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Schaumburg, Illinois

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**MORTGAGE AND SECURITY AGREEMENT**

**Cover Sheet**

\* NBD TRUST COMPANY OF ILLINOIS, as Successor.  
Trustee to NBD Elk Grove Bank f/k/a  
USAmeribanc/Elk Grove,

Date: May 15, 1988

\* ~~NBD Elk Grove Bank~~, not personally but solely as Trustee  
under Trust Agreement dated February 26, 1985 and known  
as Trust No. 2370

Borrower: \_\_\_\_\_

**Beneficiary's**

Borrower's Federal Income Tax Employer's Identification No. or Social Security  
No.: 36-3357662

Beneficiary: Basswood Associates, an Illinois limited partnership

Borrower's Notice Address: Basswood Associates  
c/o Mr. Walter Bratkiv  
500 East Randolph Road  
Schaumburg, Illinois 60173

Lender: NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY, a Massachusetts corporation, together  
with other holders from time to time of the Note (as herein defined)

Lender's Notice Address: 501 Boylston Street  
Boston, Massachusetts 02117  
Attention: Mortgage Department

Note Amount: \$ 3,200,000

Maturity Date: July 1, 1993

State: Illinois

Record Owner of the Land (as defined herein): Borrower  
(name)

Exhibits A and B <sup>and C</sup> hereto are incorporated  
herein by reference.

Mail to:  
This document prepared by:  
Gary Scott Salpe, Esq.  
ROSENTHAL AND SCHANFIELD  
55 East Monroe Street  
Suite 4620  
Chicago, Illinois 60603

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## MORTGAGE AND SECURITY AGREEMENT

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1. **DEFINITION OF TERMS.** As used herein, the terms defined in the cover sheet hereof shall have the meanings given on such sheet, and the following terms shall have the following meanings:
- 1.1 **Application:** as defined in Paragraph 3.7.
  - 1.2 **Borrower's Notice Address:** as defined on cover hereof.
  - 1.3 **Casualty:** as defined in Paragraph 5.1.
  - 1.4 **Contested Sum:** as defined in clause (e) of Paragraph 4.1.
  - 1.5 **Events of Default:** as defined in Paragraph 8.1.
  - 1.6 **Improvements:** all buildings, structures and other improvements now or hereafter existing, erected or placed on the Land, or in any way used in connection with the use, enjoyment, occupancy or operation of the Land or any portion thereof; all fixtures of every kind and nature whatsoever now or hereafter owned by Borrower and used or procured for use in connection with the Realty.
  - 1.7 **In its sole unfettered discretion:** as defined in Paragraph 10.8.
  - 1.8 **Indenture:** this Mortgage and Security Agreement and all modifications or amendments thereto or extensions thereof.
  - 1.9 **Insurance Premiums:** as defined in Paragraph 4.3.
  - 1.10 **Insurance Proceeds:** as defined in clause (a) of Paragraph 5.3.
  - 1.11 **Land:** the land described in Exhibit A attached hereto, together with all estate, title, interests, title reversion rights, rents, increases, issues, profits, rights of way or uses, additions, accretions, servitudes, gaps, gores, liberties, privileges, water rights, water courses, alleys, streets, passages, ways, vaults, adjoining strips of ground, licenses, tenements, franchises, hereditaments, rights, appurtenances and easements, now or hereafter owned by Borrower and existing, belonging or appertaining to the Land, all claims or demands whatsoever of Borrower therein or thereto, either at law or in equity, in possession or in expectancy and all estate, right, title and interest of Borrower in and to all streets, roads and public places, opened or proposed, now or hereafter used in connection with, existing, belonging or appertaining to, the Land.
  - 1.12 **Laws:** as defined in clause (c) of Paragraph 4.2.
  - 1.13 **Leases:** all leases, license agreements and other occupancy or use agreements (whether oral or written), now or hereafter existing, which cover or relate to all or any portion of the Property, together with all options therefor, amendments thereto and renewals, modifications and guarantees thereof, and all rents, royalties, issues, profits, revenues, income and other benefits of the Property arising at any time (including, without limitation, after the filing of any petition under any present or future Federal or state bankruptcy or similar law) from the use or enjoyment thereof or from the Leases, including, without limitation, cash or securities deposited thereunder to secure performance by the tenants of their obligations thereunder, whether said cash or securities are to be held until the expiration of the terms of the Leases or applied to one or more of the installments of rent coming due, additional, percentage, participation and other rentals, and deposits.



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- 1.14 **Lease Assignment:** a certain Assignment of Leases and Rents of even date herewith from Borrower to Lender and all replacements, substitutions, modifications or amendments thereto or extensions thereof.
- 1.15 **Loan Documents:** this Indenture, the Note, the Lease Assignment and any and all other documents or instruments related thereto or to the Secured Debt now or hereafter given by or on behalf of Borrower to Lender.
- 1.16 **Note:** a certain Promissory Note of even date herewith made by Borrower in favor of Lender in the Note Amount and all replacements, substitutions, modifications, renewals and extensions thereof, which Note is payable in monthly installments, until the Maturity Date (as defined in the Note).
- 1.17 **Parties in Interest:** as defined in clause (e) of Paragraph 8.1.
- 1.18 **Permitted Encumbrances:** matters set forth or referred to in the Lender's title insurance policy issued in connection with the execution and recording of this Indenture.
- 1.19 **Personalty:** all of Borrower's interest in personal property of any kind or nature whatsoever, whether tangible or intangible, which is used or will be used in the construction of, or is or will be placed upon, or is derived from or used in connection with, the maintenance, use, occupancy or enjoyment of the Realty, including, without limitation, all accounts, documents, instruments, chattel paper, equipment, general intangibles and inventory (as those terms are defined in the Uniform Commercial Code of the State), all plans and specifications, contracts and sub-contracts for the construction, reconstruction or repair of the Improvements, bonds, permits, licenses, guarantees, warranties, causes of action, judgments, claims, profits, rents, security deposits, utility deposits, refunds of fees, insurance Premiums or deposits paid to any governmental authority, letters of credit, policies and Insurance Proceeds, together with all present and future attachments, accretions, accessions, replacements and additions thereto and products and proceeds thereof.
- 1.20 **Property:** the Realty and Personalty or any portion thereof or interest therein except as the context otherwise requires.
- 1.21 **Property Liabilities:** as defined in clause (d) of Paragraph 4.1.
- 1.22 **Property Taxes and Charges:** as defined in clause (b) of Paragraph 4.1.
- 1.23 **Realty:** the Land and Improvements or any portion thereof or interest therein, as the context requires.
- 1.24 **Release:** as defined in Paragraph 3.12.
- 1.25 **Secured Debt:** to the extent not prohibited by Law, all principal, interest, late charges and other sums, charges, prepayment and other premiums, prepayment and other indemnification amounts or other amounts due or to become due under the Loan Documents, together with any other sums expended or advanced by Lender under the Loan Documents or otherwise with respect to the care, maintenance or preservation of the Property or the enforcement of the Loan Documents.

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1.26 *Subordinate Indenture*: as defined in Paragraph 4.15.

1.27 *Taking*: as defined in Paragraph 5.1.

1.28 *Taking Proceeds*: as defined in clause (a) of Paragraph 5.3.

2. **GRANTING CLAUSES.** For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower has executed and delivered the Loan Documents and hereby irrevocably and absolutely grants, transfers, assigns, mortgages, bargains, sells and conveys to Lender, with all ~~POWERS OF SALE AND STATUTORY RIGHTS AND COVENANTS~~ in the State, all of Borrower's estate, right, title and interest in, to and under, and grants to Lender a first and prior security interest in, the Property and any and all of the following, whether now owned or held or hereafter acquired or owned by Borrower:

- (a) All Leases;
- (b) All profits and sales proceeds, including, without limitation, earnest money and other deposits, now or hereafter becoming due by virtue of any contract or contracts for the sale of Borrower's interest in the Property;
- (c) All proceeds (including claims thereto or demands therefor) of the conversion, voluntary or involuntary, permitted or otherwise, of any of the foregoing into cash or liquidated claims; and
- (d) All Insurance Proceeds and all Taking Proceeds.

FOR THE PURPOSE OF SECURING THE FOLLOWING OBLIGATIONS OF BORROWER TO LENDER, in such order of priority as Lender may elect:

- (1) Payment of the Secured Debt;
- (2) Payment of such additional sums with interest thereon which may hereafter be loaned to Borrower by Lender or advanced under the Loan Documents, even if the sum of the amounts outstanding at any time exceeds the Note Amount; (not to exceed, in the aggregate, \$150,000,000); and
- (3) Due, prompt and complete observance, performance, fulfillment and discharge of each and every obligation, covenant, condition, warranty, agreement and representation contained in the Loan Documents.

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This Indenture is also intended to be a security agreement under the Uniform Commercial Code as in force from time to time in the State. Time is of the essence.

3. ~~REPRESENTATIONS AND WARRANTIES~~. Borrower hereby represents ~~and warrants~~ to Lender that the following are true, correct and complete as of the date of the Indenture:

- 3.1 *Due Organization; Authority*. Borrower is duly organized and validly existing and in good standing under the laws of the State and has power adequate to carry on its business as presently conducted, to own the Property, to make and enter into the Loan Documents and to carry out the transactions contemplated therein.
- 3.2 *Execution, Delivery and Effect of Loan Documents*. The Loan Documents have each been duly authorized, executed and delivered by Borrower, and each is a legal, valid and binding obligation of Borrower, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and subject to the exercise of judicial discretion in accordance with general principles of equity.
- 3.3 *Other Obligations*. Borrower is not in material violation of any term or provision of any document governing its organization or existence or in default under any material instruments or obligations relating to Borrower's business, Borrower's assets or the Property. No party has asserted any material claim or default relating to any of Borrower's assets or the Property. The execution and performance of the Loan Documents and the consummation of the transactions contemplated thereby will not result in any material breach of, or constitute a material default under, any contract, agreement, document or other instrument to which Borrower is a party or by which Borrower may be bound or affected, and do not and will not violate or contravene any Laws to which Borrower is subject; nor do any such instruments impose or contemplate any obligations which are or will be materially inconsistent with the Loan Documents. Borrower has filed all federal, state, county and municipal income tax returns required to have been filed by Borrower and has paid all taxes which have become due pursuant to such returns or pursuant to any assessments received by Borrower. Borrower does not know of any basis for additional assessment with regard to any such tax. No approval by, authorization of, or filing with any federal, state or municipal or other governmental commission, board or agency or other governmental authority is necessary in connection with the authorization, execution and delivery of the Loan Documents.
- 3.4 *Construction and Completion of Improvements*. The presently existing improvements have been completed and installed in a good and workmanlike manner, in compliance with Laws and the plans and specifications previously delivered to, and approved in writing by, Lender. The improvements are served by electric, gas, sewer, water, telephone and other utilities required for the present and contemplated uses and operation thereof. Any and all streets, utility lines and off-site improvements, which provide access to the Property or are necessary for its present and contemplated uses have been completed, are serviceable and have been accepted or approved by appropriate governmental bodies.

