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BOX 334

1515 West North Avenue  
Melrose Park, Illinois

Address of Premises:

12-34-403-013

Permanent Tax Index Number:

This Instrument Prepared By and  
to be Returned After Recording to:

Alvin L. Kruse  
Elizabeth P. Strand  
Seyfarth, Shaw, Fairweather &  
Geraidson  
Suite 4200  
55 East Monroe Street  
Chicago, Illinois 60603

Dated as of July 1, 1988

THE NORTHERN TRUST COMPANY,  
an Illinois banking corporation

-88-371058

to

LASALLE NATIONAL BANK,  
a national banking association,  
as Trustee under a Trust Agreement,  
dated May 17, 1988,  
and known as Trust No. 113252

from

CONSTRUCTION LOAN MORTGAGE AND SECURITY AGREEMENT

COOK COUNTY RECORDER

#8462 # D \* 88-371058

194444 TRAN 1577 88/16/88 14:16:00

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Property of Cook County Clerk's Office

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Property of Cook County Clerk's Office

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DEFINITIONS

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(b) All right, title and interest of the Mortgagor in and to all leases or subleases covering the said real estate and improvements or any portion thereof now or hereafter existing or entered into, including, but not limited to, the leases (as defined in Article I hereof), and all right, title and interest of the Mortgagor thereunder, including, without limitation, all

(a) All rents, issues, profits, royalties and income with respect to the said real estate and improvements and other benefits derived therefrom, subject to the right, power and authority given to the Mortgagor to collect and apply same; and

TOGETHER WITH THE FOLLOWING:

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness hereby secured, the receipt and sufficiency of which are hereby acknowledged, the Mortgagor hereby grants, bargains, sells, conveys and mortgages to the Mortgagee and its successors and assigns forever, under and subject to the terms and conditions hereinafter set forth, all of the Mortgagor's right, title and interest in and to the real property located in the Village of Melrose Park, County of Cook, State of Illinois, described in Exhibit A attached hereto and by this reference incorporated herein, including all improvements now and hereafter located thereon;

NOW, THEREFORE, THIS CONSTRUCTION LOAN MORTGAGE AND SECURITY AGREEMENT WITNESSETH THAT:

WHEREAS, the Note evidences a construction loan being made by the Mortgagor to the Mortgagor, for the benefit of M. P. Associates Limited Partnership, an Illinois limited partnership (the "Beneficiary"), for the purpose of financing the payoff of existing indebtedness on the real estate described in Exhibit A attached hereto and the development of a 45,344 square foot retail shopping center thereon;

WHEREAS, the Mortgagor has, concurrently herewith, executed and delivered to the Mortgagee its Construction Loan Mortgage Note (the "Note") bearing even date herewith in the principal sum of FOUR MILLION THREE HUNDRED TWENTY-FIVE THOUSAND and No/100 Dollars (\$4,325,000), payable to the order of the Mortgagee, due on December 1, 1989; and

W I T N E S S E T H:

THIS CONSTRUCTION LOAN MORTGAGE AND SECURITY AGREEMENT dated as of July 1, 1988, from LASALLE NATIONAL BANK, a national banking association, as Trustee under a Trust Agreement dated May 17, 1988, and known as Trust No. 113252, and not personally (the "Mortgagor"), to THE NORTHERN TRUST COMPANY, an Illinois banking corporation (the "Mortgagee");

CONSTRUCTION LOAN MORTGAGE AND SECURITY AGREEMENT

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(h) All fixtures now or hereafter owned by the Mortgagor and attached to or contained in and used in connection with the said real estate and improvements, including, but not limited to, all machinery, motors, elevators, fittings, radiators, awnings, shades, screens, and all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air-conditioning and sprinkler equipment and fixtures and appurtenances thereto; and all items of furniture, furnishings, equipment and personal property owned by the Mortgagor and used or useful in the operation of the said real estate and improvements; and all renewals, substitutions and replacements for any or all of the foregoing, and all proceeds therefrom, whether or not the same are or shall be attached to the said real estate and improvements in any manner; it being mutually agreed, intended and declared that all the aforesaid property owned by the Mortgagor and placed by it on and in the said real estate and

(g) All materials intended for construction, reconstruction, alteration and repairs of the said real estate and improvements, all of which materials shall be deemed to be included within the said real estate and improvements immediately upon the delivery thereof to the said real estate; and

