so-called "all risk" forms of policy in amounts equal to one hundred percent (100%) of the replacement cost of the Improvements (without deduction for depreciation) containing satisfactory replacement cost and Mortgagee interest endorsements with co-insurance penalties waived and Mortgagee shall have the right, but not the duty, to determine from time to time the replacement cost of the Improvements, (ii) covering public liability, (iii) covering loss of rental income or business interruption, (iv) covering physical damage to boilers, pressure vessels, pressure piping and other major components of any centralized heating, air-conditioning and cooling system, or such additional equipment as Mortgagee reasonably may require at any time, (v) if the Premises is situated in an area now or subsequently designated as having special flood hazards as defined by the Flood Disaster Protection Act of 1973, as amended from time to time, Mortgagor must obtain flood insurance equal to one hundred percent (100%) of the replacement cost of the Improvements

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or the maximum amount of flood insurance available, whichever is less, and (vi) affording such other or additional coverage as from time to time may be requested by Mortgagee. Mortgagor shall pay for all premiums on such policies. The companies issuing such policies, and the amounts, forms, expiration dates and substance of such policies, shall be subject to the approval of Mortgagee and shall contain, in favor of Mortgagee, a standard non-contributory mortgagee clause, or its equivalent, and a mortgagee's loss payable endorsement, in form satisfactory to Mortgagee.

6.2 Mortgagor will assign and deliver to Mortgagee the original or a certificate together with a photocopy of each policy of insurance required to be maintained pursuant to this Section 6, and all renewals and replacements thereof. Each such policy shall provide that all proceeds shall be payable to Mortgagee (notwithstanding that any such proceeds may exceed the Indebtedness then secured by the lien of this Mortgage), that the same may not be cancelled or modified except upon thirty (30) days prior written notice to Mortgagee, and that no act or thing done by Mortgagor shall invalidate the policy as against Mortgagee, and shall otherwise be in form and substance acceptable to Mortgagee, in its sole discretion, so that at all times until the payment in full of the Indebtedness, Mortgagee shall have and hold the said policy and policies as further collateral for the payment in full of the Indebtedness and interest thereon and all other amounts secured by the lien of this Mortgage. In case of policies about to expire, Mortgagor will deliver to and deposit with Mortgagee renewal policies or such other evidence of renewal, satisfactory to Mortgagee, not less than thirty (30) days prior to their respective dates of expiration. In the event of foreclosure of this Mortgage or assignment hereof by Mortgagor, or transfer of title to the Mortgaged Property in extinguishment of the Indebtedness, all right, title and interest of Mortgagor in and to any policies then in force shall pass to the purchaser, grantee or assignee and Mortgagor agrees to cooperate with Mortgagee to effect a prompt and orderly transfer of all such policies. If Mortgagor shall fail to obtain any such policy or policies required by Mortgagee, or shall fail to assign and deliver the same to Mortgagee, then Mortgagee may obtain such insurance and pay the premium or premiums therefor, in which event Mortgagor shall, on demand of Mortgagee, repay such premium or premiums to Mortgagee and such amounts so required to be repaid shall (i) be added to the Indebtedness, (ii) bear interest at the default rate contained in the Note from and after five (5) days after written notice, and (iii) be secured by the lien of this Mortgage.

6.3 Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included

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thereon under a standard non-contributory mortgage clause acceptable to Mortgagee. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee the original policy or policies of such insurance. In the event of a foreclosure sale, all interest in all such separate insurance policies in force shall pass to Mortgagee, transferee or purchaser, as the case may be and Mortgagor agrees to cooperate with Mortgagee to effect a prompt and orderly transfer of all such policies.

## SECTION 7

### ADJUSTMENT OF LOSSES, APPLICATION OF INSURANCE PROCEEDS:

7.1 In case of loss or damage by fire or other casualty, Mortgagee is authorized and empowered: (a) to make or file proofs of loss or damage and to settle and adjust any claim under insurance policies which insure against such risks; or (b) to direct Mortgagor, in writing, to agree with the insurance company or companies on the amount to be paid in regard to such loss. In either case, Mortgagee is authorized to collect any such insurance monies. If the net amount of such insurance proceeds equals or exceeds TWO MILLION DOLLARS (\$2,000,000.00) (after deduction of Mortgagee's reasonable costs and expenses, if any, in collecting the same), then such net amount may, at the option of the Mortgagee, in its sole discretion, be: (a) applied in reduction of the Indebtedness, whether due or not; or (b) held by the Mortgagee and applied to pay for the cost of repair, rebuilding or restoration of the Improvements on the Premises, in which event such proceeds shall be disbursed by Mortgagee as work is completed provided: (i) Mortgagor is not in default under any of the Other Agreements; (ii) Mortgagor delivers evidence to Mortgagee that the remaining insurance proceeds, together with the separate funds of Mortgagor, if any, are sufficient to restore the Improvements; (iii) Mortgagee approves the plans and specifications for the work if the casualty loss is in excess of \$50,000; (iv) Mortgagee receives copies of sworn statements, lien waivers and architect's certificates evidencing the lien-free completion of the work; (v) prior to each disbursement, Mortgagee receives an endorsement to the lender's title insurance policy insuring the validity and first priority of the requested disbursement; and (vi) Mortgagor complies with such other requirements as Mortgagee may reasonably establish. In any event, subject to any restrictions upon restoration or repair contained in the then current zoning code or ordinance, the Improvements shall be so repaired, restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction. If the net amount of such insurance proceeds is less than TWO MILLION DOLLARS

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(\$2,000,000.00), Mortgagee, may, in its sole discretion, apply such net amount in the reduction of the Indebtedness, whether due or not, provided, however, that (i) if restoration of the Mortgaged Property can be completed at least sixty (60) days prior to the Maturity Date and (ii) the casualty loss has not resulted in the termination of Leases which, in the aggregate, account for more than ten percent (10%) of the gross income from the Mortgaged Property, then, in that event, such net amount shall be held by the Mortgagee and applied to pay the cost of repair, rebuilding or restoration of the Improvements on the Premises, in which event such proceeds shall be made available in the manner and under the conditions set forth in 7.1(b)(i-vi) above. If the cost of rebuilding, repairing or restoring the Improvements may reasonably exceed the sum of FIFTY THOUSAND DOLLARS (\$50,000.00), then prior to the commencement of such work, the Mortgagee: (a) must approve final plans and specifications of such work; (b) must be given an architect's certificate reasonably acceptable to Mortgagee indicating that the Improvements on the Premises may be completely reconstructed at least sixty (60) days prior to the Maturity Date; and (c) Mortgagor must deposit (the "Additional Deposit") with Mortgagee an amount, in cash, which Mortgagee, in its reasonable discretion, determines is necessary, in addition to the net proceeds of insurance, to pay, in full, the cost of the repair, rebuilding and restoration. If the insurance proceeds are made available for repair, rebuilding or restoration, such proceeds shall be disbursed upon the "Disbursing Party" (hereinafter defined) being furnished with satisfactory evidence of the cost of completion thereof and with architects' certificates, waivers of lien, contractors' and subcontractors' sworn statements, title continuations and other evidence of cost and payments so that the Disbursing Party can verify that the amounts disbursed from time to time are represented by completed and in-place work and that said work is free and clear of mechanics' and materialmen's lien claims. No payment made prior to the final completion of the work shall exceed ninety percent (90%) of the value of the work performed from time to time, and at all times the undisbursed balance of such proceeds remaining in the hands of the Disbursing Party shall be at least sufficient to pay for the cost of completion of the work free and clear of liens. If at any time the undisbursed balance of the insurance proceeds and the Additional Deposit held by the Disbursing Party shall not, in the reasonable opinion of Mortgagee, be sufficient to pay in full, the balance of the costs, which will be incurred in connection with the completion of the repair, rebuilding or restoration, Mortgagor shall deposit the deficiency with the Disbursing Party before any further disbursements are made by the Disbursing Party. Any surplus which may remain out of said insurance proceeds, and the Additional Deposit, if any, after payment of the cost of repair, rebuilding, restoration and the reasonable charges of the Disbursing Party, shall be paid to the party entitled thereto as the same may appear

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on the records of the Mortgagee. No interest shall be allowed to Mortgagor on any proceeds of insurance or Additional Deposit held by the Disbursing Party. The insurance proceeds and any Additional Deposit made by Mortgagor need not be kept separate and apart from any other funds of the Disbursing Party.