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- 3.5 **Legal Actions.** There are no material actions, suits or proceedings including, without limitation, any condemnation, insolvency or bankruptcy proceedings, pending or, to the best of Borrower's knowledge and belief, threatened, against or affecting Borrower, its business or the Property; or investigations, at law or in equity, before or by any court or governmental authority, pending or, to the best of Borrower's knowledge and belief, threatened against or affecting Borrower, Borrower's business or the Property, except actions, suits and proceedings fully covered by insurance and heretofore fully disclosed in writing to Lender or which if resolved adversely to Borrower would not have a material, adverse effect on Borrower or the Property. Borrower is not in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority affecting Borrower or the Property. Furthermore, to the best knowledge and belief of Borrower, there is no basis for any unfavorable decision, ruling or finding by any court or governmental authority which would in any material respect adversely affect the validity or enforceability of the Loan Documents, or the condition (financial or otherwise) or ability of Borrower to meet Borrower's obligations under the Loan Documents.
- 3.6 **Financial Statements.** All statements, financial or otherwise, submitted to Lender in connection with the Application are true, correct and complete in all material respects, and all such financial statements have been prepared in accordance with generally accepted accounting principles consistently applied (or other basis of accounting practices permitted by Lender) and fairly present the financial condition of the parties or entities covered by such statements as of the date thereof. Since the date thereof, neither Borrower nor any such party or entity has experienced any material, adverse change in its finances, business, operations, affairs or prospects.
- 3.7 **Solvency of Tenants.** To the best of Borrower's knowledge and belief, no Major Tenant (as defined in the Mortgage Loan Application to Lender (the "Application") for the loan secured hereby) has suffered or incurred any material, adverse change in its finances, business, operations, affairs or prospects since the date of the Application.
- 3.8 **Adverse Change To Property.** No event or series of events has or have intervened or occurred since the date of Borrower's submission of the Application which would, either individually or collectively materially, adversely affect the Property.
- 3.9 **Title to Property.** Borrower has good and clear record and marketable title to the Realty and good and merchantable title to the Personality, free of all liens, encumbrances or restrictions other than the Permitted Encumbrances.
- 3.10 **Compliance With Laws and Private Covenants.** The Property complies in all material respects with all Laws. Borrower has examined and is familiar with the Permitted Encumbrances and there now exists no material violation thereof. Borrower has no notice that any of the Improvements are inconsistent with any easement over the Land or encroach upon adjacent property.
- 3.11 **Independence of the Property.** The Land is a separate and distinct parcel for tax purposes and is not subject to Property Taxes and Charges against any other land. Borrower has not by act or omission permitted any building or other improvements on property not covered by this Indenture to rely on the Property or any part thereof or any interest therein to fulfill any municipal or governmental requirement for the existence of such property, building or improvement; and no improvement on the Property relies on any property not covered by this Indenture or any interest therein to fulfill any governmental or municipal requirement. Borrower has not by act or omission impaired the integrity of the Property as a single, separate, subdivided zoning lot separate and apart from all other property.

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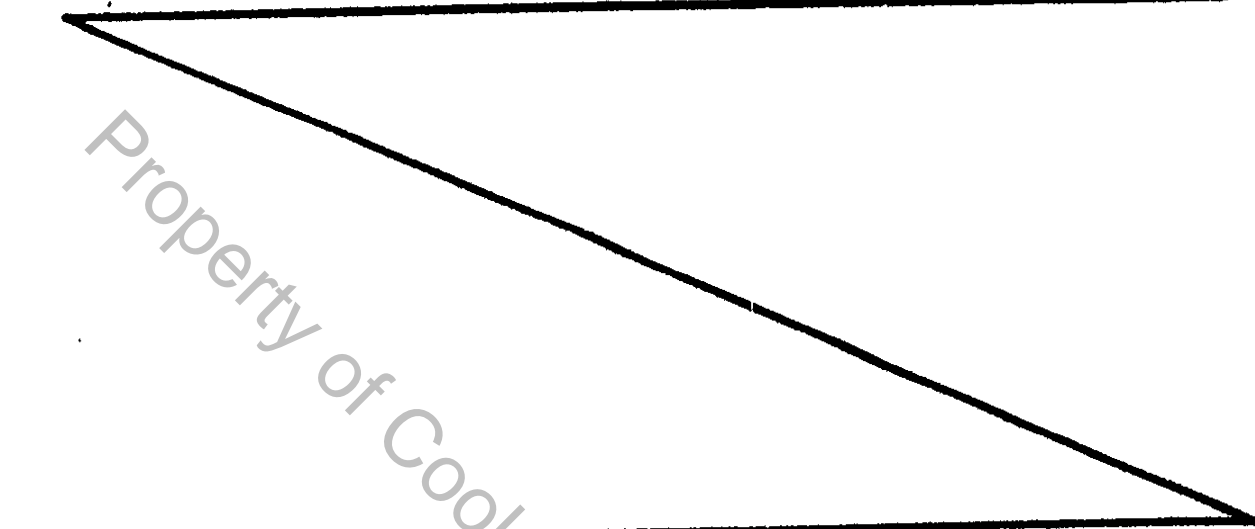
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- 3.12 **Hazardous Waste.** To the best knowledge and belief of Borrower, no release (a "Release") of oil or petroleum or chemical liquids or solids, liquid or gaseous products or hazardous waste (as defined under Laws) has occurred on the Land or other real property in the State, now or previously owned by Borrower or any of the partners of Borrower (if Borrower is a partnership), or any of the stockholders or other persons having a legal or beneficial interest in Borrower (if Borrower is a corporation, trust or other legal entity). Borrower has not received any notice from any governmental agency or from any tenant under a Lease with respect to any such Release.



## 4. COVENANTS.

### 4.1 **Payments.**

- (a) **Secured Debt.** Borrower shall pay promptly to Lender, when due, the Secured Debt at the times and in the manner provided in the Loan Documents.
- (b) **Property Taxes and Charges.** Except as provided in Paragraph 4.1(e), Borrower shall pay, prior to delinquency, all real estate taxes and personal property taxes, betterments, assessments (general and special), imports, levies, water, utility and sewer charges, and any and all income, franchise, withholding, profits and gross receipts taxes, other taxes and charges, all other public charges whether of a like or different nature, imposed upon or assessed against Borrower or the Property or upon the revenues, rents, issues, income and profits of use or possession thereof, and any stamp or other taxes which may be required to be paid with respect to any of the Loan Documents, any of which might, if unpaid, result in a lien on the Property, regardless to whom paid or assessed ("Property Taxes and Charges"). Borrower shall furnish Lender with receipts showing payment of the Property Taxes and Charges prior to the applicable delinquency date thereof.

As used in this Paragraph 4.1(b), the term "real estate taxes" shall include any form of assessment, license fee, license tax, business license fee or tax, commercial rental tax, levy, charge, penalty, tax or similar imposition, imposed by any authority having the direct power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage or other improvement or special assessment district thereof, against any legal or equitable interest in the Property, except general business taxes imposed on Lender other than taxes or other amounts referred to in Paragraph 4.1(c).

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If requested by Lender, Borrower shall cause to be furnished to Lender a tax reporting service covering the Property of a type and duration, and with a company, satisfactory to Lender.

- (c) *Taxes on Lender.* If any Law of the State or the United States or any other governmental authority imposes upon Lender the obligation to pay the whole or any part of the Property Taxes and Charges or changes in any way Laws relating to taxation so as to adversely affect the Loan Documents, then Borrower shall pay such Property Taxes and Charges or reimburse Lender immediately therefor, unless in the opinion of counsel to Lender, it might be unlawful to require Borrower to pay the same or such payment might result in the imposition of interest prohibited by Law. In such case, an Event of Default shall exist.
- (d) *Liabilities.* Except as provided in Paragraph 4.1(e), Borrower shall pay, prior to delinquency, all debts and liabilities incurred in the construction, operation, development, use, enjoyment, repair, maintenance, replacement, restoration and management of the Property ("Property Liabilities"), including, without limitation, utility charges, sums due mechanics and materialmen and other sums secured or which might be secured by liens on the Property.
- (e) *Right to Contest.* Borrower may, in good faith, by appropriate proceedings, contest the validity, applicability or amount of any asserted Property Taxes and Charges, Property Liabilities or liens, charges, attachments or *lis pendens* under Paragraph 4.2(b) ("Contested Sum"), after written notice of the same to Lender. During such contest, Borrower shall not be deemed in default hereunder if (i) prior to delinquency of the Contested Sum, Borrower deposits with Lender or Lender's nominee cash or other security, in form reasonably satisfactory to Lender, adequate to cover the payment of such Contested Sum and any obligation, whether matured or contingent, of Borrower or Lender therefor, together with interest, costs and penalties thereon, and (ii) Borrower promptly causes to be paid any amounts adjudged to be due, together with all costs, penalties and interest thereon, on or before such judgment becomes final. Each such contest shall be concluded and the Contested Sum, interest, costs and penalties thereon shall be paid prior to the date such judgment becomes final and before any writ or order is issued under which the Property could be sold pursuant to such judgment.\*
- (f) *Expenses.* Borrower shall, to the extent allowed by Law, pay, on demand but without counterclaim, setoff, deduction, defense, abatement, suspension, deferment, discrimination or reduction, all fees (including, without limitation, reasonable attorneys' fees and disbursements), taxes, recording fees, commissions and other liabilities, costs and expenses incurred in connection with (i) the making or enforcement of the Loan Documents; (ii) Lender's exercise and enforcement of its rights and remedies under Paragraphs 7 and 8 hereof; and (iii) Lender's protection of the Property and its interest therein.

Borrower shall not be entitled to any credit on the Secured Debt by reason of the payment of any sums required to be paid under Paragraphs 4.1(b) through (f).

\*Without limiting the generality of the foregoing, if Borrower so directs, Property Taxes may be paid under protest in accordance with local practices and procedures and in a manner reasonably satisfactory to Lender.

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## 4.2 Operation of the Property.

- (a) *Maintenance; Alterations.* Borrower shall maintain and preserve the Property in good repair and condition and shall correct any defects or faults in the Property. Borrower shall not commit, permit or suffer any demolition or waste of the Property or any use or occupancy which constitutes a public or private nuisance. Borrower shall not do, permit or suffer to be done any act whereby the value of the Property may be materially decreased. Borrower shall not make any material alterations, improvements, additions, utility installations or the like to the Property without the prior written consent of Lender in each instance; provided, however, that Borrower may make replacements or substitutions of any item of the Personality if the replacement or substitution is of a quality, utility, value, condition and character similar to or better than the replaced or substituted item and is free and clear of any lien, charge, security interest or encumbrance, except as created or permitted by this Indenture.
- (b) *Liens.* Except as provided in Paragraph 4.1(e), Borrower shall promptly discharge any mechanics', laborers', materialmen's or similar or other lien, charge, attachment, or *lis pendens* filed or recorded which relates to Borrower, the Property or any Release.
- (c) *Compliance with Laws and Private Covenants.* Borrower shall keep, observe and satisfy, and not suffer violations of any, Federal, regional, state and local laws (including, without limitation, all environmental laws), ordinances, rules, regulations, statutes, decisions, orders, judgments, directives or decrees of any governmental or regulatory authority, court or arbitrator (collectively "Laws") and private covenants (whether or not listed as Permitted Encumbrances) materially affecting the Property.
- (d) *Use.* Borrower shall not permit the use or occupancy of the Property other than pursuant to Leases which shall have been approved in advance and in writing by Lender pursuant to the Lease Assignment or which require no approval thereunder.
- (e) *Inspection.* Borrower shall permit Lender to enter upon and inspect the Property at reasonable times without delay, hindrance or restriction.

- 4.3 *Insurance.* Borrower shall obtain and keep in force, with one or more insurers acceptable to Lender, such insurance as Lender may from time to time specify by notice to Borrower, including, as a minimum, insurance providing (i) comprehensive general liability (including bodily injury and property damage coverage) with a broad form coverage endorsement and a combined single limit of at least \$1,000,000, (ii) protection against fire, "extended coverage" and other "All Risk" perils, including, if specifically required by Lender, earthquake and flood, to the full replacement value of the Property, with a waiver of subrogation endorsement, and (iii) rent loss insurance in an amount of not less than a sum equal to 12-months' rental income from all Leases. All property insurance policies shall include the standard mortgage clause in the State naming Lender as the first mortgagee with loss payable to Lender as such mortgagee and all other policies shall name Lender as an additional insured. All insurance policies shall not be cancellable or modifiable without 30 days' prior written notice to Lender and shall not have more than a \$10,000 deductible for any single Casualty. Borrower shall provide Lender with evidence of compliance with this Paragraph 4.3, in such forms as required from time to time by Lender, upon notice from Lender or at least 15 days prior to the expiration date of any policy required hereunder, each bearing notations evidencing the prior payment of premiums ("Insurance Premiums") or accompanied by other evidence satisfactory to Lender that such payment shall be delivered by Borrower to Lender.