(f) Any and all buildings and improvements now or hereafter erected on the said real estate, including, but not limited to, all the fixtures, attachments, appliances, equipment, machinery, and other articles attached to said buildings and improvements; and

(e) All right, title and interest of the Mortgagor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the said real estate and improvements, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the said real estate and improvements; and

(d) All easements, rights-of-way and rights used in connection with the said real estate and improvements or as means of ingress and egress thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same; and

(c) All privileges, reservations, allowances, hereditaments and appurtenances belonging or pertaining to the said real estate and improvements and all rights and estates in reversion or remainder and all other interests, estates or other claims, both in law and in equity, which the Mortgagor now has or may hereafter acquire in the said real estate and improvements; and

cash security deposits, advance rentals, and deposits or payments of similar nature; and

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(d) Payment of all sums advanced by the Mortgagee to perform any of the terms, covenants and provisions of this Mortgage or any of the other Loan Documents (as defined in Article I hereof), or otherwise advanced by the Mortgagee pursuant to the provisions hereof or any of such other documents to protect the property hereby mortgaged and pledged; and

(c) Performance and observance by the parties hereto of all of the terms, covenants and provisions of the other Loan Documents (as defined in Article I hereof); and

(b) Performance and observance by the Mortgagor of all of the terms, covenants and provisions of this Mortgage; and

(a) Payment of the indebtedness evidenced by the Note, and including the principal thereof and interest thereon and any and all modifications, extensions and renewals thereof, and performance of all obligations of the Mortgagor under the Note; and

FOR THE PURPOSE OF SECURING.

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

the said real estate and improvements and the property and interests described in (a) through (i) above being collectively referred to herein as the "Premises".

(1) All the estate, interest, right, title, other claim or demand, including claims or demands with respect to any proceeds of insurance related thereto, which the Mortgagor now has or may hereafter acquire in the said real estate and improvements or personal property and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the said real estate and improvements or personal property, including without limitation any awards resulting from a change of grade of streets and awards for severance damages;

Mortgagee as secured party; and in such property, which the Mortgagor hereby grants to the Illinois for the purpose of creating hereby a security interest security agreement under the Uniform Commercial Code of Commercial Code of Illinois), this Mortgage is deemed to be a constitute a "fixture" (as such term is defined in the Uniform Commercial Code of Illinois), this Mortgage is deemed to be a not so form a part and parcel of the real estate or does not Mortgage; and as to any of the aforesaid property which does of this Mortgage to be real estate and covered by this form a part and parcel of the real estate and for the purpose improvements shall, so far as permitted by law, be deemed to



"Hazardous Material" means 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 of 1980, as amended, any so-called "Superfund" or "Superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating,

the individual guarantors to the Mortgagee.  
"Guaranty" means the Construction Loan Guaranty of Payment and Performance dated as of July 1, 1988, from the Beneficiary and

an Illinois limited partnership.  
"Beneficiary" means M. P. Associates Limited Partnership,

July 1, 1988, from the Beneficiary to the Mortgagee.  
"Beneficial Interest Assignment" means the Construction Loan Collateral Assignment of Beneficial Interest dated as of

Mortgagor and the Beneficiary to the Mortgagee.  
"Assignment of Rents" means the Construction Loan Assignment of Rents and Leases dated as of July 1, 1988, from the

have the respective meanings specified in this Section.  
Section (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this Mortgage shall Section 1.1. Definitions. The terms defined in this

DEFINITIONS

ARTICLE I

FOLLOWS:

AND SECURITY AGREEMENT, THE MORTGAGOR HEREBY COVENANTS AND AGREES AS TO PROTECT THE SECURITY OF THIS CONSTRUCTION LOAN MORTGAGE

in full force and effect.  
contained, then this Mortgage shall be released, otherwise to remain well and truly keep and perform all of the covenants herein all other sums herein provided for, or secured hereby, and shall principal and all interest as provided in the Note, and shall pay PROVIDED, HOWEVER, that if the Mortgagor shall pay the

representatives.  
benefit of the Mortgagor, its successors, assigns and legal its sole discretion at the request of and to and for the exceeding \$10,000,000) which may be made by the Mortgagee in (f) Payment of any future or further advances (not

and  
indebtedness hereby secured or any obligation secured hereby; evidence or further secure the payment and performance of any covenants and provisions of any other instrument given to (e) Performance and observance of all of the terms,

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relating to or imposing liability or standards on conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

"Improvements" means a 45,344 square foot retail shopping center to be constructed on the Premises.