7.2 If the insurance proceeds are made available for repair, rebuilding or restoration, such work shall be done and completed by Mortgagor in an expeditious and diligent fashion, in compliance with all applicable laws, rules and regulations and in accordance with the plans and specifications approved by Mortgagee.

7.3 Mortgagee agrees to consult with Mortgagor with respect to the settlement and compromise of claims under said policies, and to solicit Mortgagor's recommendations with regard to such matters, but the final decision on all such matters shall be that of Mortgagee.

7.4 As used in this Section 7, the term "Disbursing Party" refers to the Mortgagee and/or any responsible trust company or title insurance company selected by Mortgagee.

7.5 Mortgagee shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure or for any use by Mortgagor of such proceeds as Mortgagee may pay over to Mortgagor, unless such failure is due to the intentionally or grossly negligent wrongdoing of Mortgagee.

7.6 Upon the occurrence of an Event of Default hereunder, the Mortgagee may, at its option but without being required so to do, direct the Disbursing Party to apply any monies at the time on deposit pursuant to this Section 7 against any of the Indebtedness in such order and manner as the Mortgagee may elect. When the Indebtedness has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the Mortgaged Property as the same may appear on the records of the Mortgagee.

7.7 Should the net amount of the insurance proceeds be equal to or greater than \$2,000,000 and Mortgagee elects to apply such proceeds to the outstanding principal balance of the Loan, Mortgagor shall have the right to prepay the Loan in full without a premium at any time within 180 days after notice of Mortgagee's election is sent to Mortgagor, and Mortgagee shall not be entitled to any "Release Fee" (as defined in the Note) in connection with such prepayment.

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SECTION 8

CONDEMNATION

8.1 Mortgagor hereby assigns, transfers and sets over unto the Mortgagee the entire proceeds of any award and any claim for damages for any of the Mortgaged Property taken or damaged under the power of eminent domain or by condemnation. Mortgagee is authorized to collect any such proceeds. The Mortgagee may, in its sole discretion, elect: (a) to apply the proceeds of the award or claim upon or in reduction of the Indebtedness, without premium or penalty, whether due or not; or (b) to make those proceeds available to Mortgagor or any lessee for repair, restoration or rebuilding of the Improvements on the Premises, in the manner and under the conditions that the Mortgagee may reasonably require. In any event, the Improvements shall be repaired, restored or rebuilt in accordance with plans and specifications to be submitted to and approved by the Mortgagee. In any case where proceeds are made available for repair, rebuilding or restoration, the proceeds of the award shall be held and paid out in the same manner and under the same conditions (including the requirement of Additional Deposits) provided in Section 7 hereof for the payment of insurance proceeds toward the cost of repair, rebuilding or restoration. Any surplus which may remain out of said award or out of any Additional Deposit made by Mortgagor after payment of such cost of repair, rebuilding or restoration and the reasonable charges of the Disbursing Party shall, be paid to the party entitled thereto as the same may appear on the records of the Mortgagee. No interest shall be allowed to Mortgagor on account of any proceeds of any award or Additional Deposit held by the Disbursing Party. The proceeds of any award held by the Disbursing Party and any Additional Deposit made by Mortgagor need not be kept separate and apart from any other funds of the Disbursing Party.

8.2 Upon the occurrence of an Event of Default hereunder, the Mortgagee may, at its option but without being required so to do, apply any monies at the time on deposit pursuant to this Section 8 against any of the Indebtedness in such order and manner as the Mortgagee may elect. When the Indebtedness has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the Mortgaged Property as the same may appear on the records of the Mortgagee.

8.3 Mortgagee shall not be held responsible for any failure to collect any condemnation proceeds regardless of the cause of such failure or for any use by Mortgagor of such proceeds as Mortgagee may pay over to Mortgagor, unless such failure is due to the intentionally or grossly negligent wrongdoing of Mortgagee.

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## SECTION 9

### DUE ON SALE AND FURTHER ENCUMBRANCE:

9.1 Mortgagor shall not sell (including a grant of an option to purchase), convey, assign, further encumber or transfer title to all or any portion of the Mortgaged Property or any interest (legal or equitable) therein (whether voluntary or by operation of law). For the purpose of illustration, and without limiting the generality of the preceding sentence, the occurrence at any time of any of the following events shall be deemed to be an unpermitted transfer of title to or encumbrance of the Mortgaged Property hereunder:

(a) any sale, pledge, conveyance, assignment or other transfer of, or the grant of a security interest in, all or any part of the beneficial interest in and to the Mortgagor, or power of direction under the trust agreement with the Mortgagor if Mortgagor is a land trust;

(b) any sale, pledge, conveyance, assignment or other transfer of, or the grant of a security interest in, any share of stock of any corporation if Mortgagor or a general partner of Mortgagor is a corporation, or of any corporation (herein called a "Beneficiary Corporation") which is the beneficiary or one of the beneficiaries under the trust agreement with the Mortgagor if Mortgagor is a land trust, or of any corporation directly or indirectly controlling such Beneficiary Corporation;

(c) any sale, conveyance, assignment, or other transfer of, or the grant of a security interest in, any general partnership interest in any limited partnership or general partnership if Mortgagor is a general or limited partnership, or in any limited partnership or general partnership which is the Beneficiary or one of the Beneficiaries under the trust agreement with the Mortgagor if Mortgagor is a land trust; provided, however, that transfers of limited partnership interests in the Beneficiary shall be permitted without the consent of the Mortgagee provided that the "General Partners" (as defined in the Commitment) shall maintain, in the aggregate, at least a 21% interest (computed by aggregating the limited and general partnership interests held by a General Partner) in Beneficiary, and provided, further, that at all times until the Indebtedness secured hereby is paid in full, Gary Z. Baxter shall be and remain the managing General Partner of the Beneficiary, provided that upon the death or adjudicated disability of Gary Z. Baxter, a substitute managing General Partner may be appointed with the consent of the Mortgagee, whose consent shall not be unreasonably withheld.

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## SECTION 10

### STAMP TAX; EFFECT OF CHANGES IN LAWS REGARDING TAXATION:

10.1 If, by the laws of the United States of America or of any state or subdivision thereof having jurisdiction over the Mortgagor, any tax is due or becomes due in respect of the issuance of the Note or the recording of this Mortgage or any of the Other Agreements, the Mortgagor covenants and agrees to pay such tax in the manner required by any such law. The Mortgagor further covenants to reimburse the Mortgagee for any sums which Mortgagee may expend by reason of the imposition of any tax on the issuance of the Note.

10.2 In the event of the enactment, after this date, of any law, statute, rule or regulation of the United States of America or of the state in which the Premises are located imposing upon the Mortgagee the payment of the whole or any part of the taxes, assessments, charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Premises or any other portion of the Mortgaged Property, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holder thereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments or reimburse the Mortgagee therefor; provided, however, that if in the opinion of counsel for the Mortgagee: (a) it might be unlawful to require Mortgagor to make such payment; or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law; then and in any such event, the Mortgagee may elect, by notice in writing given to the Mortgagor, to declare all of the Indebtedness, including without limitation the "Release Fee" (as defined in the Note), to be and become due and payable one hundred twenty (120) days from the giving of such notice; provided, however, that no "Prepayment Premium" (as defined in the Note) shall be due and payable in connection with such repayment of the Note.

