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PK 535

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444 N. Michigan Avenue  
Chicago, Illinois 60611

This document was prepared by  
and should be returned to:

M. J. G.

88371824

Property of Cook County Clerk's Office

Dated as of August 16, 1988

(MORTGAGEE)

VMS MORTGAGE INVESTMENT FUND, a  
Delaware corporation

and

(MORTGAGOR)

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO,  
a National Banking Association,  
Trustee under Trust Number 104672-07

Among

MORTGAGE

\$11,534,000

4500

71-43-947  
D3

Ⓢ

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1988 AUG. 16 PM 3: 18

COOK COUNTY, ILLINOIS  
FILED FOR RECORD

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NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) in hand paid by Mortgagee to Mortgagor, the receipt and sufficiency of which are hereby acknowledged and confessed, and to secure the payment of the Note, including all

gagor for the security of the indebtedness, have been done. E. Mortgagor represents to Mortgagee that all acts and things necessary to make the indebtedness (as defined herein- after) the valid obligation of Mortgagor and, to Mortgagor's best knowledge and belief, to constitute this Mortgage a valid mort-

D. Mortgagor intends by the execution and delivery of this Mortgage to secure the payment of all of his obliga- tions, debts and liabilities under or pursuant to the Note.

C. Mortgagor is the owner and holder of fee simple title in and to all of the real estate legally described on Exhibit A attached hereto and by this reference made a part hereof.

B. This Mortgage secures the Mortgagor's obligations under the Note.

A. Mortgagor and its beneficiary are justly indebted to Mortgagee, as evidenced by that certain note (the "Note") of even date herewith, made by Mortgagor and its beneficiary and payable to the order of Mortgagee in the original principal amount of Eleven Million Five Hundred Thirty-Four Thousand and No/100 Dol- lars (\$11,534,000.00) plus interest, pursuant to the Note, bearing interest and being payable as to principal and interest as described therein. The Note, this Mortgage and all other documents delivered in connection therewith are collectively referred to as the "Loan Documents."

W I T N E S S E T H :

This MORTGAGE (the "Mortgage") is executed and delivered as of the 16 day of August 1988, by American National Bank and Trust Company of Chicago, a National Banking Association, not personally but as trustee under the provisions of a Deed or Deeds in trust duly recorded and delivered to said company in pursuant of a Trust Agreement dated February 15, 1988, and known as Trust Number 104672-07 (the "Mortgagor"), to WMS Mortgage Investment Fund, a Delaware corporation, having an address at 8700 West Bryn Mawr Avenue, Chicago, Illinois (the "Mortgagee").

MORTGAGE

STATE OF ILLINOIS )  
                          ) SS.  
                          ) COUNTY OF COOK )

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C. Together with (1) all of the estate, right, title and interest of Mortgagee in and to all judgments, insurance proceeds, awards of damages and settlements which may result from any damage to those portions of the property described in subparagraphs (a) and (b) above, or any part thereof, or to any rights appurtenant thereto, or which may result from condemnation proceedings or the taking of those portions of the property described in said subparagraphs (a) and (b), or any part thereof, under the power of eminent domain and, to the extent of the indebtedness, all proceeds of any sale or other disposition of those portions of the property described in said subparagraphs

B. All improvements (the "Improvements") existing and to exist at any time hereafter upon the above-described real property, and all fixtures, materials, equipment, apparatus, furniture, furnishings, chattels, and other personal, tangible or intangible (excluding cash), now or hereafter installed, attached or used on said real property or the improvements, and which are owned by Mortgagee and used in the operation and enjoyment of said real property and improvements or otherwise furnished to the tenants thereof or therein (and not owned by such tenants), including, but not limited to, all heating, lighting, refrigeration, cooking, laundry, plumbing, ventilating, incinerating, water heating, cooling and air-conditioning equipment, fixtures and appurtenances, all engines, machines, boilers, dynamos, elevators, tanks, awnings, screens, cabinets, shades, blinds, carpets, draperies, furniture, floor covering and other goods, chattels and personal property as are ever used or furnished in connection with the operation, use and employment of the real property and the improvements or the activities conducted therein, and all renewals, replacements and substitutions therefor and additions thereto. It is hereby agreed that, to the extent permitted by law, all of the foregoing properties and fixtures are to be deemed and held to be a part of and affixed to the said real property or the improvements.

A. The real property situated in the county and state first named above, being more particularly described on Exhibit A, together with all and singular the rights, benefits, privileges, easements, tenements, hereditaments and appurtenances thereon or in any way appertaining thereto, together with any right, title and interest of Mortgagee in and to adjacent streets, alleys and rights-of-way.

Indebtedness arising under the Note and the due performance of the covenants, agreements and provisions contained herein, Mortgagee does hereby GRANT, BARGAIN, SELL, ASSIGN, MORTGAGE and CONVEY unto Mortgagee, and unto its successors and assigns forever, all and singular, for the equal and ratable benefit and security of the present and future holders of all the indebtedness for the payment thereof and the performance of and compliance with the covenants and conditions of this Mortgage, the following described properties (collectively the "Property or Mortgaged Property"), to wit:

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THIS MORTGAGE FURTHER WITNESSETH that Mortgagor has agreed and covenanted, and does hereby agree and covenant with Mortgagee and with the holders from time to time of all of the Indebtedness secured hereby, as follows:

PROVIDED, HOWEVER, and these presents are on the express condition that if Mortgagor shall pay or cause to be paid the principal of, interest upon, and all other amounts payable under and with respect to the Indebtedness and shall also pay, or cause to be paid, all other sums otherwise payable hereunder by Mortgagor, then these presents and the estate and rights hereby granted shall cease, terminate and be void, and hereupon Mortgagee shall deliver to Mortgagor the cancelled note and, upon the request of Mortgagor, Mortgagee shall duly execute, acknowledge and deliver to Mortgagor such instruments of satisfaction or release in respect of the mortgaged property and all other rights and interests covered hereby, as may be necessary or proper to discharge this mortgage of record and, if necessary, shall grant, reassign and deliver to Mortgagor, its successors or assigns, all the mortgaged property and all additions thereto and substitutions therefor, and the said rights and interests then subject to the lien of this mortgage; otherwise, this mortgage shall be and remain in full force and effect.

TO HAVE AND TO HOLD the mortgaged property unto the Mortgagee, and unto its successors and assigns forever, and for the uses and purposes hereinafter set forth forever, Mortgagor does hereby bind itself and its successors and assigns to FOREVER DEFEND the mortgaged property unto the Mortgagee and unto its successors and assigns against any and every person whomsoever lawfully claiming or intending to claim the same or any part thereof by, from, under or through Mortgagor.

SUBJECT, HOWEVER, to the liens, encumbrances, restrictions, exceptions, reservations, easements and other matters set forth or referred to in Exhibit B attached hereto and by this reference made a part hereof.

(a) and (b), or any part thereof; and except as otherwise provided herein, Mortgagee is hereby authorized to collect and receive said proceeds and awards and to give proper receipts therefor, and if Mortgagee so elects in accordance with the provisions of Section 3.04 hereinafter set forth, to apply the same against the Indebtedness, notwithstanding that the amount owing thereon may not be then due and payable; (ii) all contract rights, general intangibles, actions and rights in action including without limitation all rights to insurance proceeds and unearned premiums arising from or relating to those portions of the property described in said subparagraphs (a) and (b); and (iii) all proceeds, products, replacements, additions, substitutions, renewals and accretions of and to those portions of the property described in said Paragraphs (a) and (b) (all of such property, subject as aforesaid, being hereinafter called the "mortgaged property").

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Section 2.01. Further Assurances. At any and all times Mortgagor will do, execute, acknowledge, deliver, file and/or record, and will cause to be done, executed, acknowledged, delivered, filed and/or recorded all and every such further acts, deeds, conveyances, mortgages, transfers and assurances in law as the holder of the indebtedness shall reasonably require for the better assuring, conveying, transferring, mortgaging, assigning and committing unto the Mortgagee of all and singular the heredit-

## Covenants of Mortgagor and Mortgagee

### ARTICLE II

Section 1.02. Payment of the Indebtedness. The indebtedness shall be payable to Mortgagee at Mortgagee's address set forth in Section 6.04 hereof, or at such other place as Mortgagee may, by notice given in accordance with the notice provisions hereof, direct. If any of the indebtedness shall be collected by legal proceedings or through bankruptcy court, or shall be placed in the hands of an attorney for collection after maturity, whether matured by the expiration of time or by any option given to Mortgagee to mature same, Mortgagee agrees that a reasonable sum shall be paid by Mortgagee as attorneys' fees (including attorneys' fees for any appeal in which Mortgagee is the prevailing party) or collection fees, and shall be a part of the indebtedness.