"Individual Guarantors" means Michael S. Schwendener, Peter T. Childs, Jamie P. Childs, Stuart B. Lenhoff and James M. Arnold.

"Leases" means the lease or leases described in Exhibit B attached hereto.

"Loan Agreement" means the Construction Loan Agreement dated as of July 1, 1988, by and among the Mortgagor, the Beneficiary and the Mortgagee.

"Loan Documents" means the Loan Agreement, the Note, this Mortgage, the Assignment of Rents, the Security Agreement, the Beneficial Interest Assignment, the Guaranty, and all other documents and instruments at any time evidencing and securing the indebtedness secured by this Mortgage.

"Mortgage" means this Construction Loan Mortgage and Security Agreement dated as of July 1, 1988, from the Mortgagor to the Mortgagee.

"Mortgagee" means The Northern Trust Company, an Illinois banking corporation.

"Mortgagor" means LaSalle National Bank, a national banking association, as Trustee under a Trust Agreement dated May 17, 1988, and known as Trust No. 113252.

"Note" means the Construction Loan Mortgage Note of the Mortgagor dated July 1, 1988, in the principal amount of \$4,325,000, made payable to the order of the Mortgagee.

"Premises" means the real estate described in Exhibit A attached hereto and all improvements now and hereafter located thereon, and all other property, rights and interests described in the foregoing granting clauses of this Mortgage.

"Security Agreement" means the Construction Loan Security Agreement dated as of July 1, 1988, from the Beneficiary to the Mortgagee.

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Section 2.1. Payment of Indebtedness. The Mortgagor covenants and agrees that it will pay when due the principal of and all other sums which may become due pursuant thereto or hereto, and all other indebtedness hereby secured as described in the foregoing granting clauses of this Mortgage, including, but not limited to, all charges, fees and all other sums to be paid by the Mortgagor as provided in the Loan Documents, and that it will duly and punctually perform, observe and comply with all of the terms, provisions and conditions herein and in the other Loan Documents provided to be performed and observed by the Mortgagor. The Note, which is hereby incorporated into this Mortgage by reference with the same effect as it set forth in full herein, is in the principal amount of \$4,325,000, and bears interest at a variable rate of 1% per annum in addition to the Mortgagor's Prime Rate (as defined below) from time to time in effect while the Note is outstanding. For such purposes, the term "Prime Rate" shall mean the rate of interest per year announced from time to time by the Mortgagor called its prime rate, which rate at any time may not be the lowest rate charged by the Mortgagor. Changes in the rate of interest on the Note resulting from a change in the Prime Rate shall take effect on the date of change in the Prime Rate set forth in each announcement. Interest is payable on the Note in arrears on the first day of each month commencing with the month following the month in which the first disbursement of principal occurs. All of the unpaid principal of and accrued interest on the Note shall be due and payable on December 1, 1989.

Section 2.2. Escrow Deposits. In order to provide moneys for the payment of the Impositions on the Premises required to be paid by the Mortgagor pursuant to Section 2.6 hereof and the premiums on the insurance required to be carried by the Mortgagor pursuant to Section 2.4 hereof, the Mortgagor shall pay to the Mortgagor with each monthly interest payment on the Note such amount as the Mortgagor shall estimate will be required to accumulate, by the date 30 days prior to the due date of the next annual installment of such Impositions and insurance premiums, through substantially equal monthly payments by the Mortgagor to the Mortgagor, amounts sufficient to pay such next annual Impositions and insurance premiums. All such payments shall be held by the Mortgagor in escrow, and the Mortgagor shall not be obligated to pay interest thereon. Amounts held in such escrow shall be made available by the Mortgagor to the Mortgagor for the payment of the Impositions and insurance premiums on the Premises when due, or may be applied thereto by the Mortgagor if it in its sole discretion so elects. The Mortgagor may at any time and from time to time waive the requirement for the escrow deposits provided for in this Section. In the event of any such waiver, the Mortgagor may thereafter in its sole discretion elect to require that the

COVENANTS AND AGREEMENTS OF MORTGAGOR

ARTICLE II

(k) subject to Section 2.13(a) hereof, keep the Premises free and clear of all liens and encumbrances of every sort.