## SECTION 11

### LEASES AND RENTS:

11.1 So long as there shall not have occurred an Event of Default under this Mortgage, Mortgagor shall have the right to collect all of the Rents arising from the Leases, or renewals thereof, and shall hold the same, in trust, to be applied first

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to the payment of all impositions, levies, taxes, assessments and other charges upon the Mortgaged Property, secondly to the cost of the maintenance of insurance policies upon the Mortgaged Property required hereby, thirdly to the expenses of property operations, including the maintenance and repairs required hereby and lastly to the payment of that portion of the Indebtedness then due and payable, before using any part of the Rents for any other purposes.

11.2 At all times after the initial disbursement of the Loan, any of Mortgagee's agents shall have the right to verify, upon fifteen (15) days advance written notice (and without notice, if there shall have occurred an Event of Default hereunder) the validity, amount of or any other matter relating to any or all of the Leases, by mail, telephone, telegraph or otherwise, in the name of Mortgagor (if an Event of Default shall have occurred hereunder), Mortgagee, a nominee of Mortgagee or in any or all of said names.

11.3 Unless Mortgagee notifies Mortgagor thereof in writing that it dispenses with any one or more of the following requirements, Mortgagor shall: (i) promptly upon Mortgagor's written receipt thereof, inform Mortgagee, in writing, of any assertion of any claims, offsets or counterclaims by any of the obligors under any of the Leases; and (ii) promptly upon Mortgagor's written receipt thereof, furnish to and inform Mortgagee of all material adverse information relating to or affecting the financial condition of any obligor of (a) any Lease of 2,000 square feet or more; or (b) any one (1) or more Leases, which, taken separately, are for less than 2,000 square feet, but, when taken singly or in the aggregate, would have a material adverse effect on the financial condition of the Property ([a] and [b] are hereinafter collectively referred to as a "Material Lease").

11.4 Mortgagor at its sole cost and expense will: (i) at all times promptly and faithfully abide by, discharge and perform all of the covenants, conditions and agreements contained in all Leases, on the part of the landlord thereunder to be kept and performed; (ii) enforce or secure the performance of all of the covenants, conditions and agreements of the Leases on the part of the tenants to be kept and performed, but Mortgagor shall not and Mortgagor's beneficiary or beneficiaries shall not modify, amend, cancel, terminate or accept surrender of any Material Lease without the prior written consent of Mortgagee which consent will not be unreasonably withheld or delayed; (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with the Leases or the obligations, duties or liabilities of landlord or of any tenants thereunder; (iv) transfer and assign or cause to be separately transferred and

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assigned to Mortgagee, upon written request of Mortgagee, any Lease or Leases heretofore or hereafter entered into, and make, execute and deliver to Mortgagee upon demand, any and all instruments required to effectuate said assignment; (v) furnish Mortgagee, within ten (10) days after a request by Mortgagee so to do, a written statement containing the names of all tenants and the terms of all Leases, including the spaces occupied and the Rents payable thereunder; and (vi) exercise within five (5) days of any written demand therefor by Mortgagee any right to request from the tenant under any Lease a certificate with respect to the status thereof.

11.5 All Leases entered into after this date are subject to the prior written approval of the Mortgagee as to form, content and tenant(s). Notwithstanding the foregoing, if any Lease: (i) is written on the form lease previously approved by Mortgagee, (ii) is for a term of one (1) to five (5) years, (iii) is for space of 3,000 square feet or less, and (iv) has an effective net rental rate over the term of the Lease of at least \$13.50 per square foot per year, such Lease shall be deemed approved by Mortgagee (an "Approved Lease").

11.6 Mortgagor will not (and Mortgagor's beneficiary or beneficiaries, if applicable will not), without Mortgagee's prior written consent: (i) except as provided herein, execute any assignment or pledge of any Rents or any Leases; or (ii) accept any payment of any installment of Rent more than thirty (30) days before the due date thereof; or (iii) make any Lease except for actual occupancy by the tenant thereunder.

11.7 Nothing in the Note, this Mortgage or in the Other Agreements, shall be construed to obligate Mortgagee, expressly or by implication, to perform any of the covenants of any landlord under any of the Leases assigned to Mortgagee or to pay any sum of money or damages therein provided to be paid by the landlord, each and all of which covenants and payments Mortgagor agrees to perform and pay or cause to be performed and paid.

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

11.9 Mortgagor shall use its best efforts to cause each tenant under each Lease to agree and each tenant under each Lease shall agree, at the option of the Mortgagee, to attorn to the

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Mortgagee or to any other person succeeding to the interest of landlord as a result of any enforcement by Mortgagee of any remedy provided by law or herein upon the occurrence of an Event of Default hereunder, and shall agree to recognize the Mortgagee or such successor in interest as landlord under such Lease without change in the amount of Rent or other provisions thereof; provided, however, that the Mortgagee or other successor in interest shall not be bound by any payment of Rent or additional Rent for more than one month in advance or any amendment of or modification to any Lease made without the consent of the Mortgagee or other successor in interest. Each tenant, upon request by Mortgagee or other successor in interest, shall execute and deliver an instrument or instruments reasonably satisfactory to Mortgagee, confirming such agreements and attornment. Mortgagee, upon the written request of any tenant under a Lease which has been approved (or deemed approved) by Mortgagee, shall execute and deliver a subordination, non-disturbance and attornment agreement in substantially the same form as attached to the Commitment as EXHIBIT "D".

11.10 If an Event of Default occurs under this Mortgage:

(i) Immediately upon demand by Mortgagee, Mortgagor shall deliver to Mortgagee the originals of the Leases, with appropriate endorsements and/or other specific evidence of assignment thereto to Mortgagee - which endorsement and/or assignment shall be in form and substance reasonably acceptable to Mortgagee.

(ii) Mortgagee, then or at any time or times thereafter, at its sole election, with concurrent notice thereof to Mortgagor, may notify any or all of the obligors under the Leases that the Leases have been assigned to Mortgagee and Mortgagee (in its name, in the name of Mortgagor or in both names) may direct said obligors thereafter to make all payments due from them under the Leases directly to Mortgagee.

(iii) Mortgagor, immediately upon demand by Mortgagee, irrevocably shall direct all obligors under the Leases then and thereafter to make all payments then and thereafter due from them under the Leases directly to Mortgagee.

(iv) Mortgagee shall have the right at any time or times thereafter, at its sole election, without notice thereof to Mortgagor, to enforce the terms

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of the Leases and obtain payment of and collect the Rents, by legal proceedings or otherwise, in the name of Mortgagor, Mortgagee or in both names.

(v) Mortgagor, irrevocably, hereby designates, makes, constitutes and appoints Mortgagee (and all persons designated by Mortgagee) as Mortgagor's true and lawful attorney and agent-in-fact, with power, without notice to Mortgagor and at such time or times thereafter as Mortgagee, at its sole election, may determine, in the name of Mortgagor, Mortgagee or in both names: (a) to demand payment of the Rents and performance of the Leases; (b) to enforce payment of the Rents and performance of the Leases, by legal proceedings or otherwise; (c) to exercise all of Mortgagor's rights, interests and remedies in and under the Leases and to collect the Rents; (d) to settle, adjust, compromise, extend or renew the Leases and/or the Rents; (e) to settle, adjust or compromise any legal proceeding brought to collect the Rents or obtain performance of the Leases; (f) to take control, in any manner, of the Rents; (g) to prepare, file and sign Mortgagor's name on any proof of claim in bankruptcy, or similar document in a similar proceeding, against obligors of the Leases; (h) to endorse the name of Mortgagor upon any payments or proceeds of the Rents and to deposit the same to the account of Mortgagee; and (i) to do all acts and things necessary, in Mortgagee's sole discretion, to carry out any or all of the foregoing.

(vi) All of the foregoing payments and proceeds received by Mortgagee shall be utilized by Mortgagee, at its sole election and in its sole discretion, for any one or more of the following purposes: (a) to be held by Mortgagee as additional collateral for the payment of the Indebtedness; (b) to be applied to the Indebtedness, in such manner and fashion and to such portions thereof as Mortgagee, at its sole election, shall determine; (c) to be applied to such obligations of Mortgagor or the Mortgaged Property or the operation or business thereof as Mortgagee, at its sole election, shall determine appropriate or warranted under the then existing circumstances; or (d) to be remitted to Mortgagor.