(d) All funds advanced by Mortgagee to or for the benefit of Mortgagee, as contemplated by any covenant or provision herein contained, NOT TO EXCEED \$15,000,000.

(c) All renewals and extensions, in whole or in part, of any of the indebtedness described in this section.

(b) All indebtedness of Mortgagor arising pursuant to the provisions of this instrument.

(a) The payment of principal and interest upon the Note, and all debts, obligations and liabilities of Mortgagor thereunder as Maker thereof, including all interest accruals made pursuant to the Note shall be payable as set forth in the Note with the principal due upon demand.

Section 1.01. The Indebtedness. This Mortgage is executed and delivered by Mortgagor to secure and enforce each of the items of indebtedness or obligations (collectively, the "indebtedness") described below:

## Indebtedness Secured

### ARTICLE I

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lements, premises, estates and property hereby or by subsequent instruments conveyed, transferred, mortgaged, assigned or confirmed unto Mortgagee, or intended so to be.

Section 2.02. Payment of the Note. Mortgagee will duly and punctually pay the principal of and interest on the Note and will pay, comply with and/or perform (as the case may be) all other amounts or obligations constituting a part of the indebtedness, and will not suffer or permit an event of default to occur under this Mortgage, but will faithfully observe and perform all of the conditions, covenants and requirements hereof in accordance with the terms of this Mortgage.

Section 2.03. Notice of Legal Proceedings. Mortgagee and Mortgagee agree, each to the other, that each party will promptly notify the other party or any holder or holders of the indebtedness, in writing, of the commencement of any legal proceedings affecting the Mortgaged Property or any part thereof and Mortgagee may take such action as will be necessary to preserve its and such holder's rights affected thereby; and Mortgagee or any such holder or holders may, at his or their election, take such action on behalf of and in the name of Mortgagee and at Mortgagee's expense, and any such expense paid by Mortgagee shall be part of the indebtedness.

Section 2.04. Recordation. Mortgagee will cause this Mortgage and every additional instrument, if any, which shall be executed supplemental or amendatory hereto or pursuant to the provisions hereof, forthwith upon execution, to be filed and recorded as a mortgage in such manner and in such place as may, in the opinion of the holder of the indebtedness, be required by law in order fully to preserve and protect the lien of this Mortgage, and will punctually and fully comply with the recording and re-recording and filing and re-filing of this Mortgage any of such additional instruments in such manner as may be necessary fully to preserve, continue and protect the security and validity of the Note and the indebtedness, the lien of this Mortgage on the Mortgaged Property, and the rights and remedies of the Mortgagee, its successors and assigns. All costs incurred by Mortgagee pursuant to this Section shall be paid by Mortgagee and any such costs paid by Mortgagee shall be and become part of the indebtedness.

Section 2.05. Maintenance and protection of the Mortgaged Property. Mortgagee covenants that so long as any of the indebtedness remains outstanding, Mortgagee (i) will not commit or permit any waste on the Mortgaged Property; (ii) will maintain, preserve and keep the Mortgaged Property in good repair and condition, normal wear and tear and damage from the elements and fire and other casualty excepted; and (iii) will, from time to time, make all needed and proper repairs and renewals, replacements and substitutions, so that at all times the efficiency and utility of the Mortgaged Property shall be fully preserved and maintained.

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Section 2.08. General Covenants and Representations. Mortgagor covenants and represents that as of the date hereof and at all times during the term hereof, (i) Mortgagor is and shall be seized of an indefeasible estate in fee simple in the Mortgaged Property and has good and absolute title to it and has the right, full power and lawful authority to grant, sell, convey and pledge the same as provided herein, (ii) Mortgagor may at all times peaceably and quietly enter upon, hold, occupy and enjoy the Mortgaged Property in accordance with the terms hereof, (iii) Mortgagor will maintain and preserve the lien hereof, unless released by Mortgagor, until the indebtedness has been paid in full (iv) Mortgagor's execution of this Mortgage does not constitute a default under any obligation of Mortgagor under any

(b) Mortgagor shall not have the right to place further mortgages or other encumbrances on the Mortgaged Property without first obtaining the written consent of the Mortgagor.

(iii) Any controlling shares of capital stock of a corporation which is a general partner in a partnership which is a general partner or beneficiary of Mortgagor.

(ii) Transfer of any beneficial interest of the Mortgagor or transfer of the partnership interest of the general partners of the initial beneficiary of Mortgagor, to persons or entities other than the general partners of the beneficiary of the Mortgagor, on the date of execution of this Note.

(i) Transfer of title of the Mortgaged Property to any entity other than that of the Mortgagor or the initial beneficiary of Mortgagor:

(a) Except as and to the extent hereinafter otherwise provided, Mortgagor shall not either voluntarily or involuntarily, directly or indirectly, sell, transfer, mortgage, pledge, convey, encumber, assign or otherwise dispose of the Mortgaged Property, or any portion thereof (all of the foregoing herein-after collectively referred to as "Prohibited Transfer"), without the prior written consent of Mortgagor at any time before this Mortgage is fully released and discharged. Mortgagor shall have been considered to have sold, transferred, conveyed or disposed of the Mortgaged Property if either of the following events shall occur:

Section 2.07. Sale or Further Encumbrance of Mortgaged Property.

Section 2.06. Entry and Inspection. Mortgagor agrees that Mortgage and its agents may, at any time and from time to time, enter upon the Mortgaged Property at all reasonable times to inspect the same, provided that Mortgage will not unreasonably interfere with tenants of the Mortgaged Property nor violate the terms of any lease for the Mortgaged Property.

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Section 2.11. Taxes Affecting Mortgagee's Interest. If any federal, state, municipal or other governmental law, order, rule or regulation passed, enacted or promulgated subsequent to the date hereof in any manner changes or modifies existing laws governing the taxation of mortgages or deeds of trust or debts secured by mortgages or deeds of trust or the manner of collecting taxes so as to materially and adversely affect the rights of Mortgagee, the indebtedness and all interest accrued thereon shall become due and payable upon sixty (60) days prior written

Section 2.10. Mechanic's and Other Liens. Mortgagee shall not permit or suffer any mechanic's, laborer's, materialman's, statutory or other liens (other than any lien for taxes and other sums not yet due) to be created upon or against the mortgaged property; provided, however, that Mortgagee may, in good faith, by appropriate proceeding, contest the validity, applicability or amount of any asserted lien, and pending final adjudication of such contest, Mortgagee shall not be deemed to be in default hereunder if Mortgagee, promptly upon the request of Mortgagee, establishes an escrow or posts other security reasonably acceptable to Mortgagee in an amount estimated by Mortgagee to be adequate to cover the payment of such lien and a reasonable additional sum to cover possible interest, costs and penalties, and, if the amount of such escrow is insufficient to pay any amount adjudged by a court of competent jurisdiction to be due, with all interest, costs and penalties thereon, Mortgagee shall pay to Mortgagee such deficiency no later than the date such adjudication becomes final, whereupon Mortgagee shall upon its receipt of said additional sum, pay the amount determined to be due and payable.

Section 2.09. Compliance with Laws. Mortgagee represents that the mortgaged property, to Mortgagee's knowledge, except as otherwise disclosed to the Mortgagee on or before the date hereof, presently complies with, and will continue to comply with, all applicable restrictive covenants, zoning and subdivision ordinances and building codes, all applicable health and environmental laws and regulations. If any federal, state or other governmental body issues any notice that the mortgaged property is not in compliance with any such covenant, ordinance, code, law or regulation, Mortgagee will promptly provide Mortgagee with a copy of such notice and will immediately commence such actions as are necessary to comply therewith and will diligently and promptly comply therewith (unless and for so long as Mortgagee contests the same in good faith and by appropriate proceedings).

agreement or prior mortgage, (v) the beneficiary of Mortgagee through its general partner is duly authorized to execute the valid, legal, and binding obligation of the Mortgagee, and (vi) the beneficiary of Mortgagee shall maintain its existence as a general partnership in compliance with all applicable local, state, and federal laws or regulations.