Borrower, to the full extent permitted by Law and to the full extent permitted without invalidating the insurance policies required above, shall obtain endorsements by all insurers waiving any right of subrogation against tenants under any Leases and shall require the same of such tenants.

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Lender shall not, because of accepting, rejecting, approving or obtaining insurance, incur any liability for the existence, nonexistence, form or legal sufficiency thereof, the solvency of any insurer, or the payment of losses.

Borrower shall keep, observe and satisfy, and not suffer violations of, the requirements of insurance companies and any bureau or agency which establishes standards of insurability affecting the Property, and pertaining to acts committed or conditions existing thereon.

Upon foreclosure of this Indenture or other transfer of title or assignment of the Property in discharge, in whole or part, of the Secured Debt, all right, title and interest of Borrower in and to all policies of insurance required by this Paragraph 4.3 shall inure to the benefit of and pass to Lender.

4.1 ~~Escrow. If an Event of Default occurs~~, Borrower shall pay to Lender monthly, on each date on which a payment is due under the Note, 1/12 of such amount as Lender from time to time estimates will be required to pay all Property Taxes and Charges before becoming past due and Insurance Premiums. Lender's estimates shall be based on the amounts actually payable or, if unknown, on the amounts actually paid for the year preceding that for which such payments are being made. Any deficiencies shall be promptly paid by Borrower to Lender on demand. Borrower shall transmit to Lender bills for the Property Taxes and Charges and Insurance Premiums as soon as received. When Lender has received from Borrower or on its account funds sufficient to pay the same, Lender shall, except as provided in Paragraph 8.2, pay such bills. If the amount paid by Borrower in any year exceeds the aggregate required, such excess shall be applied to escrow payments for the succeeding year. Payments from said account for such purposes may be made by Lender at its discretion even though subsequent owners of the Property may benefit thereby. Lender shall not be a trustee of funds in said account and may commingle such funds with its general assets without any obligation to pay interest thereon or account for any earnings, income or interest on such funds.

~~4.2 **Rate and Encumbrances.** Borrower shall not, without the prior written consent of Lender, which consent, if given in Lender's sole unlettered discretion, may be conditioned upon a change in the interest rate under the Note, payment of a fee or change in the term of the Note, adjustment of the Maturity Date or amortization period or one or more of the foregoing or other requirements of Lender:~~

- ~~(a) convey, assign, sell, mortgage, encumber, pledge, dispose of, hypothecate, grant a security interest in, grant options with respect to, or otherwise dispose of (directly or indirectly or by operation of law or otherwise, of record or not), all or any part of any legal or beneficial interest in any part or all of the Property or the Leases, or any interest therein; or~~
- ~~(b) directly or indirectly sell, assign or otherwise dispose of (whether or not of record or for consideration or not), or permit the sale, assignment or other disposition of, (i) any legal or beneficial interest in the stock of any corporation which is either Borrower or is a beneficial owner of all or part of Borrower or the Property, or (ii) any legal or beneficial interest in Borrower (or any trust of which Borrower is a trustee) if Borrower is a limited or general partnership, joint venture, trust, nominee trust, tenancy in common or other unincorporated form of business association or form of ownership, except limited partnership interests if Borrower is a limited partnership.~~

~~Any breach of the foregoing clause (b) by a holder of any interest (legal or beneficial) or stock in Borrower shall constitute an Event of Default under Paragraph 6.1(b).~~

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4.6 *Financial Records and Statements.* Borrower shall keep accurate books and records in accordance with generally accepted accounting principles consistently applied (or other basis of accounting practices prescribed or permitted by Lender), in which full, true and correct entries shall be promptly made as to all operations of the Property and shall permit all such books and records to be inspected and copied by Lender, its designees or its representatives during customary business hours. Borrower shall deliver or cause to be delivered to Lender within 90 days after the close of its financial year a statement of condition or balance sheet of Borrower relating solely to the Property as at the end of such year and an annual operating statement showing in reasonable detail all income and expenses of Borrower with respect to the Property, both certified as to accuracy by either an independent certified public accountant acceptable to Lender (if requested by Lender) or the senior financial officer or partner of Borrower; and a current list of all persons then occupying portions of the Property under their Leases, the rentals payable by such tenants and the unexpired terms of their Leases, certified as to their accuracy by a representative of Borrower acceptable to Lender, and in form and substance satisfactory to Lender.

4.7 *Further Assurances.* Borrower shall promptly upon request of Lender (a) correct any defect, error or omission which may be discovered in the contents of any Loan Document or in the execution or acknowledgment thereof; (b) execute, acknowledge, deliver and record or file such further instruments (including, without limitation, mortgages, deeds of trust, security agreements, financing statements and specific assignments of rents or leases) and do such further acts, in either case as may be necessary, desirable or proper in Lender's opinion to (i) protect and preserve the first and valid lien and security interest of this Indenture on the Property or to subject there to any property intended by the terms thereof to be covered thereby, including, without limitation, any renewals, additions, substitutions or replacements thereto; or (ii) protect the interest and security interest of Lender in the Property against the rights or interests of third parties.

Borrower hereby appoints Lender as its attorney-in-fact, coupled with an interest, to take the above actions and to perform such obligations on behalf of Borrower, at Borrower's sole expense, if Borrower fails to comply fully with this Paragraph 4.7.

4.8 *Indemnity.* Borrower shall indemnify, defend and hold harmless Lender from and against, and, upon demand, reimburse Lender for, all claims, demands, liabilities, losses, damages, judgments, penalties, costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, which may be imposed upon, asserted against or incurred or paid by Lender by reason of, on account of or in connection with any bodily injury or death or property damage occurring in, upon or in the vicinity of the Property through any cause whatsoever, or asserted against Lender on account of any act performed or omitted to be performed under the Loan Documents or on account of any transaction arising out of or in any way connected with the Property or the Loan Documents, except as a result of the willful misconduct or gross negligence of Lender. Borrower shall indemnify and repay Lender immediately upon demand for any expenditures or amounts advanced (other than advances of principal under the Note) by Lender at any time under the Loan Documents.

4.9 *Notices.* Borrower shall deliver to Lender at Lender's Notice Address promptly upon receipt of the same, copies of all notices, certificates, documents and instruments received by Borrower which materially and adversely affect Borrower, the Property or the Leases, including, without limitation, those given in connection with a Release or a Subordinate Indenture.

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- 4.10 *Estoppel Certificates.* Borrower shall promptly furnish to Lender from time to time, on the request of Lender, written statements signed and, if so requested, acknowledged, setting forth the then unpaid principal, premium and interest on the Note and specifying any claims, offsets or defenses which Borrower asserts against the Secured Debt or any obligations to be paid or performed by Borrower under the Loan Documents, together with any other information reasonably requested by Lender.
- 4.11 *Legal Existence.* Borrower shall continuously maintain its existence as a legal entity and its right to own the Property and to do business in the State.
- 4.12 *Defense and Notice of Actions.* Borrower shall, without liability, cost or expense to Lender, protect, preserve and defend title to the Property, the security hereof and the rights or powers of Lender, against all adverse claimants to title or any possessory or non-possessory interests therein, whether or not such claimants or encumbrances assert title paramount to that of Borrower or Lender or claim their interest on the basis of events or conditions arising subsequent to the date hereof.
- 4.13 *Lost Note.* Borrower shall, if the Note is mutilated, destroyed, lost or stolen, deliver to Lender, a new promissory note containing the same terms and conditions as the Note with a notation thereon of the unpaid principal and accrued and unpaid interest, whereupon the prior note shall be void and of no further force and effect.
- 4.14 *Personalty.* Borrower shall use the Personalty primarily for business purposes and keep it at the Land. Borrower represents that the Land is Borrower's only place of business or, if not, that it shall maintain its principal place of business in the State. Borrower shall immediately notify Lender in writing of any change in its place of business and, as of the execution hereof and hereafter from time to time when requested by Lender, upon any acquisition of items of property constituting Personalty, Borrower shall provide Lender with a current, accurate inventory of the Personalty.
- 4.15 *Subordinate Indenture.* If Lender permits a junior lien on the Property pursuant to Paragraph 4.5, Borrower shall faithfully and fully observe and perform each and every term, covenant and condition of such indenture (the "Subordinate Indenture") and shall never permit any default to occur thereunder. Borrower shall not make, enter into or acquiesce in any agreement with the holder of any Subordinate Indenture which in any way shall modify, alter or extend any term or condition of such Subordinate Indenture.

Upon any Event of Default, Borrower shall not make or permit any repayment of a Subordinate Indenture or of any other sums borrowed from anyone other than Lender (other than to trade creditors on obligations incurred by Borrower in the ordinary operation of the Property) until full defeasance pursuant to Paragraph 9.2.

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## 5. CASUALTIES AND TAKINGS.

- 5.1 *Notice to Lender.* In the case of any act or occurrence of any kind or nature which results in damage, loss or destruction to the Property (a "Casualty"), or commencement of any proceedings or actions which might result in a condemnation or other taking for public or private use of the Property or which relates to injury, damage, benefit or betterment thereto (a "Taking"), Borrower shall immediately notify Lender describing the nature and the extent of the Taking or the Casualty, as the case may be. Borrower shall promptly furnish to Lender copies of all notices, pleadings, determinations and other papers in any such proceedings or negotiations.
- 5.2 *Repair and Replacement.* In case of a Casualty or Taking, Borrower shall promptly (at Borrower's sole cost and expense and regardless of whether the insurance or other proceeds, if any, shall be sufficient or made available by Lender for the purpose) restore, repair, replace and rebuild the Property as nearly as possible to its quality, utility, value, condition and character immediately prior to the Casualty or the Taking, as the case may be. However, upon a Casualty or Taking resulting in a restoration cost that exceeds 25% of the then replacement value of the improvements or a Taking of more than 25% of the area of the Land, and application by Lender of the Insurance Proceeds or of the Taking Proceeds to reduction of the Secured Debt in accordance with this Indenture, Borrower shall be obligated only to remove any debris from the Property and take such actions as are necessary to make the undamaged or non-taken portion of the Property into a functional economic unit, insofar as is possible under the circumstances.
- 5.3 *Proceeds.*
- (a) *Collection.* Borrower shall use its best efforts to collect the maximum amount of insurance proceeds payable on account of any Casualty ("Insurance Proceeds"), and the maximum award or payment or compensation payable on account of any Taking ("Taking Proceeds"). In the case of a Casualty Lender may, at its sole option, make proof of loss to the insurer, if not made promptly by Borrower. Borrower shall not settle or otherwise compromise any claim for Insurance Proceeds or Taking Proceeds without Lender's prior written consent.
  - (b) *Assignment to Lender.* Borrower hereby assigns, sets over and transfers to Lender all Insurance Proceeds and Taking Proceeds and authorizes payment of such Proceeds to be made directly to Lender. Lender may, in its sole unfettered discretion, apply such Proceeds to either of the following, or any combination thereof:
    - (i) payment of the Secured Debt, either in whole or in part, in any order determined by Lender in its sole unfettered discretion; or
    - (ii) repair or replacement, either partly or entirely, of any part of the Property so destroyed, damaged or taken, in which case Lender may impose such terms, conditions and requirements for the disbursement of proceeds for such purposes as it, in its sole unfettered discretion, deems advisable. Lender shall not be a trustee with respect to any Insurance Proceeds or Taking Proceeds, and may commingle Insurance Proceeds or Taking Proceeds with its funds without obligation to pay interest thereon.