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(vii) Mortgagee may also exercise any other rights and remedies then available under this Mortgage, the Note, the Other Agreements and any applicable laws.

SECTION 12

ENVIRONMENTAL MATTERS

12.1 The Mortgagor hereby represents, <sup>beneficiaries</sup> warrants and *mortgage* covenants to Mortgagee that:

(a) Except for such findings as are contained in the "Vickery Report" (as defined in the Commitment) and the Ratterman Group Ltd. report (collectively, the "Reports"), to the best of Mortgagor's knowledge, the Mortgaged Property (including the underlying groundwater and areas leased to tenants, if any), and the use and operation thereof, are currently in compliance and will remain in compliance with all applicable laws, ordinances and regulations (including consent decrees and administrative orders) relating to public health and safety and protection of the environment, including those statutes, laws, regulations, and ordinances identified in subsection 12.4 below, all as amended and modified from time-to-time (collectively, "Environmental Laws"). All governmental permits relating to the use and/or operation of the Mortgaged Property required by applicable Environmental Laws are and will remain in effect, and Mortgagor shall comply therewith. The business and all operations conducted on the Mortgaged Property have disposed and will continue to dispose of their "Hazardous Material" (hereinafter defined) in compliance with all applicable Environmental Laws.

(b) Except for such findings as are contained in the Reports, no release, generation, disclosure, manufacture, storage, treatment, transportation or disposal of Hazardous Material has occurred to the best of Mortgagor's knowledge, or will occur on, in, under (including the underlying ground water) or from the Mortgaged Property. There is and will be: (i) no Hazardous Material on, in or under the Mortgaged Property (including the underlying groundwater); (ii) no environmental, health or safety hazards that pertain to any of the Mortgaged Property or the business or operations conducted thereon; and (iii) no underground storage tanks present on or under the Mortgaged Property. Without limitation of the foregoing: (i) Mortgagor will promptly notify Mortgagee, in writing, in the event that Mortgagor has or acquires notice or knowledge that any Hazardous Material has been or is threatened to be released, discharged, disposed of, transported, or stored on, in, under or from or otherwise located on or beneath the surface of the

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Mortgaged Property or any parcel(s) of real estate adjacent thereto, and (ii) if any Hazardous Material is found on or beneath the surface of the Mortgaged Property or any parcel(s) of real estate adjacent thereto, Mortgagor, at its own cost and expense, shall immediately take such action as is necessary to detain the spread of such Hazardous Material to or on the Mortgaged Property, and shall remove such Hazardous Material from the Mortgaged Property to the complete satisfaction of Mortgagee and the appropriate governmental authorities.

(c) There are no pending or, to the actual knowledge of Mortgagor, threatened: (i) requests for information, actions or proceedings from any governmental agency or any other person or entity regarding the condition or use of the Mortgaged Property, or the disposal of Hazardous Material, or regarding any Environmental Law; or (ii) liens or governmental actions, notices of violations, notices of noncompliance or other proceedings of any kind with respect to the Mortgaged Property or Mortgagor. Mortgagor shall immediately notify Mortgagee and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports, or notices relating to the condition of the Mortgaged Property or compliance with Environmental Laws. Mortgagor shall promptly cure and have dismissed with prejudice any such actions and proceedings to the satisfaction of Mortgagee. Mortgagor shall keep the Mortgaged Property free of any lien imposed pursuant to any Environmental Law.

(d) Mortgagee shall have the right at all reasonable times and from time to time hereafter to conduct environmental audits of the Mortgaged Property, and Mortgagor shall cooperate in the conduct of each such audit. The audits shall be conducted by a consultant of Mortgagee's choosing and if any Hazardous Material is detected or if a violation of any of the warranties, representations or covenants contained in this Section 12 is discovered, the fees and expenses of such consultant shall be borne by Mortgagor and shall be paid by Mortgagor to Mortgagee on demand. Such fees and expenses shall be a part of the Indebtedness secured hereby and shall bear interest at the default rate contained in the Note, from and after the expiration of the applicable cure period specified in Section 15.1(c) herein.

12.2 If Mortgagor fails to comply with any of the foregoing warranties, representations and covenants, Mortgagee may cause the removal (and/or other cleanup acceptable to Mortgagee) of any Hazardous Material from the Mortgaged Property. The costs of Hazardous Material removal and/or other cleanup (including transportation and storage costs) shall be added to the Indebtedness, whether or not the costs exceed the amount of the Note and whether or not a court has ordered the cleanup, and such

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costs shall become due and payable on demand by Mortgagee, with interest thereon at the default rate contained in the Note. Mortgagor shall give Mortgagee, its agents and employees access to the Mortgaged Property to remove and/or otherwise cleanup any Hazardous Material. Mortgagee, however, has no affirmative obligation to remove or otherwise cleanup any Hazardous Material, and this Mortgage and the Other Agreements shall not be construed as creating any such obligation.

12.3 Beneficiary agrees to indemnify, defend (with counsel reasonably acceptable to Mortgagee and at Mortgagor's sole cost), and hold Mortgagee and Mortgagee's affiliates, shareholders, directors, officers, employees, and agents, free and harmless from and against all losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, costs, judgments, suits, proceedings, damages, disbursements or expenses of any kind or nature whatsoever (including reasonable attorneys' and experts' fees and expenses and fees and expenses incurred in investigating, defending against or prosecuting any litigation, claim or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against Mortgagee or any of them in connection with or arising from or out of:

1. any Hazardous Material on, in, under or affecting all or any portion of the Mortgaged Property, the underlying groundwater, or any adjacent or surrounding areas;
2. any misrepresentation, inaccuracy or breach of any warranty, covenant or agreement contained or referred to in this Section 12;
3. any violation or claim of violation by Mortgagor of any Environmental Law; or
4. the imposition of any lien for the recovery of any costs for environmental cleanup and/or other response costs relating to the release or threatened release of Hazardous Material.

The foregoing indemnification is the personal obligation of Beneficiary and shall survive repayment of the Note, any sale or transfer of title described in Section 9 hereof or any transfer of the Mortgaged Property by foreclosure or by a deed in lieu of foreclosure. Mortgagor, its successors and assigns, hereby waive, release and agree not to make any claim or bring any cost recovery action against Mortgagee under "CERCLA" (hereinafter defined) or any state equivalent, or any similar law now existing or hereafter enacted. It is expressly understood and agreed that Mortgagor's obligation to Mortgagee under this indemnity shall be

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without regard to fault on the part of Mortgagor with respect to any violation or condition which results in any liability to Mortgagee.

12.4 For purposes of this Mortgage, "Hazardous Material" means: (i) "hazardous substances", or "toxic substances" as those terms are defined by the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §9601 et seq.; the Illinois Environmental Protection Act ("Illinois Environmental Act"), Ill. Rev. Stat. ch 111-1/2, §1001 et seq.; or the Hazardous Materials Transportation Act, 49 U.S.C. §1802, all as amended and hereafter amended; (ii) "hazardous wastes", as that term is defined by the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6902 et seq., as amended and hereafter amended; (iii) any pollutant or contaminant of hazardous, dangerous or toxic chemicals, materials, or substances within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste substance or material, all as amended or hereafter amended. Hazardous Material shall also include (iv) crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute); (v) any radioactive material, including any source, special nuclear or by-product material as defined at 42 U.S.C. §2011 et seq., as amended or hereafter amended; (vi) asbestos in any form or condition; and (vii) polychlorinated biphenyls ("PCBs") or substances or compounds containing PCBs.

#### SECTION 13

##### FURNISHING OF FINANCIAL STATEMENTS TO MORTGAGEE:

13.1 Mortgagor covenants and agrees that it will keep and maintain, or cause its beneficiary or beneficiaries from time to time to keep and maintain, books and records of account in which full, true and correct entries shall be made of all dealings and transactions relative to the Mortgaged Property, which books and records of account shall, at reasonable times and on reasonable notice, be open for inspection (and copying) by the Mortgagee, its accountants, and other duly authorized representatives. Such books and records of account shall be kept and maintained in accordance with generally accepted accounting principles consistently applied.