(j) not initiate or acquiesce in any zoning change or reclassification of the Premises; and

(i) not commit, suffer or permit any act to be done in or upon the Premises in violation of any law, ordinance or regulation;

(h) keep and maintain the Premises and adjoining grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair (provided that during the period of the development of the Improvements, the Mortgagee shall use its best efforts to comply with the foregoing) and free of nuisance;

(g) not commit or permit any waste or deterioration of the Premises or any portion thereof;

(f) comply with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Premises or any part thereof or requiring any alterations or improvements;

(e) subject to Section 2.13(a) hereof, pay when due all claims for labor performed and materials furnished to and for the Premises;

(d) promptly repair and restore any portion of the Premises which may become damaged or be destroyed so as to be of at least equal value and of substantially the same character as prior to such damage or destruction;

(c) complete promptly and in a good and workmanlike manner the construction of the Improvements as contemplated by the loan agreement, or any other improvements which may be constructed on or at the Premises;

(b) except for work in connection with the redevelopment of the Premises pursuant to the plan heretofore submitted to the Mortgagee, not remove, demolish or substantially alter (except such alterations as may be required by laws, ordinances or governmental regulations) any of the improvements which are a part of the Premises;

(a) subject to work permitted under Section 2.3(b) hereof, keep the Premises in good condition and repair;

Section 2.3. Completion, Maintenance, Repair, Alterations. The Mortgagee covenants and agrees that it will:

Mortgagee commence making such escrow deposits by giving the Mortgagee not less than 10 days' written notice of such election. No such waiver shall impair the right of the Mortgagee thereafter to require that such escrow deposits be made.

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(g) If the Premises are located in an area that has been identified by the United States Department of Housing and Urban Development as an area having special flood hazards and if the

in such amount as the Mortgagee may require.  
in (a) and (e) above, for a period of not less than six months  
Premises caused by the perils covered by the policies described  
insurance on the Premises covering loss of the use of the  
(f) Business interruption, use and occupancy or rent loss

such amounts as are satisfactory to the Mortgagee  
of occupancy or use arising from any breakdown therein, all in  
equipment located on the Premises, and insurance against loss  
heating, air conditioning and elevator equipment and escalator  
vessels, air tanks, boilers, machinery, pressure piping,  
(e) Boiler and machinery insurance covering pressure

endorsement.  
containing the "permission to occupy upon completion of work"  
performed and equipment, supplies and materials furnished, and  
in nonreporting form, covering the total value of work  
and transit coverage, with a deductible not to exceed \$10,000,  
physical loss, on a completed value basis, including collapse  
Premises, builder's risk insurance against all risks of  
(d) During the course of any construction or repair at the

requirements of Illinois law.  
(c) Workers' compensation insurance in accordance with the

to property.  
personal injury or death and \$500,000 per occurrence for damage  
\$1,000,000 for one person and \$3,000,000 per occurrence for  
immediate minimum protection to a limit of not less than  
streets, sidewalks and passageways, such insurance to afford  
damage occurring on, in or about the Premises and the adjoining  
including without limitation bodily injury, death or property  
on an occurrence basis against claims for personal injury,  
coverage for elevators and escalators, if any, on the Premises,  
(b) Comprehensive public liability insurance, including

payable for any casualty.  
excavations, foundations and footings below the lowest basement  
floor), and with not more than \$10,000 deductible from the loss  
full replacement cost thereof (exclusive of the cost of  
"fire and extended coverage", in an amount not less than the  
any of the risks covered by insurance of the type now known as  
insurance against loss or damage to the Premises by fire and  
(a) Except when Section 2.4(d) hereof is applicable,

Section 2.4. Required insurance. The Mortgagee shall at  
all times provide, maintain and keep in force, or cause to be  
provided, maintained and kept in force, the following policies of  
insurance:

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(a) The Mortgagor agrees to pay or cause to be paid, prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, including without limitation any non-governmental levies or assessments such as maintenance charges, owner association dues or charges or fees, levies or charges resulting from covenants, conditions and restrictions affecting the Premises, which are assessed or imposed upon the Premises, or become due and payable, and which create, may create or appear to create a lien upon the Premises, or any part thereof (all of which taxes, assessments and

Section 2.6. Taxes and Impositions.