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Section 2.14. Expenses. Mortgagee shall pay when due all appraisal fees, recording fees, taxes, brokerage fees and commissions, abstract fees, title insurance fees, escrow fees, reasons, attorneys' fees, fees of inspecting architects and engineers, and all other costs and expenses of every character and nature which have been incurred or which may hereafter be incurred by mortgagee in connection with the indebtedness, the preparation and execution of the loan documents, the funding of any of the indebtedness, any modification of the Note and this mortgage, any foreclosure proceedings or any other actions resulting from an event of default hereunder. In addition, mortgagee shall, upon written demand of mortgagee, reimburse mortgagee for all such expenses which have been or shall be paid by mortgagee, such demand to be accompanied by copies of all applicable invoices and bills. To the extent permitted by law, mortgagee hereby indemnifies and agrees to hold mortgagee harmless from and against, and reimburse mortgagee for, all claims, demands, liabilities, losses, damages, judgments, penalties, costs and expenses, including, without limitation, reasonable attorneys' fees, which may be imposed upon, asserted against or incurred or paid by mortgagee by reason of or in connection with any bodily injury or death or property damage occurring in or upon or in the vicinity of the mortgaged property through any cause whatsoever, or asserted against it on account of any act performed or omitted to be performed hereunder, or on account of any transaction arising out of or in any way connected with the mortgaged property, this mortgage, any of the indebtedness evidenced by the Note or the indebtedness.

Section 2.13. Leases Affecting Property. Mortgagee shall comply with and observe its obligations as landlord under all leases affecting all or any part of the mortgaged property. If required by mortgagee, mortgagee shall promptly furnish to mortgagee certified copies of all such leases now existing or hereafter executed. Mortgagee shall not accept payment of rent more than one (1) month in advance without the prior written consent of mortgagee.

Section 2.12. After-Acquired Property. To the extent permitted by and subject to applicable law, the lien hereof shall automatically attach without further act to all property hereafter acquired by mortgagee which is located in, on or attached to, or used or intended to be used in connection with, or with the operation of, all or any part of the mortgaged property, all intangible property, and all proceeds generated therefrom.

demand from mortgagee to mortgagee whether or not there shall have occurred an Event of Default; provided, however, that if mortgagee may, without violating or causing a violation of such law, order, rule or regulation, pay such taxes or other sums as necessary to eliminate such adverse effect upon the rights of mortgagee and does pay such taxes or other sums when due, mortgagee may not elect to declare due the indebtedness by reason of the provisions of this section.

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Section 2.17. Use of the Mortgaged Property. Mortgagor shall not suffer or permit any portion of the mortgaged property

Section 2.16. Escrowed Advances. Within fifteen (15) days after written request from Mortgagor, Mortgagor shall furnish a written statement, duly acknowledged by the managing general partner, the beneficiary of Mortgagor, consisting of and any other sums secured hereby, and whether or not any other unpaid sums are claimed to exist against such principal and interest or other sums and, if such rights of set-off or defense are claimed, the specific basis and amount of each such right of set-off or defense. Within fifteen (15) days after written request from Mortgagor, Mortgagor shall furnish a written statement, duly acknowledged, setting forth the unpaid principal balance of and all interest accrued upon the Note, and any other unpaid sums secured hereby, and whether or not there exists, to Mortgagee's knowledge, any unsecured event of default.

Section 2.15. Mortgagor's Performance upon Mortgagor's Defaults. If Mortgagor fails to (i) pay any tax, assessment, encumbrance or other imposition; (ii) furnish the insurance hereunder required; or (iii) perform or observe any other covenant, condition or term contained in this Mortgage, the Note, the loan documents or any other instrument evidencing or securing the indebtedness after any cure or grace period for such payment, performance or observance shall have elapsed or Mortgagee shall have determined that a delay in such payment, performance or observance until such cure or grace period shall have elapsed may adversely affect Mortgagee's security for the payment of the Mortgage may, to preserve its interest in the mortgaged property, pay, perform or observe the same, and all payments made, whether such payments are regular or accelerated payments, and costs and expenses incurred or paid by Mortgagee in connection therewith, shall become due and payable immediately by Mortgagor to Mortgagee. The expense so incurred or amounts so paid by Mortgagee, together with interest thereon at the default rate (as hereinafter defined) from the date incurred until paid by Mortgagor, shall be added to the indebtedness and secured by the lien hereof. Mortgagee shall furnish Mortgagor with written notice of the amounts so incurred or paid by Mortgagee within a reasonable time after the expenditure of same, but Mortgagee's failure to give such written notice shall not relieve Mortgagor of its obligation to pay such amounts with interest thereon as aforesaid. Mortgagee is hereby empowered to enter upon and to authorize others to enter upon the mortgaged property for the purpose of performing or observing any covenant, condition or obligation that Mortgagor has failed to perform or observe without thereby becoming liable to Mortgagor or to any person in possession holding under Mortgage, subject to the terms of the leases for the mortgaged property.

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Section 2.20. Capital Contributions. From and after the date of this mortgage, the beneficiary of the mortgage ("Beneficiary") shall pay directly to Mortgagee all "Net Capital Proceeds" (as defined below) to which Beneficiary is or may become entitled to the extent of then balance due under the Note. The term "Net Capital Proceeds" shall refer to all cash and non-cash proceeds of any nature whatsoever (including without limitation promissory notes) received by the Mortgagee or Beneficiary in connection with the sale, transfer, financing, refinancing, condemnation or other disposition of any of its assets (including without limitation grants of easements, rights of way or other interests in the mortgaged property). Promissory notes and other amounts received by Mortgagee shall be credited first against any amounts then payable to Mortgagee under any provision of this

Section 2.19. Failure of Mortgagee to Perform Covenants. If Mortgagee shall fail to perform any of the covenants contained in this mortgage, the holder of the indebtedness may make advances to perform the same on behalf of Mortgagee, but shall be under no obligation to do so, and all sums so advanced hereunder shall be at once repayable by Mortgagee, and shall bear interest at the highest rate permitted by applicable law, and if none, then at a rate of four percent in excess of the Basic Rate Bonus from time to time on the unpaid principal balance of the Note as described in the Note (the "Default Rate") and shall be and become part of the indebtedness, but no such advance shall release Mortgagee from any default hereunder. The maker of any such advance shall be subrogated to all the rights of the party or entity receiving such payment.

Section 2.18. Alterations of Mortgaged Property. Except in compliance with Building Permit #697852 dated June 23, 1988, issued by the City of Chicago, no part of the mortgaged property shall be removed, demolished or altered, without the prior written consent of the Mortgagee. The Mortgagee shall have the right without such consent, to remove and dispose of tree from the lien of this mortgage any part of the mortgaged property as from time to time may become worn out or obsolete provided that either simultaneously with or prior to such removal, any such property shall be replaced with other property of equal utility and of a value at least equal to that of the replaced equipment when first acquired and free from any security interest of any other person and by such removal and replacement the Mortgagee shall be deemed to have subjected such replacement property to the lien of this mortgage.

Section 2.17. Use of Property. Notwithstanding anything to the contrary contained herein, the use of the mortgaged property for any unlawful purpose, or of implied dedication of any portion thereof. Mortgagee shall not use or permit the use of the mortgaged property for any unlawful purpose.

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Mortgagee and its beneficiary shall comply with any and all laws, regulations, or orders with respect to the discharge and removal of hazardous material, and shall pay immediately when due the costs of removal of any hazardous material, and shall keep the property free of any lien imposed pursuant to such laws, regulations, or orders. In the event mortgagee fails to do so, after notice to mortgagee and the expiration of the earlier of (a) applicable cure periods hereunder, or (b) the cure period permitted under applicable law, regulation, or order, beneficiary may either declare this mortgage to be in default or cause the mortgaged property to be freed from the hazardous material with the cost of the removal added to the indebtedness evidenced by the Note and secured by this mortgage (regardless of whether such indebtedness then increases the outstanding balance of the Note to an amount in excess of the face amount thereof). Mortgagee further agrees not to release or dispose of any hazardous material at the mortgaged property without the express approval of mortgagee and any such release or disposal will be in compliance with all applicable laws and regulations and conditions, if any, established by mortgagee. Mortgagee shall have the right at any time to conduct an environmental audit of the mortgaged property and mortgagee shall cooperate in the conduct of such environmental audit. Mortgagee shall give mortgagee and its agents and employees access to the mortgaged property to remove hazardous material and mortgagee agrees to indemnify and hold mortgagee free and harmless from and against all loss, costs, damage, and expenses (including attorneys' fees and costs) mortgagee may sustain by reason of the assertion against mortgagee by any party

Section 2.21. Hazardous Waste and Asbestos. The mortgagee (which for the purpose of this Section 2.21 shall also include the beneficiary of mortgage) to the best knowledge of the mortgagee, any other person has ever caused or permitted any hazardous material or asbestos to be placed, held, located or disposed of on, under or at the mortgaged property, or any part thereof, and the mortgaged property has never been used (whether by the mortgagee or, to the best knowledge of mortgagee by any other person) as a dump site or storage (whether permanent or temporary) site for any hazardous material. For the purpose of this mortgage, "Hazardous Material" means and includes any hazardous, toxic or dangerous waste, substance or material defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act, any so-called "Superfund" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order, decree or other requirement of any governmental authority relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect. The foregoing representation shall survive in perpetuity, notwithstanding the payment in full of the performance of all other obligations under the Loan Documents.