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13.2 Mortgagor covenants and agrees to furnish to the Mortgagee, within forty-five (45) days after the end of each fiscal quarter hereafter of the operation of the business of Mortgagor: (a) a quarterly operating statement of income and expenses for the Mortgaged Property; and (b) a rent roll for the quarter just ended, to be certified by the Beneficiary (or a general partner, if the Beneficiary is a partnership or the chief financial officer if the Beneficiary is a corporation), including a balance sheet and supporting schedules and containing a detailed statement of income and expenses. Each such certification shall state that those statements are true, correct and complete.

13.3 Mortgagor covenants and agrees to furnish to the Mortgagee within ninety (90) days after the end of each fiscal year hereafter of the operation of Mortgagor's business, an annual operating statement of income and expenses and an annual balance sheet of assets and liabilities for the operation and business of Mortgagor and Beneficiary and an annual operating statement of income and expenses for the Mortgaged Property. Each such statement shall be certified as true, correct and complete by a general partner of Mortgagor.

13.4 If Mortgagor fails to furnish promptly any report required by Sections 13.2 and 13.3 hereof, or if Mortgagee reasonably deems such reports to be unacceptable, Mortgagee may elect (in addition to exercising any other right, remedy and power) to make an audit of all books and records of Mortgagor and Beneficiary which in any way pertain to the Mortgaged Property and to prepare the statement or statements which Mortgagor failed to procure and deliver. Such audit shall be made and such statement or statements shall be prepared by an independent firm of certified public accountants to be selected by the Mortgagee. Mortgagor shall pay all expenses of the audit and other services which expenses shall be secured hereby as additional Indebtedness and shall be immediately due and payable with interest thereon at the default rate contained in the Note from and after five (5) days after written demand.

SECTION 14

MORTGAGEE'S PERFORMANCE OF MORTGAGOR'S OBLIGATIONS:

14.1 In case of any failure by Mortgagor to perform, keep or observe any covenant, agreement or condition required of Mortgagor hereunder (whether or not such failure constitutes an Event of Default hereunder) Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner Mortgagee deems expedient, and may, but need not, make full or partial payments of principal or interest on prior

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encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Mortgaged Property or contest any tax or assessment or cure any default of any landlord in any Lease or perform the obligations of Mortgagor in Section 12 hereof. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including, but not limited to, reasonable attorneys' fees, costs and expenses and any other monies advanced by Mortgagee in regard to any tax referred to in this Mortgage or to fulfill Mortgagor's obligations under Section 12 hereof or to protect the Mortgaged Property or the lien hereof, shall be so much additional Indebtedness secured hereby, and shall become immediately due and payable from and after five (5) days after written demand, with interest thereon at the default rate of interest set forth in the Note. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

SECTION 15

EVENTS OF DEFAULT; ACCELERATION OF INDEBTEDNESS:

15.1 The occurrence of any one or more of the following events shall constitute an "Event of Default" under this Mortgage:

(a) Failure of Mortgagor to pay, when due or declared due, any of the Indebtedness, including without limitation, any installments of principal or interest or any other amount due under the Note within ten (10) days of when due.

(b) Failure of Mortgagor to strictly comply with the prohibition on sale and further encumbrance contained in Section 9 of this Mortgage;

(c) Failure of Mortgagor to fully, faithfully and continuously satisfy, perform, discharge, observe and comply with each and every covenant, warranty, representation, agreement and condition required to be kept or observed by Mortgagor under Section 12 of this Mortgage, (i) immediately in the event an emergency condition exists in the reasonable opinion of Mortgagee, or (ii) within thirty (30) days of such required performance, in the event such condition is of a non-emergency basis, in the reasonable opinion of Mortgagee;

(d) Failure of Mortgagor, within thirty (30) days after notice by Mortgagee, to promptly, fully and faithfully satisfy, perform, discharge, observe and comply with each and every covenant, warranty, agreement and condition required to be kept or

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observed by Mortgagor under this Mortgage, other than those set forth in Subsections 15.1(a), 15.1(b) and 15.1(c) above; provided, however, that if such default is not capable of being cured within a thirty (30) day period, such thirty (30) day period shall be extended by an amount of time necessary to effect such cure (but in any event such additional time shall not exceed thirty (30) days), as long as Mortgagor is continuously and diligently attempting to cure such default;

(e) If a petition under any Chapter of Title 11 of the United States Code or any similar law or regulation is filed by or against Mortgagor, or any general partner or beneficiary thereof or any guarantor of the Note (and in the case of an involuntary petition in bankruptcy, such petition is not discharged within sixty (60) days of its filing), or a custodian, receiver or trustee for any of the Mortgaged Property is appointed, or if Mortgagor or any general partner or beneficiary thereof or any guarantor of the Note makes an assignment for the benefit of creditors, or if any of them are adjudged insolvent by any state or federal court of competent jurisdiction, or an attachment or execution is levied against any of the Mortgaged Property;

(f) If a notice of lien, levy or assessment is filed of record with respect to the Mortgaged Property or with respect to all or any of Mortgagor's assets (or the assets of any general partner or beneficiary thereof or any guarantor of the Note) by the State in which the Premises is located or any department or agency thereof or by the United States or any department or agency thereof, or if any taxes or debts due, owing and delinquent at any time or times hereafter to any one of them becomes a lien or encumbrance upon the Mortgaged Property or any other of Mortgagor's assets (or the assets of any general partner or beneficiary thereof or any guarantor of the Note) and the same is not released (or a bond covering same satisfactory to Mortgagee, in its sole and absolute discretion, provided) within sixty (60) days after the same becomes a lien or encumbrance;

(g) the occurrence of a default after the expiration of any applicable grace period or an Event of Default under any of the Other Agreements;

(h) if Mortgagor is in default in the payment of any indebtedness (other than the Indebtedness secured hereby) secured by the Mortgaged Property [excluding however any default under the indebtedness secured by the "Junior Mortgage" (as defined in the Commitment)] and such default is declared and is not cured within the time, if any, specified therefor in any agreement governing the same; or

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(i) if any statement, report or certificate made or delivered to Mortgagee by Mortgagor or any general partner of Beneficiary or any guarantor of the Note, is not true and correct in any material respect.

15.2 If an Event of Default shall have occurred, then and in any such event, the whole of the Indebtedness shall at once, at the option of the Mortgagee, become immediately due and payable without notice to Mortgagor.

## SECTION 16

### ENTRY; FORECLOSURE; EXPENSE OF LITIGATION:

16.1 (a) If an Event of Default shall have occurred Mortgagor, upon demand of Mortgagee, shall forthwith surrender to Mortgagee the actual possession, and if and to the extent permitted by law, Mortgagee itself, or by such officers or agents as it may appoint, may enter and take possession, of all or any part of the Mortgaged Property, and may exclude Mortgagor and its agents and employees wholly therefrom, and may have joint access with Mortgagor to the books, papers and accounts of Mortgagor;

(b) If Mortgagor shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after such demand by Mortgagee, Mortgagee may obtain a judgment or decree conferring on Mortgagee the right to immediate possession or requiring the delivery to Mortgagee of the Mortgaged Property. Mortgagor specifically consents to the entry of such judgment or decree;

(c) Mortgagor will pay to Mortgagee, upon demand, all expenses (including, without limitation, reasonable fees, costs and expenses of attorneys, engineers, accountants and agents) of obtaining such judgment or decree or of otherwise seeking to enforce its rights under the Note, this Mortgage or the Other Agreements; and all such expenses shall, until paid, be secured by this Mortgage and shall bear interest at the default rate provided under the Note;

(d) Upon every such entering upon or taking of possession, Mortgagee may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) keep the Mortgaged Property insured; (iii) manage and operate the Mortgaged Property and exercise all of the rights

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Paragraph 11 (ii)  
delivered to the recipient or believed  
to be delivered to any person in  
any manner whatsoever.