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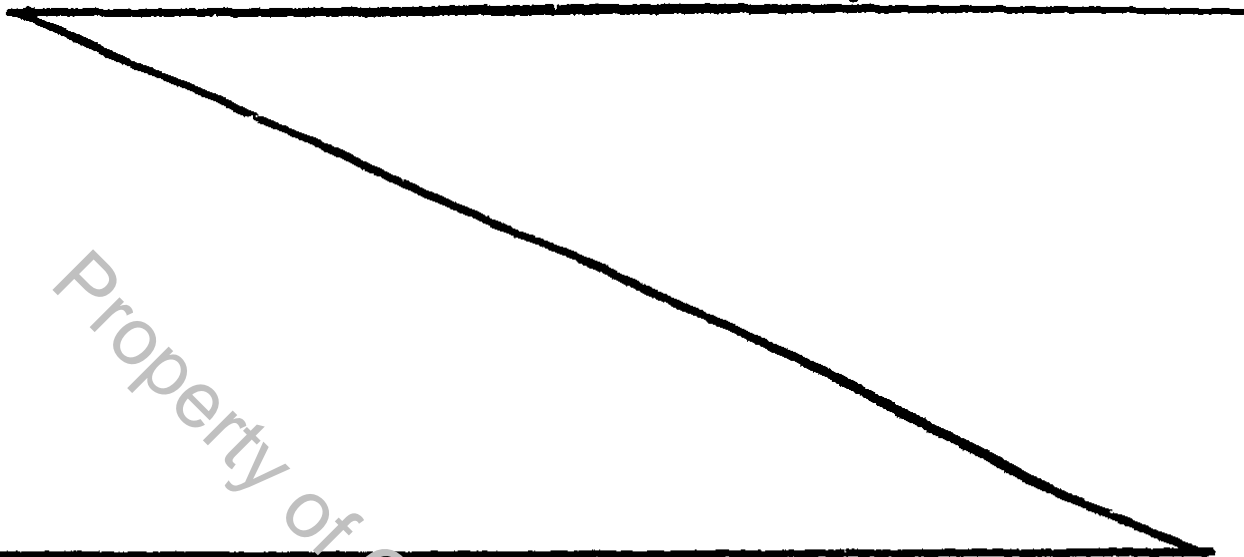
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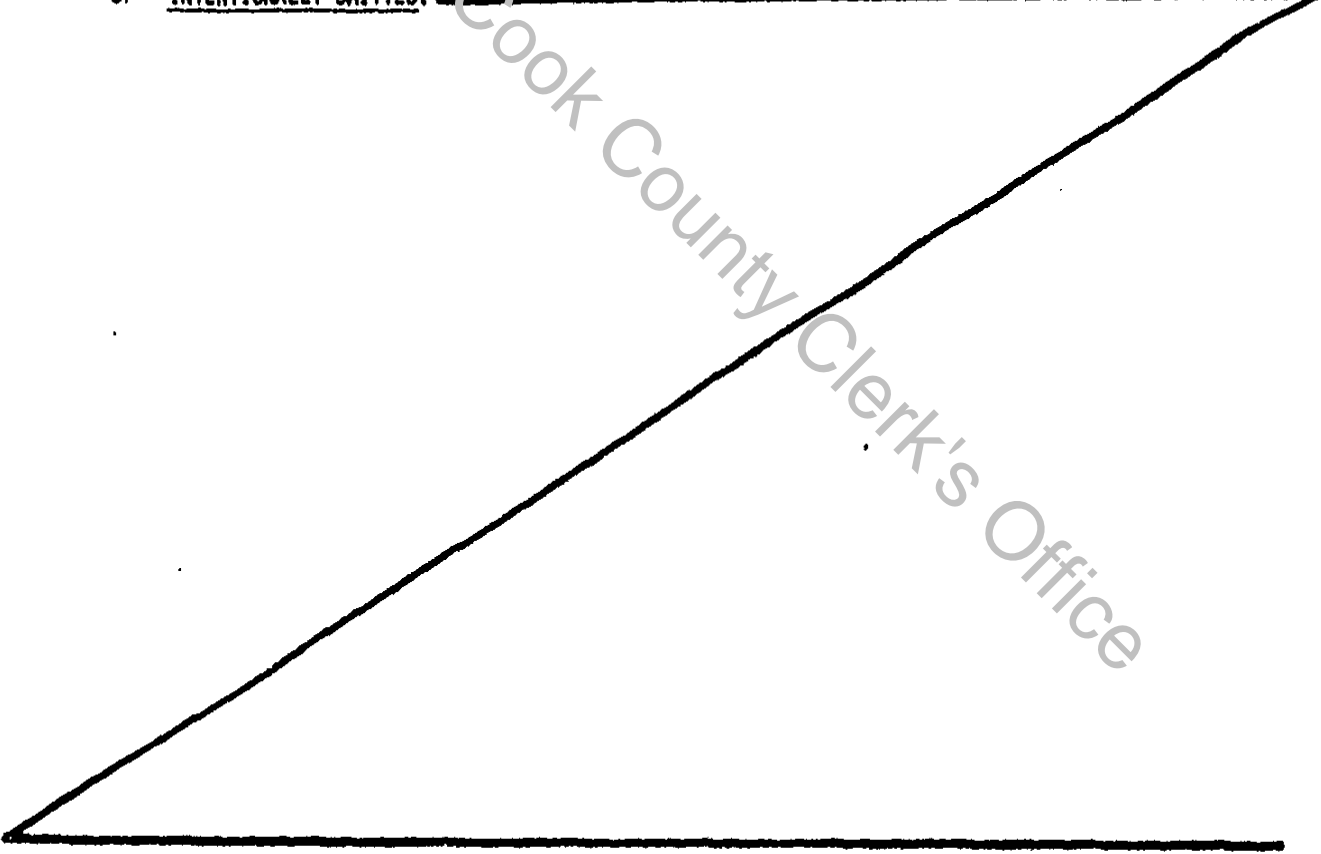


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If any portion of the Secured Debt shall thereafter be unpaid, Borrower shall not be excused from the payment thereof in accordance with the terms of the Loan Documents. Lender shall not, in any event or circumstance, be liable or responsible for failure to collect or exercise diligence in the collection of any Insurance Proceeds or Taking Proceeds.



8. INTENTIONALLY OMITTED.



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7. **LEGAL PROCEEDINGS.** Whether or not an Event of Default (as defined in Paragraph 8.1) has occurred and exists, Lender shall have the right, but not the duty or obligation, to intervene or otherwise participate in, prosecute or defend at any time any legal or equitable proceedings (including, without limitation, any eminent domain proceedings) which affect the Property, the Leases or any of the rights created by the Loan Documents, but only after notice to Borrower and if permitted by Laws.

## 8. DEFAULTS; REMEDIES OF LENDER.

8.1 **Events of Default.** Any of the following shall constitute an "Event of Default" hereunder:

- (a) **Breach of Payment or Insurance Covenant.** Any breach by Borrower of the covenants in Paragraph 4.1(a) (Secured Debt) or Paragraph 4.3 (Insurance), which breach shall immediately thereupon, without notice or opportunity to cure, constitute an Event of Default;
- (b) **Misrepresentations.** Any representation or warranty made by Borrower in the Loan Documents or any certificate or side letter delivered in connection with the Loan Documents proves to be untrue, misleading or is not fulfilled in any material way;
- (c) **Breach of Named Covenants.** Any breach by Borrower of the covenants in the Indenture in ~~Paragraph 4.5 (Sales and Encumbrances)~~ or Paragraph 4.15 (Subordinate Indenture) and the continuation without remedy of such breach for a period of 10 days;
- (d) **Breach of Other Covenants.** Any breach by Borrower of any other covenant in the Loan Documents or failure to observe or perform any other covenant, agreement, condition, term or provision of any of the Loan Documents or any certificate or side letter delivered in connection with the Loan Documents, which breach or failure continues for 30 days after written notice thereof by Lender to Borrower;
- (e) **Bankruptcy.** Immediately upon the occurrence of any of the following without any action or notice by Lender, (i) any one or more of the then legal or beneficial owners of the Property, or any individual or entity then personally liable on the Secured Debt (including, without limitation, any guarantor) or, if Borrower is a partnership, any general partner or joint venturer (collectively the "Parties in Interest") becomes insolvent, makes a transfer in fraud of, or an assignment for the benefit of, creditors, or admits in writing its inability, or is unable, to pay debts as they become due; or (ii) a receiver, custodian, liquidator or trustee is appointed for all or substantially all of the assets of a Party in Interest or for the Property in any proceeding brought by a Party in Interest, or any such receiver or trustee is appointed in any proceeding brought against a Party in Interest or the Property and such appointment is not promptly contested or is not dismissed or discharged within 120 days after such appointment, or a Party in Interest consents or acquiesces in such appointment; or (iii) a Party in Interest files a petition under the Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof; or (iv) a petition against a Party in Interest is filed commencing an involuntary case under any present or future Federal or state bankruptcy or similar law and such petition is not dismissed or discharged within 120 days after the filing thereof; or (v) any composition, rearrangement, liquidation, extension, reorganization or other relief of debtors now or hereafter existing is requested by a Party in Interest; or

\*or Paragraph B-3 (Sales and Encumbrances) of Exhibit B,

\*\*or the Beneficiary of Borrower

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- (f) *Adverse Court Action.* A court of competent jurisdiction enters a stay order with respect to, assumes custody of or sequesters all or a substantial part of, the Property, or the Property is taken on execution or by other process of law.

8.2 *Remedies.* In case of an Event of Default, Lender may, at any time thereafter, at its option and without notice, exercise any or all of the following remedies:

- (a) *Acceleration.* Declare the entire Secured Debt due and payable, and it shall thereupon be immediately due and payable;
- (b) *Foreclosure.* Foreclose this Indenture by instituting a foreclosure suit in any court having jurisdiction;
- (c) *Offset Rights.* Apply in satisfaction of the Secured Debt or any amount at any time to become due or payable in connection with the ownership, occupancy, use, restoration or repair of the Property, any deposits or other sums credited by or due from Lender to Borrower, including, without limitation, Insurance Proceeds, Taking Proceeds and funds held in the escrow account referred to in Paragraph 4.4;
- (d) *Cure of Default.* Without releasing Borrower from its obligation hereunder or under the Loan Documents, cure any Event of Default. In connection therewith, Lender may enter upon the Property and do such acts and things as Lender deems necessary or desirable to protect the Property or the Leases, including, without limitation: (i) paying, purchasing, contesting or compromising any encumbrance (including, without limitation, any junior debt outstanding), charge, lien, claim of lien, Property Taxes and Charges or Property Liabilities; (ii) paying any Insurance Premiums, and (iii) employing counsel, accountants, contractors and other appropriate persons to assist Lender in the foregoing;

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- (e) *Possession of Property.* Take physical possession of the Property and of all books, records, documents and accounts relating thereto and exercise, without interference from Borrower, any and all rights which Borrower has with respect to the Property, including, without limitation, the right at Borrower's expense, to rent and lease the same and to hire a professional property manager for the Property. If necessary to obtain possession as provided for above, Lender may, without liability to Borrower or other persons, invoke any and all legal remedies to dispossess Borrower, including, without limitation, one or more actions for forcible entry and detainer, trespass and restitution. In connection with any action taken by Lender pursuant to this Paragraph 8.2(e), Lender shall not be liable for any loss sustained by Borrower resulting from any failure to let the Property or from any other act or omission of Lender in managing the Property unless caused by the willful misconduct or bad faith of Lender, nor shall Lender be obligated to perform or discharge any obligation, duty or liability under any Lease or by reason of any Loan Document. Borrower hereby agrees to indemnify, hold harmless and defend Lender from and against any liability, loss or damage incurred by Lender under any Lease or under the Loan Documents as a result of Lender's exercise of rights or remedies under any of the Loan Documents. Should Lender incur any such liability, the amount thereof shall be secured hereby and Borrower shall reimburse Lender therefor immediately upon demand. Lender shall have full power to make from time to time all alterations, renovations, repairs and replacements to the Property as may seem proper to Lender;
- (f) *Remedies under State Law.* Take such actions as are set forth, described or referred to in Exhibit B of this Indenture and permitted by Laws;
- (g) *Receiver.* Secure the appointment of a receiver or receivers, as a matter of right for the Property whether such receivership be incident to a proposed sale of such Property or otherwise, and without regard to the value of the Property or the solvency of Borrower. Borrower hereby consents to the appointment of such receiver or receivers, waives any and all defenses to such appointment and agrees not to oppose any application therefor by Lender. The appointment of such receiver, trustee or other appointee by virtue of any court order, or Laws shall not impair or in any manner prejudice the rights of Lender to receive payment of the rents and income pursuant to the Lease Assignment;
- (h) *Uniform Commercial Code Remedies.* Exercise any and all rights of a secured party with respect to the Personality under the Uniform Commercial Code of the State and in conjunction with, in addition to or in substitution for those rights and remedies:
- (i) take possession of, assemble and collect the Personality or render it unusable by Borrower; and
  - (ii) require Borrower to assemble the Personality and make it available at any place Lender may designate so as to allow Lender to take possession or dispose of the Personality.