Mortgage, the balance to mortgagee.

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(a) Mortgagor shall, at its sole cost and expense, obtain and maintain insurance policies in such amounts as Mortgagee may require, but in no event shall the amount of any insurance be

Section 3.01. Hazard Insurance.

Insurance, Taxes and Restoration  
of the Mortgaged Property

ARTICLE III

Mortgagor shall install nor permit to be installed in the Mortgaged Property friable asbestos or any substance containing asbestos and deemed hazardous by federal or state regulations respecting such material, and with respect to any such material currently present in the Mortgaged Property shall promptly either (a) remove any material which such regulations deem hazardous and require to be removed or (b) otherwise comply with such federal and state regulations, at Mortgagor's expense. If Mortgagor shall fail to remove or otherwise comply, Mortgagee may declare this Mortgage to be in default and/or do whatever is necessary to eliminate said substances from the Mortgaged Property or otherwise comply with the applicable law, regulation, or order and the costs thereof shall be added to the indebtedness evidenced by the Note and secured by this Mortgage. Mortgagor shall give Mortgagee and its agents and employees access to the Mortgaged Property to remove asbestos or substances. Mortgagor shall defend, indemnify and save Mortgagee harmless from all costs and expenses (including consequential damages) asserted or proven against Mortgagee by any party, as a result of the presence of said substance, and any removal or compliance with regulations. The foregoing indemnification shall be a recourse obligation of Mortgagee's beneficiary and shall survive repayment of the Note, notwithstanding any limitation on liability contained herein or in any of the Loan Documents; provided, however, that the foregoing indemnity shall not be construed to create any liability or obligation on the part of any stockholder of Mortgagee's beneficiary, personally, with respect to the matters set forth herein unless Mortgagee's beneficiary liquidates, dissolves, terminates its existence or distributes all or substantially all of its assets to its stockholders.

of any claim in connection with such Hazardous Material. The foregoing indemnification shall be a recourse obligation of the beneficiary of Mortgagee and shall survive repayment of the Note, notwithstanding any limitations on recourse contained herein or in any of the Loan Documents; provided, however, that the foregoing indemnity shall not be construed to create any liability or obligation on the part of any stockholder of Mortgagee's beneficiary, personally, with respect to the matters set forth herein unless Mortgagee's beneficiary liquidates, dissolves, terminates its existence or distributes all or substantially all of its assets to its stockholders.



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(c) Adjustment of Loss. (1) Pursuant to its rights granted hereunder in all proceeds from any insurance policies, Mortgagee is hereby authorized and empowered, at its option, but subject to the provisions of subparagraph (ii) below, to adjust or compromise any loss under any insurance policies covering or relating to the Mortgaged Property and to collect and receive the proceeds from any government of the United States or any agency thereof as having special flood hazards and for which flood insurance is available, and shall pay promptly when due any premiums on such insurance and shall contain a noncontributory standard mortgagee's endorsement making losses payable to Mortgagee as its interest may appear. At least thirty (30) days prior to the expiration date of all such insurance policies, evidence of renewals thereof reasonably satisfactory to Mortgagee shall be delivered to Mortgagee. Not less than twenty-one (21) days prior to the anniversary or effective date of such policy, Mortgagee shall deliver to Mortgagee receipts or other evidence of the payment of any premiums then due on such insurance policies and renewals. In the event of any loss, Mortgagee may make proof of loss if not made promptly by Mortgagee. In the event of the sale of all or any portion of the Mortgaged Property pursuant to this Mortgage or any other transfer of title to the Mortgaged Property in extinguishment of the indebtedness, all right, title and interest of Mortgagee in and to all insurance policies and renewals thereof then in force shall pass to the Mortgagee. All such policies shall provide that they shall not be modified, cancelled or terminated without at least thirty (30) days prior written notice to Mortgagee.

(b) Other Insurance. Mortgagee shall, at its sole cost and expense, obtain and maintain liability insurance policies and such other insurance relating to the Mortgaged Property and the use and operation thereof in such amounts as shall be reasonably required by Mortgagee and with such companies and in such form as shall be reasonably acceptable to Mortgagee. By written demand upon Mortgagee, Mortgagee may require such policies to contain an endorsement, in form satisfactory to Mortgagee, naming Mortgagee as an additional insured thereunder. Mortgagee shall pay promptly when due any premiums on such insurance policies and renewals thereof and any such premiums paid by the Mortgagee shall become part of the indebtedness.

less than the amount necessary to prevent any co-insurance requirements, insuring the Mortgaged Property against such insurable hazards, casualties and contingencies as Mortgagee may reasonably require, including without limitation loss of rentals or business interruption insurance and flood insurance (if all or any part of the Property shall at any time be located within an area identified by the government of the United States or any agency thereof as having special flood hazards and for which flood insurance is available), and shall pay promptly when due any premiums on such insurance policies and on any renewals thereof. The form of such policies and the companies issuing same shall be reasonably acceptable to Mortgagee. All such policies and renewals thereof shall be assigned to and held by Mortgagee and shall contain a noncontributory standard mortgagee's endorsement making losses payable to Mortgagee as its interest may appear. At least thirty (30) days prior to the expiration date of all such insurance policies, evidence of renewals thereof reasonably satisfactory to Mortgagee shall be delivered to Mortgagee. Not less than twenty-one (21) days prior to the anniversary or effective date of such policy, Mortgagee shall deliver to Mortgagee receipts or other evidence of the payment of any premiums then due on such insurance policies and renewals. In the event of any loss, Mortgagee may make proof of loss if not made promptly by Mortgagee. In the event of the sale of all or any portion of the Mortgaged Property pursuant to this Mortgage or any other transfer of title to the Mortgaged Property in extinguishment of the indebtedness, all right, title and interest of Mortgagee in and to all insurance policies and renewals thereof then in force shall pass to the Mortgagee. All such policies shall provide that they shall not be modified, cancelled or terminated without at least thirty (30) days prior written notice to Mortgagee.

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(a) After an event of default, Mortgagor shall deposit with Mortgagor on the first business day of each and every month, an amount equal to one-twelfth (1/12) of the impositions and premiums thereof to become due upon the mortgaged property; between one and thirteen months after the date of such deposit; provided that in the case of the first such deposit, there shall be deposited in addition an amount which, when added to the aggregate amount of monthly deposits to be made hereunder with respect to impositions and premiums to become due and payable within thirteen months after such first deposit, will provide (without interest) a sufficient fund to pay such impositions and premiums one month prior to the date when they are due and payable. The amounts of such deposits (herein generally called "Tax and Insurance Deposits") shall be based upon Mortgagor's reasonable estimate as to the amount of impositions and premiums. Mortgagor shall promptly upon the demand of Mortgagor make additional Tax and Insurance Deposits as Mortgagor may from time to time require due to (i) failure of Mortgagor to require, or failure of Mortgagor to make, Tax and Insurance Deposits in previous months, (ii) understatement of the amounts of impositions and/or premiums, (iii) the particular due dates and amounts of impositions and/or premiums, or (iv) application of the Tax and Insurance Deposits pursuant to Section 3.03(c)

Section 3.03. Deposits for impositions and insurance premiums payable with respect to all insurance policies ("premiums") as and when the same shall become due and payable:

(d) Mortgagor shall have the right to contest the amount or validity, in whole or in part, of any imposition, or to seek a reduction in the valuation of the mortgaged property or any personal property located thereon as assessed for real estate or personal property tax purposes by appropriate proceedings diligently conducted in good faith, provided that such contest will not place the mortgaged property in jeopardy of foreclosure of any lien resulting from any imposition.

(c) Mortgagor shall furnish to Mortgagor, prior to the date on which any imposition would become delinquent, official receipts of the appropriate taxing authority, or other evidence satisfactory to Mortgagor, evidencing the full payment thereof.

(b) Nothing herein contained shall require Mortgagor to pay income taxes assessed against Mortgagor, or any capital, levy, corporation franchise, excess profits, estate, succession, inheritance or transfer taxes of Mortgagor.

exercise the option to pay the same (and any accrued interest on the unpaid balance of such impositions) in installments and, in such event, shall pay such installments as may become due during the term of this mortgage as the same respectively become due and before any fine, penalty, further interest or cost may be added thereto.

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(f) Notwithstanding anything to the contrary herein contained, Mortgagor shall not be required to make Tax and Insurance Deposits with Mortgagee so long as it is timely paying sufficient Tax and Insurance Deposits to the holder of the Senior Mortgage, if any and furnishes to Mortgagee evidence of such timely payment as and when made, without demand therefor.