Paragraph 11 (iii)  
delivered to the recipient or believed  
to be delivered to any person in  
any manner whatsoever.

Paragraph 11 (iv)  
delivered to the recipient or believed  
to be delivered to any person in  
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any manner whatsoever.

Paragraph 11 (vii)  
delivered to the recipient or believed  
to be delivered to any person in  
any manner whatsoever.

Paragraph 11 (viii)  
delivered to the recipient or believed  
to be delivered to any person in  
any manner whatsoever.

and powers of Mortgagor to the same extent as Mortgagor could in its own name or otherwise with respect to the same; and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to Mortgagee, all as Mortgagee from time to time may determine to be to its best advantage. Mortgagee may collect and receive all of the rents, issues, profits and revenues of the same, including those past due as well as those accruing thereafter, and, after deducting (aa) all expenses of taking, holding, managing and operating the Mortgaged Property (including reasonable compensation for the services of all persons employed for such purposes), (bb) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements and purchases and acquisitions, (cc) the cost of such insurance, (dd) such taxes, assessments and other similar charges as Mortgagee may determine to pay, (ee) other proper charges upon the Mortgaged Property or any part thereof, and (ff) the reasonable compensation, expenses and disbursements of the attorneys and agents of Mortgagee, shall apply the remainder of the monies and proceeds so received by Mortgagee as described in Section 17 hereof; and

(e) Mortgagee shall have no liability for any loss, damage, injury, cost or expense resulting from any action or omission by it or its representatives which was taken or omitted in good faith.

16.2 When the Indebtedness or any part thereof shall become due, whether by acceleration or otherwise, Mortgagee may, either with or without entry or taking possession as herein provided or otherwise, proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy to (a) enforce payment of the Note or the performance of any term, covenant, condition or agreement of Mortgagor hereunder, (b) foreclose the lien hereof for the Indebtedness or part thereof and to sell the Mortgaged Property as an entirety or otherwise, as Mortgagee may determine, and/or (c) pursue any other right or remedy available to it under or by the law and/or decisions of the State in which the Premises is located. In any civil action to foreclose the lien hereof or otherwise enforce Mortgagee's rights, there shall be allowed and included as additional indebtedness in the order or judgment for foreclosure and sale or other order all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, costs and expenses appraiser's fees, engineers fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimates as to items to be expended after entry of said order or judgment) of procuring all such abstracts of title, title searches and examination, title insurance policies, torrens' certificates and similar data and assurances with respect to the title as Mortgagee may deem reasonably

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necessary either to prosecute such civil action or to evidence to bidders at any sale which may be had pursuant to such order or judgment the true condition of the title to, or the value of, the Mortgaged Property. All expenditures and expenses of the nature in this section mentioned and such costs, expenses and fees as may be incurred in the protection of the Mortgaged Property and the maintenance of the lien of this Mortgage, including the reasonable fees, costs and expenses of any attorneys employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note, the Other Agreements, or the Mortgaged Property, including probate, appellate and bankruptcy proceedings, or in preparations for the commencement or defense of any action or proceeding or threatened action or proceeding, shall be immediately due and payable to Mortgagee, with interest thereon at the default rate set forth in the Note from and after five (5) days after written demand, and shall be secured by this Mortgage.

16.3 After the occurrence of an Event of Default, Mortgagee shall have the right and option to commence a civil action to foreclose the lien of this Mortgage and to obtain an order or judgment of foreclosure and sale subject to the rights of any tenant or tenants of the Mortgaged Property. The failure to join any tenant or tenants of the Mortgaged Property as party defendant or defendants in any such civil action or the failure of any such order or judgment to foreclose their rights shall not be asserted by the Mortgagor as a defense in any civil action instituted to collect the Indebtedness secured hereby, or any part thereof, or any deficiency remaining unpaid after foreclosure and sale of the Mortgaged Property, any statute or rule of law at any time existing to the contrary notwithstanding.

16.4 Upon any foreclosure sale, Mortgagee may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of the Indebtedness as a credit to the purchase price.

## SECTION 17

### APPLICATION OF PROCEEDS OF FORECLOSURE SALE:

The proceeds of any foreclosure sale of the Mortgaged Property shall be distributed and applied, at Mortgagee's option, in the following order of priority: first, on account of all, fees, costs and expenses incident to the foreclosure and other enforcement proceedings, including all such items as are mentioned in the preceding Section hereof; second, all other items which may under the terms hereof constitute Indebtedness additional to that evidenced by the Note, with interest thereon as herein provided;

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third, all interest remaining unpaid on the Note; fourth, all principal remaining unpaid on the Note; and fifth, any excess to any party entitled thereto as their rights may appear.

## SECTION 18

### APPOINTMENT OF RECEIVER OR MORTGAGEE IN POSSESSION:

If an Event of Default shall have occurred and be continuing and/or if Mortgagee shall have accelerated the Indebtedness, Mortgagee, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right without notice and without regard to the occupancy or value of any security for the Indebtedness or the insolvency of any party bound for its payment to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect and apply the rents, issues, profits and revenues thereof. The receiver shall have all of the rights and powers to the fullest extent permitted by law. Mortgagor will pay to Mortgagee upon demand (with interest thereon at the default rate contained in the Note) all expenses, including receiver's fees, reasonable attorneys' fees, costs and expenses and agent's compensation, incurred pursuant to the provisions of this Section; and all such expenses shall be secured by this Mortgage and shall bear interest at the default rate contained in the Note.

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## SECTION 19

### RIGHTS UNDER UNIFORM COMMERCIAL CODE

Upon the occurrence of an Event of Default under this Mortgage, the Mortgagee, pursuant to the appropriate provisions of the Code, shall have an option to proceed with respect to both the real property portion of the Mortgaged Property and the Deposits and the Collateral in accordance with its rights, powers and remedies with respect to such real property, in which event the default provisions of the Code shall not apply. The parties agree that if the Mortgagee shall elect to proceed with respect to the Deposits and the Collateral separately from such real property, fifteen (15) days notice of the sale of the Collateral shall be reasonable notice. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by the Mortgagee shall include, but not be limited to, reasonable attorneys' fees, costs and expenses, and other expenses incurred by Mortgagee.

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## SECTION 20

### RIGHTS CUMULATIVE:

Each right, power and remedy conferred upon the Mortgagee by this Mortgage and by all other documents evidencing or securing the Indebtedness and conferred by law and in equity is cumulative and in addition to every other right, power and remedy, express or implied, given now or hereafter existing, at law and in equity; and each and every right, power and remedy herein or therein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagee; and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of, or discontinuance by the Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

## SECTION 21

### RELEASE UPON PAYMENT AND DISCHARGE OF MORTGAGOR'S OBLIGATIONS:

Mortgagee shall release this Mortgage and the lien hereof by proper instrument upon payment and discharge of all the Indebtedness (including any Release Fee, prepayment charges and late charges provided for herein or in the Note) and upon payment of reasonable costs and expenses of Mortgagee for the preparation and the execution of such proper instrument.

## SECTION 22

### NOTICE:

All notices permitted or required pursuant to this Mortgage shall be in writing and shall be deemed to have been properly given (i) if served in person; (ii) on the third business (3rd) day following the day such notice is deposited in any post office station or letter-box if mailed by certified or registered mail, return receipt requested, postage prepaid, or (iii) on the first (1st) business day following the day such notice is delivered to the carrier if sent by Federal Express or Airborne overnight delivery, if addressed to the party to whom such notice is intended as set forth below:

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(a) Notices to Mortgagor:

American National Bank and Trust  
Company of Chicago  
33 North LaSalle Street  
Chicago, Illinois 60690  
Attention: Land Trust Department  
Trust No. 55182

and

Mallers-Chicago Limited Partnership  
105 West Adams Street, Suite 3700  
Chicago, Illinois 60603  
Attention: Gary Z. Baxter

With a copy to:

Nagelberg & Resnick, P.C.  
303 West Madison Street  
Suite 1700  
Chicago, Illinois 60606  
Attention: Bruce Boruszak, Esq. and  
Howard A. Nagelberg, Esq.