Written notice mailed to Borrower, as provided herein, 15 days prior to the date of public sale of the Personality or prior to the date, after which private sale of the Personality will be made, shall constitute reasonable notice. Any sale made pursuant to the provisions of this Paragraph 8.2(h) shall be deemed to have been a public sale conducted in a commercially reasonable manner, if held contemporaneously with the sale of the Property as provided in Paragraph 8.2(k) of this Indenture. In the event of a foreclosure sale, whether made by Lender under the terms hereof, or under judgment of a court, the Personality and the other parts of the Property may, at the option of Lender, be sold in parts or as a whole. It shall not be necessary that Lender take possession of the Personality prior to the time that any sale pursuant to the provisions of this Paragraph 8.2 (h) is conducted and it shall not be necessary that the Personality be present at the location of such sale:

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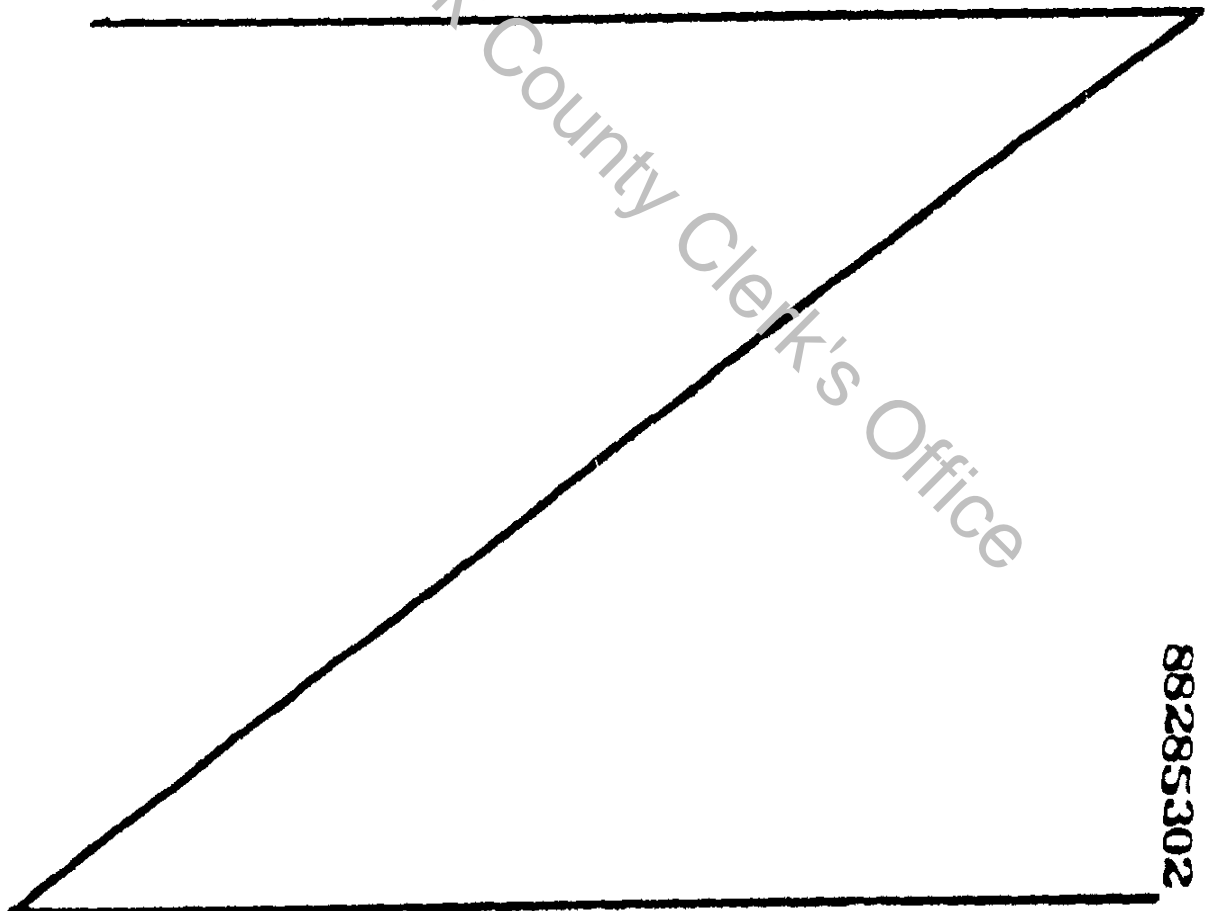


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A CARBON, PHOTOGRAPHIC OR OTHER REPRODUCTION OF THIS INDENTURE OR ANY FINANCING STATEMENT RELATING TO THIS INDENTURE SHALL BE SUFFICIENT AS A FINANCING STATEMENT. THIS INDENTURE IS EFFECTIVE AND SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS WHICH ARE OR ARE TO BECOME FIXTURES INCLUDED WITHIN THE PROPERTY AND IS TO BE FILED FOR RECORD IN THE REAL ESTATE RECORDS OF THE LOCATION IN THE STATE WHERE THE PROPERTY IS SITUATED. THE MAILING ADDRESS OF LENDER AND THE ADDRESS OF BORROWER FROM WHICH INFORMATION CONCERNING THE SECURITY INTEREST MAY BE OBTAINED ARE SET FORTH ON THE COVER SHEET HEREOF;

- (i) *Judicial Actions.* Commence and maintain an action or actions in any court of competent jurisdiction to foreclose this Indenture pursuant to the Laws of the State or to obtain specific enforcement of the covenants of Borrower hereunder. Borrower agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy;
- (j) *Subrogation.* Have and exercise all rights and remedies of any person, entity or body politic to whom Lender renders payment or performance in connection with the exercise of its rights and remedies under the Loan Documents, including, without limitation, any rights or remedies under any mechanic's or vendor's lien or liens, superior titles, mortgages, deeds of trust, liens, encumbrances, rights, equities and charges of all kinds heretofore or hereafter existing on the Property to the extent that the same are paid or discharged from the proceeds of the Note whether or not released of record;
- (k) *Sale.* Sell the Property in accordance with Laws; and



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- (l) *Other.* Take such other actions or commence such other proceedings as Lender deems necessary or advisable to protect its interest in the Property and its ability to collect the Secured Debt as are available under Laws.

Any sums advanced by Lender under this Paragraph 8.2 shall bear interest at the interest rate specified in the Note plus 2%, shall be payable by Borrower on demand and together with such interest, shall constitute a part of the Secured Debt.

All sums realized by Lender under this Paragraph 8.2, less all costs and expenses incurred by Lender under this Paragraph 8.2, including, without limitation, reasonable attorneys' fees and disbursements, property management fees, costs of alterations, renovations, repairs and replacements made or authorized by Lender and all expenses incident to Lender taking possession of the Property, and such sums as Lender deems appropriate as a reserve to meet future expenses of the Property, shall be applied to the Secured Debt in such order as Lender shall determine. Thereafter, any balance shall be paid to the person or persons legally entitled thereto.

- 8.3 *Holding Over.* Should Borrower<sup>\*</sup> after an Event of Default, continue in possession of any part of the Property not leased to others, either lawfully or unlawfully, Borrower shall be a tenant from day to day, terminable at the will of either Borrower or Lender, at a reasonable rental per diem, such rental to be due and payable daily to Lender.

8.4 *General Provisions.*

- (a) *Multiple Sales.* Several sales may be made pursuant to Paragraph 8.2 without exhausting Lender's right to such remedy for any unsatisfied part of the Secured Debt and without exhausting the power to exercise such remedy for any other part of the Secured Debt, whether matured at the time or subsequently maturing. If a part of the Property is sold pursuant to Paragraph 8.2, and the proceeds thereof do not fully pay and satisfy the Secured Debt, such sale, if so made, shall not in any manner affect the unpaid and unsatisfied part of the Secured Debt, but as to such unpaid and unsatisfied part, the Loan Documents shall remain in full force and effect as though no such sale had been made.
- (b) *Cumulative Remedies.* All of the rights, remedies and options set forth in Paragraph 8.2 or otherwise available at law or in equity are cumulative and may be exercised without regard to the adequacy of or exclusion of, any other right, remedy, option or security held by Lender.
- (c) *Right to Purchase.* At any sales of the Property pursuant to Paragraph 8.2, Lender shall have the right to purchase the Property being sold, and in such cases the right to credit against the amount of the bid made therefor (to the extent necessary) all or any of the Secured Debt then due.
- (d) *Right to Terminate Proceedings.* Lender may, in its sole unfettered discretion, at any time before conclusion of any proceeding or other action brought in connection with its exercise of the remedies provided for in Paragraph 8.2, terminate, without prejudice to Lender, such proceedings or actions.

<sup>\*</sup>(or any other person, including Borrower's beneficiary, claiming, by, through or under Borrower)

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(e) **No Waiver or Release.** Lender may resort to any remedies and the security given by the Loan Documents in whole or in part, and in such portions and in such order as may seem best to Lender in its sole unfettered discretion, and any such action shall not in any way be considered as a waiver of any of the rights, benefits or remedies evidenced by the Loan Documents. The failure of Lender to exercise any right, remedy or option provided for in the Loan Documents shall not be deemed to be a waiver of any of the covenants or obligations secured by the Loan Documents. No sale of all or any of the Property, no forbearance on the part of Lender and no extension of the time for the payment of the whole or any part of the Secured Debt or any other indulgence given by Lender to Borrower or any other person or entity, shall operate to release or in any manner affect Lender's interest in the Property or the liability of Borrower to pay the Secured Debt, except to the extent that such liability shall be reduced by proceeds of sale of all or any of the Property received by Lender.

(f) **Waivers and Agreements Regarding Remedies.** To the full extent Borrower may do so, Borrower hereby:

(i) agrees that Borrower will not at any time insist upon, plead, claim or take the benefit or advantage of any Laws now or hereafter in force providing for any appraisal or appraisement, valuation, stay, extension or redemption, and waives and releases all rights of redemption, valuation, appraisal or appraisement, stay of execution, extension and notice of election to mature or declare due the whole of the Secured Debt;

(ii) waives all rights to a marshalling of the assets of Borrower, Borrower's partners and others with interests in Borrower, including the Property, or to a sale in inverse order of alienation in the event of foreclosure of the interests hereby created, and agrees not to assert any right under any Laws pertaining to the marshalling of assets, the sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Lender under the terms of the Loan Documents to a sale of the Property for the collection of the Secured Debt without any prior or different resort for collection, or the right of Lender to the payment of the Secured Debt out of the proceeds of sale of the Property in preference to every other claimant whatsoever;

(iii) waives any right to bring or utilize any defense, counterclaim or setoff, other than one in good faith which denies the existence or sufficiency of the facts upon which the foreclosure action is grounded or which is based on Lender's wrongful actions. If any defense, counterclaim or setoff (other than one permitted by the preceding sentence) is timely raised in such foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based on a claim which could be tried in an action for money damages, the foregoing waiver shall not bar a separate action for such damages (unless such claim is required by Laws or applicable rules of procedure to be pleaded in or consolidated with the action initiated by Lender) but such separate action shall not thereafter be consolidated with Lender's foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying Lender's foreclosure action;

(iv) waives and relinquishes any and all rights and remedies which Borrower may have or be able to assert by reason of the provisions of any Laws pertaining to the rights and remedies of sureties; and

(v) waives the defense of laches and any applicable statutes of limitation.