(e) The provisions of this Mortgage are for the benefit of Mortgagee and Mortgagee alone. No provision of this Mortgage shall be construed as creating in any party other than Mortgagee and Mortgagee any rights in and to the Tax and Insurance Deposits or any rights to have the Tax and Insurance Deposits applied to payment of Impositions and Premiums. Mortgagee shall have no obligation or duty to any third party to collect Tax and Insurance Deposits.

(d) Notwithstanding anything herein contained to the contrary, Mortgagee, or its successors and assigns, shall not be liable for any failure to apply the Tax and Insurance Deposits unless Mortgagee, while no default exists hereunder, shall have requested Mortgagee in writing to make application of such Tax and Insurance Deposits on hand to the payment of the Impositions or Premiums for the payment of which such Tax and Insurance Deposits were made, accompanied by the bills therefor.

(c) Upon the occurrence of a default under this Mortgage, Mortgagee may, at its option, without being required so to do, apply any Tax and Insurance Deposits on hand to any of the indebtedness in such order and manner as Mortgagee may elect. When the indebtedness has been fully paid, any remaining Tax and Insurance Deposits shall be paid to Mortgagee. All Tax and Insurance Deposits are hereby pledged as additional security for the indebtedness, and shall be held by Mortgagee irrevocably to be applied for the purposes for which made as herein provided, and shall not be subject to the direction or control of Mortgagee.

(b) Subject to Section 3.03(a) hereof, Mortgagee will, out of the Tax and Insurance Deposits, upon the presentation to Mortgagee by Mortgagee of the bills therefor, pay the Impositions and Premiums or will upon the presentation of receipted bills therefor, reimburse Mortgagee for such payments made by Mortgagee. If the total Tax and Insurance Deposits on hand shall not be sufficient to pay all of the Impositions and Premiums when the same shall become due, then Mortgagee shall pay to Mortgagee on demand the amount necessary to make up the deficiency.

Additionally, upon the execution hereof, Mortgagee shall deposit with Mortgagee, as a Tax and Insurance Deposit, the amount of all Impositions and Premiums to become due and payable prior to the first monthly Tax and Insurance Deposit or within one month hereafter. All Tax and Insurance Deposits shall be held by Mortgagee without any allowance of interest thereon.

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Section 4.01. Events of Default. The happening of any of the following events shall be a default under the Mortgage (each herein called a "Default" or an "Event of Default"):

Events of Default and Remedies

ARTICLE IV

(a) In the event of any partial or total damage or loss by fire or other casualty whatsoever to the Improvements, Mortgage, with reasonable diligence (subject to unavoidable delays), shall repair, restore or reconstruct the Improvements, or the portion thereof so damaged, as nearly as possible to the condition the same were in immediately prior to such damage.

(b) If by reason of any damage or destruction mentioned in (a) above, any sums are paid under any insurance policy mentioned in Section 3.01 hereof, and provided that Mortgagee is not then in default under the terms of the Note or this Mortgage, such sums shall be held by Mortgagee and disbursed as follows: Insurance proceeds held by Mortgagee for restoration, repairing, replacement or rebuilding of the Mortgaged Property shall be disbursed from time to time upon Mortgagee being furnished with evidence satisfactory to it of the estimated cost of the restoration, repair, replacement and rebuilding, (ii) funds (or assurances satisfactory to Mortgagee that such funds are available) sufficient in addition to the proceeds of insurance, to complete and fully pay for the restoration, repair, replacement and rebuilding, and (iii) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, plats of survey and such other evidences of cost, payment and performance as Mortgagee may require and approve. No payment made prior to the final completion of the restoration, repair, replacement and rebuilding shall exceed ninety percent (90%) of the value of the work performed from time to time, as such value shall be determined by Mortgagee in its sole and exclusive judgment; funds other than proceeds of insurance shall be disbursed prior to disbursement of such proceeds, and at all times the undischursed balance of such proceeds remaining in the hands of Mortgagee, together with funds deposited or irrevocably committed to the satisfaction of Mortgagee by or on behalf of Mortgagee to pay the cost of such repair, restoration, replacement or rebuilding, shall be at least sufficient in the reasonable judgment of Mortgagee to pay the entire unpaid cost of the restoration, repair, replacement or rebuilding, free and clear of all liens or claims for lien. Any surplus which may remain out of insurance proceeds held by Mortgagee after payment of such costs of restoration, repair, replacement or rebuilding shall be paid to Mortgagee. No interest shall be allowed to Mortgagee on account of any proceeds of insurance or other funds held by Mortgagee.

Section 3.04. Damage or Destruction by Fire or Other Casualty.



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(iv) All or a substantial part of the assets of Mortgagor or any general partner of Mortgagor are attached, seized, subjected to a writ or distress warrant, or are levied upon, unless such attachment, seizure, writ, warrant or levy is vacated within sixty (60) days;

(iii) Within sixty (60) days after the filing against Mortgagor or any general partner of Mortgagor of any involuntary proceeding under the Federal Bankruptcy Act or similar law, state or federal, now or hereafter in effect, such proceedings shall not have been dismissed;

(ii) Mortgagor or any general partner of Mortgagor shall file an answer or other pleading in any proceeding admitting insolvency, bankruptcy, or inability to pay its debts as they mature;

(i) Mortgagor or any general partner of Mortgagor shall file a voluntary petition in bankruptcy or for arrangement, reorganization or other relief under any chapter of the Federal Bankruptcy Act or any similar law, state or federal, now or hereafter in effect.

(e) If (and for the purpose of this paragraph (e) only), the term Mortgagor shall mean and include not only Mortgagor, but also any successor in interest who pursuant to the terms hereof has acquired the mortgage property for the benefit or interest in any trust holding title thereto) subject to the terms of this Mortgage;

(d) If default shall continue for thirty (30) days after written notice thereof by Mortgagor in the due and punctual performance or observance of any other agreement or condition herein contained; provided, however, that if such default by its nature cannot be cured within said thirty (30) day period, then Mortgagor shall not be in default so long as Mortgagor commences to cure said default within said thirty (30) day period and diligently and in good faith pursues said cure to completion;

(c) The occurrence of a Prohibited Transfer;

(b) If any default shall exist under any other document or instrument regulating, evidencing or securing any of the indebtedness in each case after the expiration of any period of grace expressly allowed for the cure of such default in such other document or instrument;

(a) If any default be made in the due and punctual payment of monies required under the Note or under this Mortgage, as and when the same is due and payable and any applicable period of grace expressly allowed for the cure of such default in such document shall have expired;

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(b) The proceeds of any foreclosure sale of the mortgaged property shall be applied by mortgagee, (i) first, to the payment of all advances made for the account of mortgagee by the holders of any of the indebtedness for the protection of the mortgaged property, with interest upon such advances as herein provided, without preference to one type of claim over another but in the proportion that the unpaid balance due each such holder bears to the unpaid balance of all such advances; (ii) second, to the payment of attorneys' fees and collection costs; (iii) third, to the payment of additional interest as defined in the Note; (iv) fourth, to the payment of accrued but unpaid interest; (v) fifth, to the retirement of the then outstanding balance of principal of the Note and all other indebtedness including Bonus Interest, Part Passon; and (vi) the remainder, if any, shall be paid to mortgagee or such other person or persons entitled thereto by law. The holder or holders of any of the

(a) The holder or holders of the Note and any other indebtedness may at its or their election declare the unpaid balance of the indebtedness immediately due and payable and proceed by suit or suits at law or in equity to enforce the payment of the Note or other such indebtedness in accordance with the terms thereof and hereof, including the right to have a receiver appointed by a court of competent jurisdiction, to foreclose the lien of this mortgage as against all or any portion of the mortgaged property, and to have said mortgaged property sold under the judgment or decree of a court of competent jurisdiction, all in accordance with the provisions of Illinois law applicable to the foreclosure of mortgages.

Section 4.02. Remedies upon Default. In case of the happening of any event of default, then, and in every such case, any or all of the following remedies may be availed of, to wit:

(viii) An event of default shall accrue under the Senior Loan (as hereinafter defined).