(b) Notices to Mortgagee:

Heller Financial, Inc.  
9th Floor - Real Estate Division  
200 North LaSalle Street  
Chicago, Illinois 60601  
Attn.: Manager, Credit/Loan Administration

With a copy to:

Heller Financial, Inc.  
9th Floor - Real Estate Division  
200 North LaSalle Street  
Chicago, Illinois 60601  
Attn.: Group General Counsel

## SECTION 23

### WAIVERS:

23.1 No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Note.

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23.2 Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension homestead or exemption laws or any so-called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of the lien of this Mortgage, but hereby waives the benefit of such laws. Mortgagor, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety. Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate or residential real estate and Mortgagor does hereby expressly waive, to the full extent permitted by law, any and all rights of reinstatement and any and all rights of redemption from sale under any order or judgment of foreclosure of the lien of this Mortgage on behalf of the Mortgagor, the trust estate and all persons beneficially interested therein and each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage. If Mortgagor is a trustee, Mortgagor represents that it is duly authorized and empowered by the trust instruments and by all persons having the power of direction over it as such trustee to execute this Mortgage, including, the foregoing agreements, waivers and releases.

23.3 No delay or omission of Mortgagee or of any holder of the Note to exercise any right, power or remedy accruing upon the occurrence of any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such Event of Default or acquiescence therein; and every right, power and remedy given by this Mortgage to Mortgagee may be exercised from time to time as often as may be deemed expedient by Mortgagee. No consent or waiver, expressed or implied, by Mortgagee to or of any breach or default by Mortgagor in the performance of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of the same or any other obligations of Mortgagor hereunder. Failure on the part of Mortgagee to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by Mortgagee of its rights hereunder or impair any rights, powers or remedies on account of any breach or default by Mortgagor.

23.4 If Mortgagee: (a) releases anyone primarily or secondarily liable on any of the indebtedness; (b) accepts a renewal note or notes therefor; (c) grants forbearance or any extension of time for the payment of any sums secured hereby; (d)

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IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the County of Cook, Illinois, this 1st day of January, 1938.

CLERK

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the County of Cook, Illinois, this 1st day of January, 1938.

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takes other or additional security for the payment of the Indebtedness; (e) waives or does not exercise any right granted by law or granted herein or in the Note or in any of the Other Agreements; (f) releases with or without consideration any of the Mortgaged Property from the lien of this Mortgage or any other security for the payment of the Indebtedness; (g) changes any of the terms, covenants, conditions or agreements of the Note or this Mortgage or any of the Other Agreements; (h) consents to the filing of any map, plat or replat or condominium declaration affecting the Mortgaged Property; (i) consents to the granting of any easement or other right affecting the Mortgaged Property; or (j) makes or consents to any agreement subordinating the lien hereof; any such act or omission shall not release, discharge, modify, change or affect (except to the extent of the changes referred to in clause (f) above) the Indebtedness or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, cosigner, endorser, surety or guarantors; nor shall any such act or omission preclude Mortgagee from exercising any right, power or privilege herein granted or intended to be granted upon the occurrence of any Event of Default nor, except as otherwise expressly provided in an instrument or instruments executed by Mortgagee, shall the lien of this Mortgage or the priority thereof be altered thereby, whether or not there are junior lienors and whether or not they consent to any of the foregoing. In the event of the sale or transfer, by operation of law or otherwise, of all or any part of the Mortgaged Property, Mortgagee, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the Indebtedness, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings. The foregoing shall not affect, limit or negate the prohibition against such sale or transfer as set forth in Section 9 hereof.

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## SECTION 24

### FILING AND RECORDING CHARGES AND TAXES:

24.1 Mortgagor will pay all filing, registration, recording and search and information fees, and all expenses incident to the execution and acknowledgment of this Mortgage and all other documents securing the Note and all federal, state, county and municipal taxes, other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution, delivery, filing, recording or registration of the Note, this Mortgage and all other documents securing the Note.

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[The following text is extremely faint and largely illegible due to the quality of the scan. It appears to be a multi-paragraph document, possibly a legal notice or official record, containing various lines of text and possibly some structured data or a list. The text is mirrored across the page, suggesting a bleed-through from the reverse side.]

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## SECTION 25

### BUSINESS PURPOSE; USURY EXEMPTION:

25.1 Mortgagor has been advised by its beneficiaries that the proceeds of the loan secured by this Mortgage will be used for the purposes specified in Section 6404 4(c) of Chapter 17 of the Illinois Revised Statutes (or any substitute amendment or replacement statutes), and that the principal obligation secured hereby constitutes a "business loan" transacted solely for the purpose of carrying on or acquiring the business of the beneficiaries of the Mortgagor which comes within the purview and operation of said paragraph.

## SECTION 26

### MISCELLANEOUS:

26.1 Successors and Assigns: This Mortgage and all provisions hereof shall extend to and be binding upon the original Mortgagor named on page 1 hereof and its successors, grantees, assigns, each subsequent owner or owners of the Mortgaged Property and all persons claiming under or through Mortgagor; and the word "Mortgagor" when used herein shall include all such persons and all persons primarily and secondarily liable for the payment of the Indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage.

26.2 Release of Previous Holder: The word "Mortgagee" when used herein shall include the successors and assigns of the original Mortgagee named on page 1 hereof, and the holder or holders, from time to time, of the Note. However, whenever the Note is sold, each prior holder shall be automatically freed and relieved, on and after the date of such sale, of all liability with respect to the performance of each covenant and obligation of Mortgagee hereunder thereafter to be performed, provided that any monies in which the Mortgagor has an interest, which monies are then held by the seller of the Note, are turned over to the purchaser of the Note.

26.3 Severability and Applicable Law: In the event one or more of the provisions contained in this Mortgage or in the Note or in any other document given at any time to secure the payment of the Note shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Mortgagee, not affect any other provision of this Mortgage, the Note or other document and this Mortgage, the Note or other document shall be construed as if such invalid, illegal or

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unenforceable provision had never been contained herein or therein. The validity and interpretation of this Mortgage and the Note it secures are to be construed in accordance with and governed by the laws of the State in which the Premises is situated.

26.4 Governmental Compliance: Mortgagor shall not by act or omission permit any lands or improvements not subject to the lien of this Mortgage to include the Mortgaged Property or any part thereof in fulfillment of any governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Mortgaged Property to be so used. Similarly, no lands or improvements comprising the Mortgaged Property shall be included with any lands or improvements not subject to the lien of this Mortgage in fulfillment of any governmental requirement. Mortgagor shall not by act or omission impair the integrity of the Premises as a single zoning lot separate and apart from all other premises. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this Section 26.4 shall be void.

26.5 Estoppel Certificate: Mortgagor, within fifteen (15) days after mailing of a written request by the Mortgagee, agrees to furnish from time to time a signed statement setting forth the amount of Indebtedness and whether or not any default, offset or defense then is alleged to exist against the Indebtedness and, if so, specifying the nature thereof.

26.6 Evasion of Prepayment Premium: If the maturity of the Indebtedness is accelerated by the Mortgagee because of the occurrence of an Event of Default, as herein provided, such acceleration shall be deemed to be an evasion of the prepayment provisions provided for in the Note and in such event there shall be added to and included in the Indebtedness the prepayment premium or liquidated damages (if any) required under the provisions governing the prepayment privilege (if any) contained in the Note.

26.7 Regulation G: Mortgagor covenants that the proceeds evidenced by the Note secured hereby will not be used for the purchase or carrying of registered equity securities within the purview and operation of Regulation G issued by the Board of Governors of the Federal Reserve System.