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- (g) *Lender's Discretion.* Lender may exercise its options and remedies under any of the Loan Documents in its sole unfettered discretion.
- (h) *Sales.* In the event of a sale or other disposition of the Property pursuant to Paragraph 8.2 and the execution of a deed or other conveyance pursuant thereto, the recitals therein of facts (such as default, the giving of notice of default and notice of sale, demand that such sale should be made, postponement of sale, terms of sale, sale, purchase, payment of purchase money and other facts affecting the regularity or validity of such sale or disposition) shall be conclusive proof of the truth of such facts. Any such deed or conveyance shall be conclusive against all persons as to such facts recited therein.

The acknowledgment of the receipt of the purchase money, contained in any deed or conveyance executed as aforesaid, shall be sufficient to discharge the grantee of all obligations to see to the proper application of the consideration therefor as herein provided. The purchaser at any trustee's or foreclosure sale hereunder may disaffirm any easement granted or rental agreement or Lease made in violation of any provision of the Loan Documents, and may take immediate possession of the Property free from, and despite the terms of, such grant of easement, rental agreement or Lease.

## 9. POSSESSION AND DEFEASANCE.

- 9.1 *Possession.* Until the occurrence of an Event of Default and except as otherwise expressly provided to the contrary, Borrower shall retain full possession of the Property with full right to use the Property and to collect the rents, issues and profits therefrom, subject, however, to all of the terms and provisions of the Loan Documents.
- 9.2 *Defeasance.* If all of the Secured Debt is paid as the same becomes due and payable and if all of the covenants, warranties, conditions, undertakings and agreements made in the Loan Documents are kept and performed, then in that event only, all rights under the Loan Documents shall terminate and the Property shall become wholly clear of the liens, grants, security interests, conveyances and assignments evidenced hereby, and Lender shall release or cause to be released, such liens, grants, assignments, conveyances and security interests in due form at Borrower's cost, and this Indenture shall be void.

Recitals of any matters or facts in any instrument executed hereunder shall be conclusive proof of the truthfulness thereof. To the extent permitted by Law, such an instrument may describe the grantee as "the person or persons legally entitled thereto." Lender shall not have any duty to determine the rights of persons claiming to be rightful grantees of any of the Property. When the Property has been fully released, such release shall operate as a reassignment of all future rents, issues and profits of the Property to the person or persons legally entitled thereto, unless such release expressly provides to the contrary.

## 10. GENERAL

- 10.1 *Lender's Right to Waive, Consent or Release.* Lender may at any time and from time to time, in writing: (a) waive compliance by Borrower with any covenant herein made by Borrower to the extent and in the manner specified in such writing; (b) consent to Borrower doing any act which Borrower is prohibited hereunder from doing, or consent to Borrower's failing to do any act which Borrower is required hereunder to do, to the extent and in the manner specified in such writing; or (c) release any part of the Property, or any interest therein from this Indenture and the lien of the Loan Documents. No such act shall in any way impair the rights hereunder of Lender, except to the extent specifically agreed to by Lender in such writing.

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- 10.2 *No Impairment.* The interests and rights of Lender under the Loan Documents shall not be impaired by any indulgence, including, without limitation: (a) any renewal, extension or modification which Lender may grant with respect to any of the Secured Debt; (b) any surrender, compromise, release, renewal, extension, exchange or substitution which Lender may grant in respect of the Property or any interest therein; or (c) any release or indulgence granted to any maker, endorser, guarantor or surety of any of the Secured Debt.
- 10.3 *Amendments.* The Loan Documents may not be waived, changed or discharged orally, but only by an agreement in writing and signed by Lender, and any oral waiver, change or discharge of any provision of the Loan Documents shall be without authority and of no force and effect. Such waiver, change or discharge shall be effective only in the specific instances and for the purposes for which given and to the extent therein specified.
- 10.4 *No Usury.* Any provision contained in any of the Loan Documents notwithstanding, Lender shall not be entitled to receive or collect, nor shall Borrower be obligated to pay interest on any of the Secured Debt in excess of the maximum rate of interest permitted by Laws, and if any provision of the Loan Documents shall ever be construed or held to permit the collection or to require the payment of any amount of interest in excess of that permitted by such Laws, the provisions of this Paragraph 10.4 shall control unless contrary or inconsistent with any provision of the Note, in which case the provision of the Note shall control. Borrower's and Lender's intent is to conform strictly to the usury Laws now in force, and the Loan Documents evidencing or relating to any of the Secured Debt shall be held subject to reduction to conform to said Laws as now or hereafter construed.
- 10.5 *Notices.* Any notice, request, demand or other communication required or permitted under the Loan Documents (unless otherwise expressly provided therein) shall be given in writing by delivering the same in person to the intended addressee, by overnight courier service with guaranteed next day delivery or by certified United States Mail, postage prepaid or telegram sent to the intended addressee at the applicable Notice Address or to such different address as either Borrower or Lender shall have designated by written notice to the other sent in accordance herewith. Such notices shall be deemed given when received or, if earlier, in the case of delivery by courier service with guaranteed next day delivery, the next day or the day designated for delivery, or in the case of delivery by certified United States Mail, two days after deposit therein. No notice to or demand on Borrower in any case shall of itself entitle Borrower to any other or further notice or demand in similar or other circumstances.
- 10.6 *Successors and Assigns.* The terms, provisions, covenants and conditions hereof shall be binding upon Borrower, and any permitted successors and assigns of Borrower, and shall inure to the benefit of Lender and its successors, substitutes and assigns, and shall constitute covenants running with the Land. All references in this indenture to Borrower or Lender shall be deemed to include all such successors, substitutes and assigns.

If in contravention of the provisions of this Indenture or otherwise ownership of the Property or any portion thereof becomes vested in a person other than Borrower, Lender may, without notice to the Borrower, whether or not Lender has given written consent to such change in ownership, deal with such successor or successors in interest with reference to the Loan Documents and the Secured Debt in the same manner as with Borrower, without in any way vitiating or discharging Lender's remedies or Borrower's liability under the Loan Documents or on the Secured Debt.

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- 10.7 **Severability.** A determination that any provision of Loan Documents is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of the Loan Documents to any person or circumstances is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.
- 10.8 **Gender and Construction.** Within this Indenture, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. References in this Indenture to "herein", "hereunder" or "hereby" shall refer to this entire Indenture, unless the context otherwise requires. When the phrase "in its sole unfettered discretion" is used in the Loan Documents with respect to Lender, it shall permit Lender to evaluate such criteria (without allowance for reasonableness) as it chooses in approving or disapproving the requested or pending action.
- 10.9 **Joint and Several Liability.** If Borrower is composed of more than one party, the obligations, covenants, agreements, representations and warranties contained in the Loan Documents, as well as the obligations arising thereunder, are and shall be joint and several as to each such party.
- 10.10 **Modifications.** References to any of the Loan Documents in this Indenture shall include all amendments, modifications, extensions and renewals thereof.
- 10.11 **Governing Laws.** This Indenture shall be construed according to and governed by the Laws of the State.
- 10.12 **Captions.** All paragraph and sub paragraph captions are for convenience of reference only and shall not affect the construction of any provision herein.

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10.13 Nonrecourse. This Mortgage is executed by ~~NBD EIK Grove Bank~~ <sup>NBD Trust Company of Illinois</sup> (the "Bank"), not personally but as Trustee aforesaid, in the exercise of the power and authority conferred upon and fixed in it as such Trustee, and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on said Bank as Trustee aforesaid or on said Bank personally or on any beneficiary of said Bank, to pay the said Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant, either express or implied, herein contained, all such liability, if any, being expressly waived by the Lender and by every person now or hereafter claiming any right or security hereunder, and that so far as the Bank, as Trustee aforesaid, and its successors, and the Bank personally are concerned, the Lender and the holder or holders of the Note and the owner or owners of the indebtedness accruing hereunder shall look solely to the Property for the payment thereof, by the enforcement of the liens hereby created or created by the other Loan Documents, in the manner herein and in the Note provided or by action to enforce the personal liability of any guarantor or co-maker, or any combination of remedies; provided that nothing contained in this paragraph shall in any manner or way release, affect or impair:

- (a) The existence of the indebtedness evidenced by the Note; or
- (b) The enforceability of the liens and security interests created hereby or by the other Loan Documents for repayment of the Note; or
- (c) The right of the Lender or any holder of the Note after the occurrence of default under the Note or any Event of Default hereunder or under any other Loan Documents to recover from the beneficiary of Borrower any sums payable by such beneficiary pursuant to a Beneficiary's Agreement of even date herewith executed by such beneficiary and delivered to Lender.
- (d) The right of the Lender or other holder of the Note to enforce the personal liability of any guarantor of the Note.

10.14 Acknowledgment of Receipt. Borrower hereby acknowledges receipt, without charge, of a true and complete copy of this Indenture.

10.15 Exhibits. The following are the Exhibits referred to in this Indenture, which are hereby incorporated by reference herein:

- Exhibit A — Property Description
- Exhibit B — Applicable State Law Provisions
- EXHIBIT C - Note

IN WITNESS WHEREOF, ~~NBD EIK Grove Bank~~, not personally but as Trustee as aforesaid, has caused these presents to be signed by one of its Vice Presidents or Assistant Vice Presidents and its corporate seal to be hereunto affixed and attested by its Assistant Secretary, all as of the day, month and year first above written.

\* NBD TRUST COMPANY OF ILLINOIS, as Successor ~~NBD EIK Grove Bank~~, not personally Trustee to NBD EIK Grove Bank I/k/a <sup>USAmeriBank/EIK Grove,</sup> but solely as Trustee as aforesaid

By: [Signature]  
Sr. (Assistant) Vice President

ATTEST:

[Signature]  
(Assistant) Secretary MARKETING OFFICER

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## LEGAL DESCRIPTION

LOT 50 IN WOODFIELD BUSINESS CENTER UNIT 18, BEING A RESUBDIVISION OF PART OF LOT 3 IN WOODFIELD BUSINESS CENTER, BEING A SUBDIVISION OF PART OF THE SOUTH WEST 1/4 OF SECTION 11, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 07-11-303-008  
07-11-303-012

500 East Remington Road  
Schaumburg, Illinois

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R&S 250300-330  
GSS 64-906  
DOC #10  
(06/23/88)-4

## EXHIBIT B

### APPLICABLE ILLINOIS STATE LAW PROVISIONS AND OTHER PARTICULAR PROVISIONS

The following provisions are hereby incorporated in and form part of the foregoing Mortgage:

B-1. Waiver. Without limiting the provisions of Section 8.4(f) hereof, Borrower hereby expressly waives any and all rights of redemption from any order or decree of foreclosure of this Mortgage on Borrower's own behalf and on behalf of each and every person acquiring any interest in or title to the Property or beneficial interest in Borrower subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Borrower and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Chapter 110, Para. 15-1601 of the Illinois Revised Statutes or other applicable law or replacement statutes.

B-2. Business Loan. The loan evidenced by the Note and secured hereby is a business loan within the purview of Section 6404 of Chapter 17 of Illinois Revised Statutes (or any substitute, amended, or replacement statutes) transacted solely for the purpose of carrying on or acquiring the business of the Borrower or, if the Borrower is a trustee, for the purpose of carrying on or acquiring the business of the beneficiary of the Borrower, as contemplated by said Section.