(vii) Any order appointing a custodian, receiver, trustee or liquidator of mortgagee or any general partner of mortgagee or all or a major part of such party's property or the mortgaged property is not vacated within sixty (60) days following the entry thereof; or

(vi) Mortgagee or any general partner of mortgagee shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due or shall consent to the appointment of a custodian, receiver or trustee or liquidator of all or the major part of its property, or the premises;

(v) Mortgagee or any general partner of mortgagee shall be adjudicated a bankrupt or shall have an order for relief entered in respect of such party by any bankruptcy court;

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Section 4.03. Mortgagor's Right to Possession of the Mortgaged Property. Upon the happening of any event of default, whether or not the Note or the other indebtedness shall have been declared due and payable, and in addition to the other rights and remedies hereunder and without in any way affecting the lien hereof or the priority of the lien hereof, or any other right of such holder or holders hereunder, such holder or holders by his or their agents or attorneys may, but shall not be obligated to, enter into and upon all or any part of the mortgaged property and exclude mortgagor, mortgagor's agents, servants and lessees and wholly therefrom and, having and holding the same, (i) use, operate, manage and control the mortgaged property or any part thereof. In any such case, the holder or holders of the indebtedness shall have the right to manage the mortgaged property, to carry on the business thereof, to lease all or any part thereof and to exercise all rights and powers of mortgagor with respect to the same, in such manner as such holder or holders may deem proper, and such holder or holders shall be entitled to collect and receive all earnings, income, rents, issues and profits of the same and every part thereof, applying the net proceeds so derived, first, to the cost of maintenance and operation of the mortgaged property and second, to the payment of all of the indebtedness, principal and interest, application to be made first to interest, then to principal, and the balance thereof, if any, shall be paid to the mortgagor. Upon the payment of the aforesaid costs and indebtedness, the mortgaged property shall be returned to mortgagor in its then condition and such holder or holders shall not be liable to mortgagor for any damage to or injury of the mortgaged property, except such as may be caused

(d) The sale of a part of the mortgaged property by foreclosure shall not exhaust the rights of mortgagor under this mortgage, but foreclosures may be made successively until the entire mortgaged property shall be sold or all the indebtedness shall be fully paid.

(c) In addition to the giving of all notices of the foreclosure sale in accordance with applicable law (the "Legal Notice"), mortgagor shall attempt to, at least twenty-one (21) days preceding the date specified in the Legal Notice as the date upon which the mortgaged property will be sold as aforesaid, serve written notice of the proposed sale by certified mail, return receipt requested, on mortgagor in accordance with the notice provisions of this mortgage. Failure of mortgagor to give the notice set forth in this subsection shall not prejudice any of mortgagor's rights hereunder.

Indebtedness shall have equal rights to become the purchaser at any such sale, being the highest bidder, and shall have the right to credit against the portion of the indebtedness held by such holder or holders the amount of any successful bid. Nothing shall preclude such holder from supplementing its allowable credit bid with such amount of additional cash as such holder may deem appropriate.

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(a) subject to the limitations set forth in Section 6.09 hereof, no remedy herein conferred upon or reserved to Mortgagee or the holder of the indebtedness is intended to be exclusive of any other remedy or remedies; but each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon the occurrence of any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein; and every such right and power may be exercised

Section 4.04. Remedies Not Exclusive.

Mortgagee shall surrender possession of the Mortgaged Property to Mortgagee only when all amounts then due under the Note or this Mortgage shall have been paid and all other defaults shall have been cured; provided, however, the same right to take possession shall exist if any subsequent Event of Default shall occur.

(e) exercise such remedies as are available to Mortgagee at law or in equity.

(d) enter into agreements with others to exercise the powers herein granted Mortgagee, all as Mortgagee from time to time may determine in its sole discretion; and

(c) manage and operate the Mortgaged Property and exercise all rights and powers of Mortgagee, on its behalf or otherwise, with respect to the same;

(b) insure or keep the Mortgaged Property insured;

(a) perform such rehabilitation, make all necessary and proper repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures and personal property;

through his or their willful misconduct. If Mortgagee shall, for any reason, fail to surrender or deliver the Mortgaged Property after Mortgagee's demand, Mortgagee may obtain a judgment or decree conferring unto Mortgagee the right of immediate possession of the Mortgaged Property from Mortgagee, to the entry of which judgment or decree Mortgagee hereby specifically consents. Mortgagee shall pay to Mortgagee all costs and expenses of obtaining such judgment or decree and reasonable compensation to Mortgagee, its attorneys and agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien hereof. Upon every such entering upon or taking of possession of the Mortgaged Property, Mortgagee, to the extent permitted by law, may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof, and, from time to time;



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Mortgagee may elect to furnish all tenants with a nondisturbance letter or require that all leases entered into subsequent to the date hereof shall provide that Mortgagee may elect to give the tenant thereunder priority over the lien of this Mortgage; that upon notification by Mortgagee to that effect, the rights and interests of such tenant shall be deemed to have priority over the lien of this Mortgage; and that such tenant shall execute and deliver whatever instruments may be required for such

Section 4.05. Leases. Mortgagee is authorized to foreclose this Mortgage subject to the rights, if any, of any tenants of the Property, or Mortgagee may elect which tenants Mortgagee desires to name as parties defendant in such foreclosure, and the failure to make any such tenant a party defendant to any foreclosure proceedings and to foreclose its rights will not be, nor are asserted by Mortgagee to be, a defense to any proceedings instituted by Mortgagee to collect the sums secured hereby.

(b) The holders of the Indebtedness may resort to any security given by this Mortgage or to any other security now existing or hereafter given to secure the payment of any of the indebtedness, in whole or in part, and in such portions and in such order as may seem best to such holders in their sole and uncontrolled discretion, and any such action shall not in anywise be considered as a waiver of any of the rights, benefits or liens created hereby.

From time to time and as often as may be deemed expedient. Every right, power and remedy given to the Mortgagee may be exercised from time to time and as often as may be deemed expedient by the Mortgagee. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or other Event of Default then existing or impair any rights, powers or remedies consequent thereto. If Mortgagee (i) grants forbearance or an extension of time for the payment of any sums secured hereby; (ii) takes other or additional security for the payment thereof; (iii) waives or does not exercise any right granted in the Note or this Mortgage or the Loan Agreement; (iv) releases any part of the Mortgaged Property from the lien of this Mortgage; (v) consents to the filing of any map, plat or replat of the Mortgaged Property; (vi) consents to the granting of any easement burdening the Mortgaged Property or (vii) makes or consents to any agreement changing the terms of this Mortgage or subordinating the lien hereof, no such act or omission shall release, discharge, modify, change or affect the original liability under the Note or this Mortgage or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor, except as otherwise expressly provided in an instrument executed by Mortgagee. Except as otherwise expressly provided in an instrument executed by Mortgagee, no such act or omission shall preclude Mortgagee from exercising any right, power or remedy granted herein or intended to be granted in case of any Event of Default then existing or of any subsequent Event of Default, nor shall the lien of this Mortgage be altered thereby.

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purposes, and Mortgagee shall be made, constituted and irrevocably appointed as such tenant's attorney-in-fact so to do in the event that tenants shall fail to do so within ten (10) days after written demand from Mortgagee.

Section 4.06. Mortgagee as Tenant-at-Will After Sale. Mortgagee agrees that after any sale hereunder, Mortgagee and/or all parties occupying the mortgaged property, or any part thereof, shall, at the option of the purchaser at such sale, be mere tenants at the will and sufferance of the purchaser(s) at such sale or sales, and that such purchaser(s) shall be entitled to immediate possession thereof, and that if Mortgagee or any such tenant or tenants fail to vacate the mortgaged property, or any part thereof, immediately at such purchaser's request, such purchaser(s) may, and shall have the right to, file or institute an action for forcible entry and detainer or institute or maintain any other action or suit or exercise any other rights or remedies given landlords under any statute or law. Notwithstanding the above, however, at the option of any purchaser at such sale, any tenant leases covering the mortgaged property or any part thereof in effect at the time of such sale shall remain in full force and effect and such purchaser shall automatically become the "landlord" thereunder with all rights and obligations accruing to the landlord thereunder.

Section 4.07. Discontinuance of Proceedings; Positions of Parties Restored. If Mortgagee shall have proceeded to enforce any right or remedy hereunder by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or such proceedings shall have resulted in a final determination adverse to Mortgagee, then and in every such case, Mortgagee and Mortgagee shall be restored to their former positions and rights hereunder and all rights, powers and remedies of the Mortgagee shall continue as if no such proceedings had occurred.

Section 4.08. Interest After Event of Default. Event of Default shall have occurred, all indebtedness, to the full extent permitted by applicable law, shall bear interest from the occurrence of such Event of Default until cured at the default rate (as such term is defined in the Note secured by this Mortgage).

Section 4.09. Waiver of Right of Redemption and Other Rights. To the full extent permitted by law, Mortgagee hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner whatsoever claim to take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, not claim, take or insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the mortgaged property, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision contained, or to any decree, judgment or order of any court of competent jurisdiction; or, after such sale or

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(a) Upon the occurrence of an event of default and at any time thereafter, in addition to all other rights and remedies which the secured party may then have hereunder and under the Code, or otherwise, but subject to the limitations set forth in

Section 5.02. Rights in Event of Default.