26.8 Management: Mortgagor further covenants and agrees that all agreements to manage the Mortgaged Property: (i) shall provide that the obligation to pay any amount thereunder will not be enforceable against any party other than the party who entered into such agreement; (ii) shall provide that such agreement, together with any and all liens and claims for lien that any

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manager or other person or entity performing the duties of a manager thereunder has or may thereafter have thereunder or for managing the Mortgaged Property or any part thereof, shall be in all respects subordinate to the lien of this Mortgage; and (iii) shall not be enforceable against Mortgagee. Mortgagor shall furnish Mortgagee with evidence of the foregoing which is in all respect reasonably satisfactory to Mortgagee.

26.9 Leasing Commissions: Mortgagor covenants and agrees that all agreements to pay leasing commissions: (i) shall provide that the obligation to pay such commissions will not be enforceable against any party other than the party who entered into such agreement; (ii) shall be subordinate to the lien of this Mortgage; and (iii) shall not be enforceable against Mortgagee. Mortgagor shall furnish Mortgagee with evidence of the foregoing which is in all respects satisfactory to Mortgagee provided, however, that Mortgagee will not require amendments to existing leasing commission agreements, in order to conform to any of the foregoing.

26.10 Covenants Run With Land: All the covenants contained in this Mortgage will run with the land. Time is of the essence of this Mortgage and all provisions herein relating thereto shall be strictly enforced.

26.11 Limit On Liability: Neither Mortgagee nor any Depository described in this Mortgage shall be liable for any act or omission taken in good faith but only for its gross negligence or wilfull misconduct.

26.12 Illinois Mortgage Foreclosure Law: (a) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (Chapter 110, Sections 15-1101 et seq., Illinois Revised Statutes) (herein called the "Act") the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

(b) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon the occurrence of an Event of Default which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses reasonably incurred by Mortgagee to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act,

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whether incurred before or after any decree or judgment of foreclosure, and whether or not provided for elsewhere in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

SECTION 27

LIEN FOR LOAN COMMISSIONS,  
SERVICE CHARGES AND THE LIKE:

27.1 So long as the original Mortgagee named on page 1 hereof is the owner of the Note, and regardless of whether any proceeds of the loan evidenced by the Note have been disbursed, this Mortgage also secures the payment of all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by the Mortgagee in connection with the loan transaction intended to be secured hereby.

SECTION 28

EXCULPATORY CLAUSES:

28.1 This Mortgage is executed by the Land Trustee, 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 Land Trustee hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing contained herein or in the Note shall be construed as creating any liability on the Land Trustee personally to pay the Note or any interest, late charge or premium that may accrue thereon, or any Indebtedness secured by this Mortgage, or to perform any covenant, either express or implied herein contained, all such liability, if any, being expressly waived by Mortgagee and by every person now or hereafter claiming any right or security hereunder, and that so far as Land Trustee personally is concerned, the legal holder or holders of the Note and the owner or owners of any Indebtedness secured hereby shall look solely to the Mortgaged Property hereby mortgaged, conveyed and assigned and to an other security given at any time to secure the payment thereof.

28.2 Nothing contained in the Note or this Mortgage shall be construed as creating any personal liability on the part of Mortgagor (or the general partners of Mortgagor) with respect to the obligations of Mortgagor contained in the Note, the Mortgage or the Other Agreements, all such liability being expressly waived by the holder of the Note for itself, its successors and assigns (except that after the occurrence of a

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default under the Note, the Mortgage or the Other Agreements or after acceleration of the Loan, Mortgagor and the general partners shall be personally liable to the extent of all gross income from the Mortgaged Property received after the occurrence of such default and/or such acceleration which is not applied in payment of the Loan or expended in connection with the operation of the Mortgaged Property in the ordinary course of business). Notwithstanding the above, nothing herein shall limit the liability of guarantors, if any, under any guaranty given in connection with the Loan, or limit the right of Mortgagee to take any action as may be necessary or desirable to realize upon any security given to secure the indebtedness evidenced by the Note or to pursue ~~Mortgagor~~, or any general partners of Mortgagor, as the case may be, for any and all losses, costs, or damages incurred by Mortgagee due to a material misrepresentation, fraud, or misappropriation of funds by Mortgagor, or any general partner of Mortgagor, as the case may be, or to pursue ~~Mortgagor~~, or any general partner of Mortgagor, for failure to perform its obligations under Section 12 of this Mortgage or its obligations under the Other Agreements not to intentionally or materially waste the Mortgaged Property.

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IN WITNESS WHEREOF, the Mortgagor has executed this instrument as of the day and year first above written.

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but as Trustee as aforesaid

ATTEST:

By: [Signature]  
Name: [Signature]  
Its: ASSISTANT SECRETARY

By: [Signature]  
Name: [Signature]  
Its: VICE PRESIDENT

MALLERS-CHICAGO LIMITED PARTNERSHIP, an Illinois limited partnership

By: MALLERS-CHICAGO CORP., an Illinois corporation, a general partner of Mellers-Chicago Limited Partnership  
ATTEST:

By: [Signature]  
Name: ROSE COVATK  
Its: Asst. Sec

By: [Signature]  
Name: [Signature]  
Its: [Signature]

By: [Signature]  
Gary Z. [Signature], a general partner of Mellers-Chicago Limited Partnership

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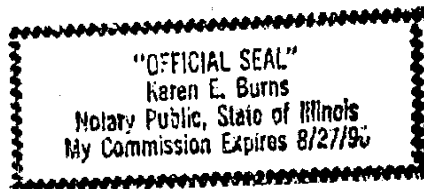
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STATE OF ILLINOIS     )  
                                  )   SS  
COUNTY OF COOK        )

I, KAREN E. BURNS, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that ANTHONY J. LUCAS, VICE PRESIDENT of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association, not personally but as Trustee under Trust Agreement dated May 6, 1992 and known as Trust No. 55185 and ANTHONY J. LUCAS, ASSISTANT SECRETARY of said Bank who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such ANTHONY J. LUCAS and ANTHONY J. LUCAS, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Bank, as Trustee, for the uses and purposes therein set forth; and the said ANTHONY J. LUCAS then and there acknowledged that (he/she), as custodian of the corporate seal of said Bank, caused the corporate seal of said Bank to be affixed to said instrument as the free and voluntary act of said Bank, as Trustee, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal NOV 2 1988 day of November, 1988.



*Karen E. Burns*  
\_\_\_\_\_  
Notary Public

My Commission Expires:

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STATE OF ILLINOIS

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CLERK OF THE COURT

Property of Cook County Clerk's Office



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STATE OF ILLINOIS     )  
                                  )   SS  
COUNTY OF COOK       )

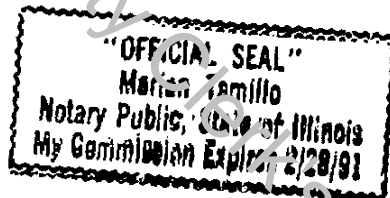
I, Merion Ramillo, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Gary Z. Baxter, a general partner of MALLERS-CHICAGO LIMITED PARTNERSHIP, an Illinois limited partnership, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such general partner, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act of said limited partnership, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 21st day of November, 1988.

Merion Ramillo  
Notary Public

My Commission Expires:

2/28/91



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STATE OF ILLINOIS

COUNTY OF COOK

Property of Cook County Clerk's Office

CLERK OF COURT  
COURT HOUSE  
CHICAGO, ILLINOIS

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STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I, Marion Tamilla, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Harry Z. Batten, the President of MALLERS-CHICAGO CORP., an Illinois corporation, a general partner of MALLERS-CHICAGO LIMITED PARTNERSHIP, an Illinois limited partnership, and Bruce D. Souzak, its Asst. Secretary, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such President and Asst. Secretary, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said corporation as general partner of said limited partnership, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 21<sup>st</sup> day of November, 1988.

Marion Tamilla  
Notary Public



My Commission Expires: 2/28/91

COOK County Clerk's Office

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STATE OF ILLINOIS

COUNTY OF COOK

IN SENATE

January 10, 1900

REPORT

OF THE

COMMISSIONERS

OF THE

LAND OFFICE

FOR THE

YEAR

ENDING

DECEMBER

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