#### B-3. Sales And Encumbrances.

(a) Except as specifically permitted pursuant to the provisions of Subparagraph B-3(b) below, it shall be an immediate Event of Default hereunder if, without the prior written consent of Lender, which consent, if given in Lender's sole and unfettered discretion, may be conditional upon a change in the interest rate under the Note, payment of a fee, change in the Term of the Note, or one or more of the foregoing or other requirements of Lender, any of the following shall occur:

(i) If Borrower shall create, effect, contract for, commit to or consent to or shall suffer

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or permit any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of the Property or any part thereof, or interest therein, excepting only sales or other dispositions of Personalty (herein called "Obsolete Personalty") no longer useful in connection with the operation of the Property, provided that prior to the sale or other disposition thereof, such Obsolete Personalty has been replaced by Personalty, subject to the first and prior lien hereof, of at least equal value and utility;

(ii) If Borrower is a trustee, then if any beneficiary of the Borrower shall create, effect, contract for, commit to or consent to, or shall suffer or permit, any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of such beneficiary's beneficial interest in the Borrower;

(iii) If the Borrower is a corporation, or if any corporation is a beneficiary of a trustee Borrower, then if any shareholder of such corporation shall create, effect, contract for, commit to or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of any such shareholder's shares in such corporation;

(iv) If the Borrower is a partnership or joint venture, or if any beneficiary of a trustee Borrower is a partnership or joint venture, then if any general partner or joint venturer in such partnership or joint venture shall create, effect or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of any part of the partnership interest or joint venture interest, as the case may be, of such partner or joint venturer; or

(v) If there shall be any change in control (by way of transfers of stock ownership, partnership interests or otherwise) in any general partner which directly or indirectly controls or is a general partner in a partnership or joint venture beneficiary as described in subsection (iv) above;

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in each case whether such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, of record or not of record, voluntarily or involuntarily, by operation of law or otherwise, and Borrower covenants not to effect or suffer or permit to occur any of the foregoing acts or events.

(b) The provisions of Subparagraph B-3(a) shall not apply to:

(i) Liens securing the Secured Debt;

(ii) The lien of current real estate taxes and assessments upon the Property not in default;

(iii) Any transfers of the Property or any part or interest therein, or any beneficial interests, shares of stock, or partnership or joint venture interests, as the case may be, in Borrower or any beneficiary of a trustee Borrower by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate, personal representatives and/or committee;

(iv) Transfers of limited partnership interests in Beneficiary among the limited partners in the Beneficiary;

(v) Transfers of general partnership interests in the Beneficiary among the general partners in the Beneficiary, provided that (A) such transfers would not cause a termination of the existence of the Beneficiary, and (B) following such transfers (1) REM Management Company, an Illinois general partnership (herein called "REM"), remains the owner of not less than a twenty percent interest in the profits and losses of the Beneficiary, and Walter Bratkiv and Raisa Bratkiv remain general partners in REM and the owners in the aggregate of one hundred percent of the profits and losses of REM and (2) Kulas Management Company, an Illinois general partnership (herein called "KMC"), remains the owner of not less than a twenty percent interest in the profits and losses of the Beneficiary, and Julian Kulas and Elizabeth Kulas remain general partners in KMC and the owners in the aggregate of one hundred percent of the profits and losses of KMC;

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(vi) Liens (herein called "Secondary Encumbrances") encumbering the Property or the beneficial interest of Beneficiary in Borrower given as security for borrowed money (herein generally called "Secondary Debt"), provided that:

(A) Secondary Encumbrances shall at all times be and remain junior, inferior and subject to the liens of the Loan Documents, as same may be at any time and from time to time modified, renewed, replaced, extended, or consolidated, to the full extent of the Secured Debt now or hereafter secured hereby, and the instruments creating the Secondary Encumbrances shall specifically so provide to the satisfaction of Lender; and, at the request of Lender, the lender of the Secondary Debt shall execute and deliver to Lender a subordination agreement, in form and substance acceptable to Lender, subordinating the lien of the Secondary Encumbrances and all rights of the lender of the Secondary Debt to the liens of the Loan Documents;

(B) At the time any Secondary Debt is incurred, Net Income [as defined in clause (C) below] of the Property for the 12-month period preceding the incurring of such Secondary Debt shall be at least equal to 120% of the Debt Service [as defined in clause (C) below] on all indebtedness secured by liens upon the Property and liens upon the beneficial interest of the Beneficiary in Borrower for the period of 12 months after the incurring of such Secondary Debt; Net Income, Debt Service and coverage to be certified to Lender by a Certified Public Accountant based upon a review of the records of the Property for such preceding 12-month period;

(C) For the purposes hereof, (i) "Net Income" for any period shall mean the gross receipts and revenues collected during such period on account of the ownership and operation of the Property, after deducting therefrom all costs and expenses incurred (whether paid or accrued) in connection with the ownership and operation of the Property during such period; provided that, in determining Net

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Income, there shall not be deducted from receipts and revenues any Debt Service or any depreciation or other non-cash charges; and (2) "Debt Service" for any period shall mean the amount of payments of principal and interest required to be made during such period on all indebtedness secured or proposed to be secured by liens upon the Property and liens upon the beneficial interest of the Beneficiary in Borrower, including Secured Debt and existing and proposed Secondary Debt;

(D) Prior to incurring any Secondary Debt, Borrower shall furnish to Lender evidence of compliance with the provisions of clause (B) above; and Borrower shall give notice to Lender of the creation of any Secondary Encumbrance forthwith (and in any event within 5 business days) after the creation thereof;

and Borrower shall pay upon demand all reasonable costs and expenses (including, but not limited to, fees and disbursements of Lender's counsel) incurred in connection with the preparation or review of any instruments and other matters relating to sales, transfers, assignments, liens, pledges, mortgages, security interests or other encumbrances or alienations permitted pursuant to this Section B-3(b);

(c) Lender shall not unreasonably withhold its consent to the sale by Borrower of all of the Property (such sale by Borrower being herein called the "Initial Sale") to the National Society to Prevent Blindness, Inc. (herein called "NSPB") pursuant to the terms and provisions of that certain lease (herein called the "NSPB Lease"), dated October 15, 1986, between Beneficiary, as landlord, and NSPB, as tenant, which NSPB Lease is subject and subordinate to this Mortgage, subject to the following:

(i) NSPB shall deliver to Lender evidence that NSPB is financially responsible and has a net worth in excess of \$5,000,000;

(ii) NSPB shall deliver to Lender evidence that NSPB is experienced in the management and ownership of office buildings;

(iii) Lender may withhold its consent if an Event of Default shall have occurred or if any event

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shall have occurred and be then continuing which, with the passage of time or the giving of notice or both, would constitute an Event of Default;

(iv) If consent is given by Lender, there shall be no change in loan terms or in the Loan Documents;

(v) The consent of Lender to any such Initial Sale shall be conditioned upon (A) the payment to Lender of a processing fee of two percent of the then-outstanding amount of the Secured Debt, (B) the payment to Lender's Servicing Agent of a fee of .25% of the then-outstanding amount of the Secured Debt (such fees to cover the costs reasonably anticipated by Lender and Lender's Servicing Agent in the review of documents, the processing of the request, and other matters relating to the Initial Sale), (C) the payment to Lender's counsel of any legal fees and expenses incurred by Lender to process the Initial Sale, and (D) the payment to Lender of Lender's actual out-of-pocket expenses relating to the Initial Sale;

(vi) Lender may impose such reasonable requirements in connection with the Initial Sale as Lender shall deem necessary to assure the continued enforceability and perfection of the liens and security interests securing the Secured Debt, including, without limitation, a requirement for the execution and delivery by the purchaser or transferee and the beneficiary, if any, of such purchaser or transferee of, and the recording or filing of, UCC-1 and UCC-2 financing statements, an assignment of leases and rents, a beneficiary's agreement, an irrevocable right to approve documents to be executed by the Borrower, and an assumption agreement, all in form and substance acceptable to Lender;

(vii) The provisions of this Subparagraph B-3(c) shall relate only to one Initial Sale (the sale of all of the Property by Borrower, as aforesaid) and thereafter this Subparagraph (c) shall have no further application. The provisions of Subparagraphs B-3(a) and B-3(b) hereof do not apply to the Initial Sale but shall thereafter remain in effect with respect to any other sale or transfer of all or a part of the Property.

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The provisions of this Subparagraph B-3 shall be operative with respect to and shall be binding upon any person who in accordance with the provisions hereof or otherwise shall acquire any part of, or interest in, or encumbrance upon, the Property, or any beneficial interest in, shares of stock of, or partnership or joint venture interest in, the Borrower or any beneficiary of a trustee Borrower; but nothing in this sentence shall be deemed to permit any person to acquire the same in contravention of the foregoing provisions.

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EXHIBIT C  
**PROMISSORY NOTE**

NEW England Trust Company of Illinois  
as Successor Trustee to NBO  
Grave Bank f/k/a US American Bank/  
EIK Grave,

1. **DEFINED TERMS.** As used in this Promissory Note, the following terms shall have the following meanings:  
\* ~~NBO-ETH-Grave-Bank~~, not personally but solely as Trustee under Trust Agreement

- 1.1 Borrower. dated February 26, 1985 and known as Trust No. 2370
- 1.2 Principal Sum. \$3,200,000
- 1.3 Monthly Installment. \$ 24,333.34
- 1.4 Date of Disbursement. \_\_\_\_\_
- 1.5 Interest Rate. 9.125 % per annum
- 1.6 Maturity Date. July 1, 1993
- ~~1.7 Amortization Period. \_\_\_\_\_ years~~
- 1.8 First Payment Date. August 1, 1988
- 1.9 Indenture. A Mortgage and Security Agreement of even date with this Note, from Borrower to, or for the benefit of, Lender, which secures Borrower's obligations hereunder, and which covers property in Schaumburg, Illinois
- 1.10 Treasury Bond. The 8.625 % United States Treasury Bond or Note maturing in August, 1993
- 1.11 Loan Documents, Insurance Proceeds, Taking Proceeds, Secured Debt, Property and Event of Default shall have the same meanings as in the Indenture. The Loan Documents are incorporated herein by this reference.

~~1.12 Call Period. \_\_\_\_\_~~  
~~1.13 Prepayment Period. From: Disbursement Date to Maturity Date~~

~~1.14 Prepayment Premium. As provided in the Indenture, the prepayment premium shall be calculated as follows: (a) for the period from the date of disbursement to the date of prepayment, the premium shall be the greater of (i) the amount of the unpaid principal sum multiplied by the rate per annum of the rate per annum of the note per year of the period to maturity, and (ii) the amount of the unpaid principal sum multiplied by the rate per annum of the rate per annum of the note per year of the period to maturity, and (b) for the period from the date of prepayment to the date of maturity, the premium shall be the greater of (i) the amount of the unpaid principal sum multiplied by the rate per annum of the rate per annum of the note per year of the period to maturity, and (ii) the amount of the unpaid principal sum multiplied by the rate per annum of the rate per annum of the note per year of the period to maturity.~~

1.15 Guarantor. Any and all guarantors, sureties and endorsers of this Note and all other persons now or hereafter liable for the indebtedness evidenced by this Note or arising under any of the Loan Documents, and any amendments, modifications, supplements, substitutions, additions, renewals, replacements and extensions thereof.

2. **DEBT.** For value received, Borrower promises to pay to the order of NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY, a Massachusetts corporation (herein, together with its successors and assigns as holder of this Note, called "Lender"), the Principal Sum, with interest on unpaid principal from the Date of Disbursement at the Interest Rate. Interest shall be calculated on a 360-day year of twelve 30-day months.

3. **PAYMENTS.** Borrower shall pay the Monthly Installment to Lender commencing on the First Payment Date and continuing on each monthly anniversary thereof until the Maturity Date. If interest due and accrued for a period of more or less than one month on the First Payment Date, the first Monthly Installment payment shall be increased or decreased to the extent that the amount of interest then due exceeds or is less than one month's interest.