Section 5.01. Grant of Security Interest. Without limiting any of the provisions of this mortgage, mortgage, as debtor, and referred to as "debtor" in this Article, does hereby grant unto mortgagee, its successors and assigns, as secured party (hereinafter in this Article called "secured party"), a security interest in all goods, trade names, warrants, guarantees, contracts, rights, furniture and furnishings, equipment, inventory, materials, apparatus, property and fixtures owned by debtor and located on the mortgaged property and used in the operation and enjoyment of the mortgaged property, or otherwise furnished to the tenants, including both those now and those hereafter existing, whether tangible or intangible (excluding cash) (hereinafter called the "collateral") to the full extent that such properties may be subject to the Uniform Commercial Code (hereinafter called the "code") of the state in which the mortgaged property is located. In such regard, mortgagee shall have the right to substitute collateral with collateral of like kind and utility.

Security Agreement

ARTICLE V

sales, claim or exercise any rights under any statute now or hereafter in force to redeem the mortgaged property so sold, or any part thereof, or relating to the marshaling thereof, upon foreclosure sale or other enforcement, thereof. To the full extent permitted by law, mortgagee hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this mortgage on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under mortgagee or title to the mortgaged property subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of mortgagee and of all other persons are and shall be deemed to have hereby been waived to the full extent permitted by applicable law. To the full extent permitted by law, mortgagee agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy held by or otherwise granted or delegated to mortgagee, but will suffer and permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, mortgagee hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the loan documents.

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Section 5.03. Right to Take Possession. Among the rights of Secured Party in the event an Event of Default occurs, and without limitation, the Secured Party shall have the right to take possession of the Collateral and to enter upon any premises where same may be situated for such purpose without being deemed guilty of trespass and without liability for damages thereby occasioned, and to take any action deemed necessary or appropriate or desirable-

(b) Secured Party shall be entitled to apply the proceeds of any sale or other disposition of the Collateral in the same order as set forth in Subsection 4.02(b) hereof. Secured Party shall account to Debtor for any surplus. Reasonable notification of the time and place of any public sale of the Collateral, or reasonable notification of the time at which any private sale or other intended disposition of the Collateral is to be made, shall be sent to Debtor and to any other person entitled to notice under the Code. It is agreed that notice sent or given not less than twenty-one (21) calendar days prior to the taking of the action to which the notice relates is reasonable notification and notice for the purpose of this paragraph.

(vi) Buy the Collateral at any private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations.

(v) Buy the Collateral at any public sale; or

(iv) Apply by appropriate judicial proceedings for appointment of a receiver for the Collateral, or any part thereof, and Debtor hereby consents to any such appointment;

(iii) At its discretion, retain the Collateral in satisfaction of the indebtedness whenever the circumstances are such that Secured Party is entitled to do so under the Code;

(ii) After notification as hereinafter provided, sell or otherwise dispose of, at its office or elsewhere as chosen by Secured Party, all or any part of the Collateral. Any such sale or other disposition may be as a unit or in parcels, by public or private proceedings, and by way of one or more contracts (it being agreed that the sale of any part of the Collateral shall not exhaust Secured Party's power of sale, but sales may be made from time to time until all of the Collateral has been sold or until the indebtedness has been paid in full), and at each or any such sale it shall not be necessary to exhibit the Collateral;

(1) Reduce its claim to judgment, or foreclose or otherwise enforce its security interest in all or any part of the Collateral by any available judicial procedure;

Section 6.09 hereof, Secured Party at its option may:

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(a) If at any time during the term hereof any portion of the mortgaged property shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation, then as and among Mortgagee, Mortgagor and those authorized to exercise such right, all awards payable as a result thereof (after deduction of reasonable fees and expenses of collection, including, but not limited to, rea-

Section 6.01. Condemnation.

Miscellaneous

ARTICLE VI

Section 5.07. Other Remedies of Secured Party. The Secured Party may, at its option, dispose of or have disposed of the collateral in accordance with Secured Party's rights and remedies in respect of the mortgaged property as elsewhere set forth in this Mortgage, without limiting any rights and/or privileges herein granted to Secured Party.

Section 5.06. Financing Statements. Debtor hereby agrees, it requested to do so by the secured party, to execute from time to time any and all financing statements which may be filed in any proper filing offices in the county and state in which the mortgaged property is located. Upon the full payment of the indebtedness, Secured Party shall deliver, in recordable form, appropriate Termination Statements.

Section 5.05. Assembly of Collateral. Secured Party may require Debtor to assemble the collateral and make it available to Secured Party at the mortgaged property. All expenses of retaking, holding, preparing for sale, lease or other use or disposition, selling, leasing or otherwise using or disposing of the collateral and the like which are incurred or paid by Secured Party as authorized or permitted hereunder, including also all attorneys' fees, legal expenses, and costs, shall be added to the indebtedness and Debtor shall be liable therefor.

Section 5.04. Recitals in Instrument of Sale. All recitals in any instrument of assignment or any other instrument executed by Secured Party incident to sale, transfer, assignment, lease or other disposition or utilization of the collateral or any part thereof hereunder shall be full proof of the matters stated therein; no other proof shall be requisite to establish full legal property of the sale or other action or of any fact, condition or thing incident thereto, and all prerequisites of such sale or other action and of any fact, condition or thing incident thereto shall be presumed to have been performed or to have occurred.

ble by Secured Party, at its option and in its discretion, to repair, refurbish or otherwise prepare the collateral for sale, lease or other use or disposition as herein authorized.



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Section 6.03. Partial Invalidity. The invalidity or unenforceability in particular circumstances of any portion of this mortgage shall not extend beyond such provision or such circumstances and no other provision hereof shall be affected thereby. If, from any circumstances whatever, fulfillment of any provision of this mortgage, the Note or any other instrument, or the exercise of any right or option whatsoever contained in the Note, this mortgage or any other instrument, shall involve trans-acting the limit of validity prescribed by the applicable usury statute or any other law, then, in fact, the obligation to be fulfilled shall be reduced to the limit of such validity so that in no event shall mortgagee or any of the successors in title or assigns of mortgagee be obligated in any respect to pay interest on the principal of any of the indebtedness at a higher rate than is permitted by law to be charged, it being the intention of the

Section 6.02. Successors and Assigns. Whenever in this mortgage any of the parties hereto are named or referred to, this shall be deemed to include the successors or assigns of such parties, and all the covenants and agreements in this mortgage contained by or on behalf of mortgagee or mortgage shall be binding upon and inure to the benefit of the successors and assigns of mortgagee and mortgage, whether so expressed or not.

6.01. (1) so long as any event of default shall exist hereunder and remain uncured, mortgagee shall not be entitled to receive any sum of money which it otherwise would have been entitled to receive pursuant to this section were it not for such uncured event of default until all events of default have been cured and all sums to which mortgagee may be entitled hereunder have been received by mortgagee; and (ii) if this mortgage shall be fore-closed upon by reason of any such event of default prior to the payment to mortgagee of any sum which it would otherwise have been entitled to receive hereunder, then mortgagee shall in no event be entitled to receive any such sum.

(b) Notwithstanding anything contained in this section

sonable attorneys' and experts' fees) shall be paid to mortgagee. Upon any such taking, and if mortgagee reasonably deter-mines that the remainder of the mortgaged property can feasibly be restored to a functional unit, mortgagee shall proceed with reasonable diligence to perform any repairs, restorations, alter-ations or replacements made necessary by such taking to restore the mortgaged property to a functional unit. Provided that mort-gagee is not then in default under the terms of the Note or this mortgage, and further provided that mortgagee has received rea-sonable assurances that mortgagee has sufficient funds available (either from condemnation awards or other sources) to complete restoration of the mortgaged property to a functional unit, mort-gagee shall release to mortgagee funds from the condemnation award for such purpose in the same manner as set forth in Subsec-tion 4.03(b) hereof. Upon completion of such restoration any remaining proceeds shall be applied to the payment of the Indebt-ness.

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VMS Mortgage Investment Fund  
8700 West Bryn Mawr Ave.  
Chicago, Illinois 60631  
Attn: Mortgage Servicing Department

If to Mortgagee:

Davidson & Schwartz  
River Center  
Suite 394  
111 North Canal Street  
Chicago, Illinois 60606  
Attn: Arnold M. Schwartz, Esq.

- and -

David S. Sher and Company  
180 North LaSalle Street  
Suite 3112  
Chicago, Illinois 60601  
Attn: Lawrence Oberman

With copies to:

VMS 219 Lake Shore Drive, Inc.  
c/o VMS Realty Partners  
8700 West Bryn Mawr Avenue  
Chicago, Illinois 60631  
Attn: Robert G. Byron, Esq.

If to Mortgagee:

Section 6.04. Notices. Any notice to be given or to be served upon any party hereto, in connection with this Mortgage, must be in writing and may be given by certified or registered mail, return receipt requested, and shall be deemed to have been given and received when a certified or registered letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail, and if given otherwise than by certified or registered mail, it shall be deemed to have been given when delivered to and received by the party to whom it is addressed. Such notices shall be given to the parties hereto at the addresses set forth below. Any party hereto may, at any time, by giving five (5) days written notice to the other party hereto, designate any other address in substitution of the following address to which such notice shall be given:

parties to conform strictly to the applicable usury laws of the state in which the mortgaged property is located.

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Section 6.09 Limitation of Liability. Mortgagee does hereby specifically covenant and agree, on its own behalf and on behalf of any future holder or holders of the Note, that Mortgagee or any future holder or holders of the Note shall enforce payment of any obligation contained in this Mortgage or in the Note solely from the mortgaged property and that no deficiency, after applying the net proceeds of any foreclosure or other judicial sale of the mortgaged property, shall ever be asserted against Mortgagee, or any of its partners, officers, directors, shareholders or officials, or their partners, heirs, administrators, executors, successors or assigns, or in any manner realized upon the personal liability of Mortgagee or any of its partners, officers, directors, shareholders or officials. This covenant is not intended as any release or discharge of any indebtedness represented by the Note and other loan documents and secured by this Mortgage, but is a covenant on behalf of Mortgagee and any future holder or holders of the Note not to sue Mortgagee, or any of its partners, officers, directors, shareholders or officials, or their partners, heirs, administrators, executors, successors or assigns for a deficiency, and the indebtedness represented by the Note and other loan documents shall remain in full force and

Section 6.08. Required Notices. Mortgagee shall notify Mortgagee promptly of the occurrence of any of the following: (1) receipt of notice from any governmental authority relating to the violation of any rule, regulation, law or ordinance, the enforcement of which would materially and adversely affect the mortgaged property; (2) receipt of any notice of default from any tenant leasing all or any portion of the mortgaged property; (3) commencement of any judicial or administrative proceedings by or against or otherwise adversely affecting Mortgagee or the mortgaged property; and (4) the occurrence of any event of default under any lease of the mortgaged properties.

Section 6.07. Governing Law. This Mortgage shall be construed, interpreted, enforced and governed by and in accordance with the laws and decisions of the State of Illinois.

Section 6.06. Counterparts. This Mortgage may be executed in several counterparts, all or any of which may be treated for all purposes as an original and shall constitute and be one and the same instrument.

Section 6.05. Amendments. This Mortgage cannot be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any such change, modification or discharge is sought.

Shefsky, Saitlin & Froelich, Ltd.  
444 N. Michigan Ave - Suite 2300  
Chicago, Illinois 60611  
Attn: Kenneth W. Bosworth, Esq.

With a copy to:

UNOFFICIAL COPY

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THIS MORTGAGE is executed by the American National Bank and Trust Company of Chicago, not personally but as trustee as afore- said in the exercise of the power and authority conferred upon and vested in it as such Trustee and it is expressly understood and agreed that nothing herein or in the Note contained shall be construed as creating any liability on American National Bank and Trust Company of Chicago personally 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 mortgagee and by every person now or hereafter claiming any right or security hereunder, and that so far as American National Bank and Trust Company of Chicago personally and its successors are concerned, the legal holder or holders of said Note and the owner or owners of any indebtedness accruing here- under shall look solely to the premises hereby conveyed for the payment thereof, by the enforcement of the lien hereby created, in the manner herein and in said Note provided or by action to

Sections of this Mortgage and the underlining of certain cross references herein are inserted for convenience only and shall not affect the meaning or interpretation hereof.

Section 6.11 Intentionally deleted.

an Illinois general partnership in favor of Mortgagee. Guaranty dated of even date herewith made by VMS Realty Partners, of the Guarantor as contained in that certain Agreement of going to the contract, limit, modify, supercede or amend the obliga- full. However, notwithstanding anything contained in the fore- sale proceeds does in fact discharge the Note and the judgment in faction of such judgment, whether or not the application of the to the Note and/or such judgment, Mortgagee will execute a satis- of the proceeds of any seizure and sale of the mortgaged property solely against the mortgaged property and that, after application holders of the Note, that judgment proceedings shall be enforced or agree, on its own behalf and on behalf of any future holder or ordinary process, Mortgagee does hereby specifically covenant and brought to enforce payment of the Note or other loan documents by proceedings as hereinabove provided. In the event that suit is and to receive the proceeds of any condemnation or eminent domain and policy maintained or carried, as provided in this mortgage, and profits, and to receive any proceeds of loss under any insur- either before or during any such foreclosure proceeding the rents of the Note or other loan documents, to foreclose this mortgage by a sale of the mortgaged property, and to collect and receive other legal rights and remedies, including, but without limita- of default in the payment of the indebtedness, or any part there- of, or of any of the covenants or conditions of this mortgage or of the Note or other loan documents, to foreclose this mortgage and to receive the proceeds of any condemnation or eminent domain and to receive the proceeds of any condemnation or eminent domain proceedings as hereinabove provided. In the event that suit is brought to enforce payment of the Note or other loan documents by ordinary process, Mortgagee does hereby specifically covenant and agree, on its own behalf and on behalf of any future holder or holders of the Note, that judgment proceedings shall be enforced solely against the mortgaged property and that, after application of the proceeds of any seizure and sale of the mortgaged property to the Note and/or such judgment, Mortgagee will execute a satisfaction of such judgment, whether or not the application of the sale proceeds does in fact discharge the Note and the judgment in full. However, notwithstanding anything contained in the fore- going to the contract, limit, modify, supercede or amend the obliga- tions of the Guarantor as contained in that certain Agreement of Guaranty dated of even date herewith made by VMS Realty Partners, an Illinois general partnership in favor of Mortgagee.

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Property of Cook County Clerk's Office

IN WITNESS WHEREOF, American National Bank and Trust Company of Chicago not personally but as Trustee as aforesaid, has caused these presents to be signed by one of its Vice-Presidents or Assistant Vice-Presidents and its corporate seal to be hereunto affixed and attested by its Assistant Secretary, the day and year first above written.

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

By: [Signature]  
Vice-President

Attest: [Signature]  
Assistant Secretary

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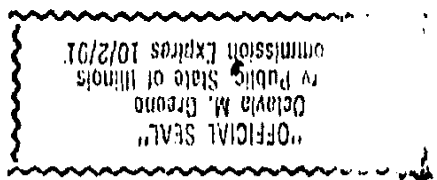
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Property of Cook County

I, a Notary Public in and for said County, in the State of Illinois, do hereby certify that Vice-President of American National Bank and Trust Company of Chicago, a national banking association, and Assistant Secretary of said national banking association, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice-President and Assistant Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts, and as the said instrument is a free and voluntary act of said national banking association, for the uses and purposes therein set forth; and the said Assistant Secretary did also then and there acknowledge that he, as custodian of the corporate seal of said national banking association, did affix the said corporate seal of said national banking association to said instrument as his own free and voluntary act, and as the free and voluntary act of said national banking association, as Trustee, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 1988.



Notary Public  
*[Signature]*

My commission expires \_\_\_\_\_

STATE OF ILLINOIS )  
COUNTY OF COOK )  
SS. )

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Property of Cook County Clerk's Office

Easement for the benefit of Parcel 1 aforesaid as created by Agreement made by and between 229 Lake Shore Building Corporation, a corporation of Illinois to 219 Lake Shore Drive Building Corporation dated February 1, 1926 and recorded October 19, 1927 as Document 9814268 for driveway together with ingress and egress to the same over that part of the following described parcel of land used as a driveway, the East 16 feet of Lot 9 and all of Lots 10 and 11 in Holbrook and Sheppard's Subdivision of part of Block 8 in Canal Trustee's Subdivision of the South Fractional Quarter of Fractional Section 3, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 2:

Lots 7 and 8 and West 34 feet of Lot 9 in Holbrook and Sheppard's Subdivision of part of Block 8 in Canal Trustee's Subdivision of the South Fractional Quarter of Fractional Section 3, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois;

Parcel 1:

EXHIBIT A : LEGAL DESCRIPTION

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Property of Cook County Clerk's Office

17-03-208-006  
219 E. LAKE SHORE DR.  
Chicago IL

Those matters shown as Exceptions Numbered 3, 4, 5, 7, 8, 9  
10 and 14 in Chicago Title Insurance Company Commitment for Title  
Insurance Number 71-43-947, bearing an effective date of May 20,  
1988.

LIENS, ENCUMBRANCES, RESTRICTIONS,  
EXCEPTIONS, RESERVATIONS AND EASEMENTS  
AFFECTING THE PROPERTY

EXHIBIT B

88371824