If a partial prepayment of the unpaid Principal Sum occurs as a result of Lender exercising its option under the Indenture to apply Taking Proceeds or Insurance Proceeds to the Secured Debt, each Monthly Installment occurring after such application shall be reduced to an amount which will amortize the then unpaid Principal Sum over the then remaining portion of the Amortization Period. Such change in the Monthly Installment shall not change the Maturity Date.

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On the Maturity Date, Borrower shall pay to Lender the entire then unpaid balance of principal and interest. Borrower acknowledges that the Monthly Installments will not amortize fully the Principal Sum by the Maturity Date and that the Monthly Installments are based on the Amortization Period, which results in a "balloon payment" of the entire unpaid principal balance and accrued unpaid interest being due on the Maturity Date. Lender has made no agreement to refinance such balloon payment.

All payments shall be made in lawful money of the United States of America, in immediately available funds, at 501 Boylston Street, Boston, Massachusetts, or at such other place as Lender may from time to time designate in writing.

4. **LATE CHARGE AND ADDITIONAL INTEREST.** Borrower recognizes that a default by it in making the payments herein agreed to be paid when due will result in Lender incurring additional administrative expenses in servicing the loan, loss of the use of the money due and frustration in meeting its other financial and loan commitments. Borrower acknowledges that Lender's damages for such a default would be extremely difficult and impractical to ascertain. Borrower therefore agrees that a late charge equal to two cents for each one dollar of each payment which is not made when due is a reasonable estimate of said damages, which late charge Borrower shall pay to Lender immediately after each such default. Such payment shall not affect Lender's other rights and remedies under this Note and the Loan Documents.

All expenditures by Lender pursuant to the Loan Documents, other than advances of principal, which are not reimbursed by Borrower immediately upon demand, all amounts remaining due and unpaid after the Maturity Date and any amounts due and unpaid after an Event of Default shall bear interest at a rate 2% per annum more than the Interest Rate, until such amounts are paid to Lender. Such payments shall be in addition to the above late charge.

5. **APPLICATION OF PAYMENTS.** Unless an Event of Default has occurred and is continuing, all payments hereunder shall be applied first to late charges, costs of collection or enforcement and other similar amounts due, if any, under this Note and the other Loan Documents, then to interest which is due and payable under this Note and the remainder to principal due and payable under this Note. If an Event of Default has occurred and is continuing, such payments may be applied to sums due hereunder or under the Loan Documents in any order and combination that Lender may, in its sole discretion, determine.
6. **WAIVERS.** Borrower and each Guarantor severally waive presentment for payment, demand, notice of nonpayment, notice of intention to accelerate the maturity of this Note, diligence in collection, commencement of suit against any obligor, notice of protest, and protest of this Note and all other notices in connection with the delivery, acceptance, performance, default or enforcement of the payment of this Note, before or after maturity of this Note, with or without notice to Borrower or any Guarantor, and agree that their liability shall not be in any manner affected by any indulgence, extension of time, renewal, waiver or modification granted or consented to by Lender. Borrower and each Guarantor consent to any and all extensions of time, renewals, waivers or modifications that may be granted by Lender with respect to the payment or other provisions of this Note, and to any substitution, exchange or release of the collateral for this Note, or any part thereof, with or without substitution of said collateral, and agree to the addition or release of any Guarantor, all whether primarily or secondarily liable, before or after maturity of this Note, with or without notice to Borrower or any Guarantor, and without affecting their liability under this Note.

\_\_\_\_\_  
Borrower's initials

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5/11/2014 10:00 AM

7. **NO USURY.** Lender and Borrower intend to comply at all times with applicable usury laws. If at any time such laws would ever render usurious any amounts called for under this Note or the other Loan Documents, then it is Borrower's and Lender's express intention that neither Borrower nor any Guarantor shall ever be required to pay interest on this Note at a rate in excess of the maximum lawful rate, that the provisions of this paragraph shall control over all other provisions of this Note and the Loan Documents which may be in apparent conflict hereunder, that such excess amount shall be immediately credited on the principal balance of this Note (or, if this Note has been fully paid, refunded by Lender to Borrower), and the provisions hereof shall be immediately reformed and the amounts thereafter collectible under this Note reduced, without the necessity of the execution of any further documents, so as to comply with the then applicable law, but so as to permit the recovery of the fullest amount otherwise called for under this Note. Any such crediting or refund shall not cure or waive any default by Borrower under this Note or the other Loan Documents. If at any time following any reduction in the interest rate payable by Borrower there remains unpaid any principal amount under this Note and the maximum interest rate not prohibited by applicable law is increased or eliminated, then the interest rate payable under this Note shall be readjusted, to the extent not prohibited by applicable law, so that the total dollar amount of interest payable hereunder shall be equal to the dollar amount of interest which would have been paid by Borrower without giving effect to the reduction in interest resulting from compliance with applicable usury laws. Borrower agrees that in determining whether or not any interest payable under this Note or the other Loan Documents exceeds the highest rate not prohibited by law, any non-principal payment (except payments specifically stated in this Note or in the other Loan Documents to be "interest"), including, without limitation, prepayment fees and late charges, shall, to the maximum extent not prohibited by law, be an expense, fee, or premium rather than interest. The term "applicable law" as used in this Note shall mean the laws of the state in which the Property is located or the laws of the United States, whichever laws allow the greater rate of interest, as such laws now exist or may be changed or amended or come into effect in the future.\*
8. **REMEDIES.** The rights and remedies of Lender are set forth in the Loan Documents and include, without limitation, the right to declare the principal balance of this Note, and accrued interest, immediately due and payable, in case of an Event of Default.
9. **JOINT AND SEVERAL LIABILITY.** If there is more than one Borrower, the obligations and covenants of each Borrower shall be joint and several.
10. **AMENDMENTS.** This Note may not be changed or amended orally but only by an agreement in writing, signed by the party against whom enforcement is sought.
11. **GOVERNING LAW.** This Note shall be governed and construed by the laws of the state in which the Property is located.
- ~~12. **CALL.** Lender may, at its option, whether or not an Event of Default has occurred, accelerate the Maturity Date and declare all then unpaid principal and interest due and payable on any date within the Call Period specified in written notice given to Borrower not less than six calendar months in advance of the accelerated Maturity Date so specified. If Lender exercises its right to accelerate, all then unpaid principal and accrued interest shall be paid by Borrower to Lender on such accelerated Maturity Date, without, however, the payment of any premium or charge for such prepayment. Until such accelerated Maturity Date, all regular Monthly Installments due under Paragraph 2 shall continue to be made.~~
13. **PERMITTED PREPAYMENT.** Borrower may prepay the entire unpaid Principal Sum with accrued and unpaid interest within 90 days of the Maturity Date. Otherwise, Borrower shall not prepay, in whole or in part, any of the unpaid Principal Sum unless there is a Prepayment Period set forth in Paragraph 14. In such event, Borrower may prepay the entire unpaid Principal Sum (but not any lesser amount) with accrued interest thereon to the date of prepayment on any date during the Prepayment Period on which a Monthly Installment is due, after giving 90 days' written notice to Lender of its intention to prepay, provided that no Event of Default exists and Borrower pays, at the time of prepayment and in addition thereto, the then applicable Prepayment Premium. A notice of prepayment, once given, shall be irrevocable, and the date fixed for prepayment in such notice shall become the Maturity Date.

amounts required to be paid pursuant to Paragraph 13.

\*Without limiting the generality of the foregoing, Borrower represents that the loan evidenced by this Note is a business loan within the purview and intent of the Illinois Interest Act [Ill. Rev. Stat. (1983)], transacted solely for the purpose of owning and operating the business of the beneficiary of the Borrower as contemplated by said Act.

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## PREPAYMENT INDEMNIFICATION

14. ~~PREPAYMENT INDEMNIFICATION~~. Subject to applicable law, Borrower shall indemnify Lender against any loss, damage and expense Lender incurs if the unpaid Principal Sum is paid prior to the Maturity Date for any reason (including, without limitation, refinancing, acceleration or otherwise) except (i) a payment made pursuant to Paragraph 12 hereof, or (ii) any application by Lender of Insurance Proceeds or Taking Proceeds to reduction of the Secured Debt pursuant to the Loan Documents. Such indemnification shall include, without limitation, payment to Lender by Borrower of:

An amount equal to (a) the then outstanding principal balance multiplied by the percentage arrived at by multiplying (i) the difference between 9.125% and the yield-to-maturity percentage for the Treasury Bond as reported in The Wall Street Journal (or, if The Wall Street Journal is no longer published, some other daily financial publication of national circulation) on the fifth business day preceding the date of prepayment, by (ii) the quotient (rounded to the nearest one-hundredth of a percent) arrived at by dividing the number of days from and including the date of prepayment, to the Maturity Date, by 365; and (b) discounting the sum arrived at pursuant to clause (a) at the rate per year of the yield-to-maturity percentage for the Treasury Bond, as so reported, to the present value of the payment stream, on the assumption that the premium would be received in equal monthly installments until maturity; it being the intent of the Prepayment Premium to provide Lender with a yield of 9.125% from date of prepayment to the Maturity Date; provided that there shall be no Prepayment Premium payable if the yield on the Treasury Bond as so reported equals or exceeds 9.125%.

~~(b) the amount of:~~

plus

- (c) the amount, as reasonably estimated by Lender, of Lender's out-of-pocket reasonable costs and expenses in reinvesting the amount prepaid (i.e., the sums determined under (a) and (b) above), including, without limitation, transaction and processing fees and costs, legal fees and brokerage expenses and Lender's expenses incurred in terminating any servicing agreement related to the loan.

If the foregoing is determined to be unenforceable in whole or in part, Lender may, at its option, pursue any other legal or equitable right or remedy now or hereafter available to Lender.

15. ~~NON-RECOURSE DEBT~~. <sup>Successor</sup> This Note is executed by ~~WBD-BLK GROVE BANK~~, not personally but as <sup>NBD Trust Company of Illinois</sup> Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee, and no personal liability shall be asserted or be enforceable against the Borrower or any beneficiary of Borrower because or in respect to this Note, or the making, issue or transfer thereof, all such liability, if any, being expressly waived by each taker and holder hereof; provided that nothing contained in this paragraph shall in any manner or way release, affect or impair:

- (a) The existence of the indebtedness evidenced by this Note; or
- (b) The enforceability of the liens and security interests created by the Loan Documents, including the Indenture, or the right of the holder of this Note to enforce the same; or
- (c) The right of the holder of this Note after the occurrence of a default hereunder or any other Event of Default to recover from the beneficiary of Borrower any sums payable by such beneficiary pursuant to a certain Beneficiary's Agreement of even date herewith executed by such beneficiary and delivered to Lender; or
- (d) The right of the Lender or other holder of this Note to enforce the personal liability of any guarantor of this Note.

Borrower's initials

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16. **SECURITY.** This Note is secured by the other Loan Documents, and all amendments, modifications, supplements, substitutions, additions, renewals, replacements and extensions thereof.
17. **COLLECTION.** Any check, draft, money order or other instrument given in payment of all or any portion hereof may be accepted by Lender and handled by collection in the customary manner, but the same shall not constitute payment hereunder or diminish any rights of Lender except to the extent that actual cash proceeds of such instrument are unconditionally received by Lender and applied to this indebtedness in the manner elsewhere herein provided.
18. **ATTORNEYS' FEES:** Upon any Event of Default, Borrower shall pay all costs of collection, including, without limitation, reasonable attorneys' fees and expenses, whether or not suit is filed hereon.

IN WITNESS WHEREOF, this Note has been executed and delivered under seal this 15th day of May, 1988.

NBD Trust Company of Illinois,  
as Successor Trustee to NBD Elk Grove  
Bank & NA US American Bank/Elk Grove,  
~~NBD Elk Grove Bank~~, not personally but  
solely as Trustee, as aforesaid

By: \_\_\_\_\_  
(Vice) President

ATTEST:

\_\_\_\_\_  
(Assistant) Secretary

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