All policies of insurance required by the terms of this Mortgage shall be issued by companies and in amounts in each company maintained for and name the Mortgagor, the beneficiary and the Mortgagor as insureds, as their respective interests may appear, and the policies required by paragraphs (a), (d), (e), (f) and (g) of Section 2.4 hereof shall have attached thereto a mortgagor's loss payable endorsement for the benefit of the Mortgagor in form satisfactory to the Mortgagor. The Mortgagor shall furnish the Mortgage with certificates of all required policies of insurance. At least 30 days prior to the expiration of each such policy, the Mortgagor shall furnish the Mortgagor with evidence satisfactory to the Mortgagor of the payment of the premium and the reissuance of a policy continuing insurance in force as required by this Mortgage. Each policy of insurance required by this Mortgage shall contain a provision that such policy will not be cancelled or materially amended, including any reduction in the scope or limits of coverage, without at least 30 days' prior written notice to the Mortgagor.

Section 2.5. Delivery of Policies; Payment of Premiums.

All policies of insurance required by terms of this Mortgage shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of the Mortgagor or beneficiary which might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of set-off, counterclaim or deductions against the Mortgagor, and shall provide that the amount payable for any loss shall not be reduced by reason of co-insurance.

(h) Such other insurance, and in such amounts, as may from time to time be reasonably required by the Mortgagor against the same or other hazards.

sale of flood insurance has been made available under the National Flood Insurance Act of 1968, flood insurance in an amount at least equal to the replacement cost of the Premises or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less.



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Section 2.8. Actions by Mortgagee to Preserve Premises. Should the Mortgagor fail to make any payment or to do any act as

Section 2.7. Utilities. The Mortgagor shall pay or cause to be paid when due all utility charges which are incurred by the Mortgagor or others for the benefit of or service to the Premises or which may become a charge or lien against the Premises for gas, electricity, water or sewer services furnished to the Premises and all other assessments or charges of a similar nature, whether public or private, affecting the Premises or any portion thereof, whether or not such taxes, assessments or charges are liens thereon.

(c) The Mortgagor shall have the right before any delinquency occurs to contest or object to the amount or validity of any Imposition by appropriate legal proceedings properly instituted and prosecuted in such manner as shall stay the collection of the contested Impositions and prevent the sale or forfeiture of the Premises to collect the same; provided that no such contest or objection shall be deemed or construed in any way as relieving, modifying or extending the Mortgagor's covenants to pay any such Imposition at the time and in the manner provided in this Section unless the Mortgagor has given prior written notice to the Mortgagee of the Mortgagor's intent to so contest or object to an Imposition, and unless, at the Mortgagee's satisfaction, in its reasonable judgment, that legal proceedings instituted by the Mortgagor contesting or objecting to such Impositions shall conclusively operate to prevent the sale or forfeiture of the Premises, or any part thereof, to satisfy such Imposition prior to final determination of such proceedings; and/or (ii) the Mortgagor shall furnish a good and sufficient bond or surety as requested by and satisfactory to the Mortgagee, in its reasonable discretion, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale or forfeiture of the Premises during the pendency of such contest, adequate fully to pay all such contested Impositions and all interest and penalties upon the adverse determination of such contest.

(b) The Mortgagor shall furnish to the Mortgagee within 30 days after the date upon which any Imposition is due and payable by the Mortgagor, official receipts of the appropriate taxing authority, or other proof satisfactory to the Mortgagee, evidencing the payment thereof.

other governmental charges and non-governmental charges of the above-described or like nature are hereinafter referred to as "Impositions"; provided however, that if, by law, any such Imposition is payable, or at the option of the taxpayer may be paid, in installments, the Mortgagor may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.

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and in the manner provided herein or in any of the other loan documents, the Mortgagee in its own discretion, without obligation, so to do and without releasing the Mortgagee from any obligation, may make or do the same in such manner and to such extent as it may deem necessary to protect the security hereof. In connection therewith (without limiting its general powers), the Mortgagee shall have and is hereby given the right, but not the obligation, upon five days' notice to the Mortgagee, or in the case of emergencies immediately, (i) to enter upon and take possession of the Premises; (ii) to make additions, alterations, repairs and improvements to the Premises which it may reasonably consider necessary and proper to keep the Premises in good condition and repair; (iii) to appear and participate in any action or proceeding affecting or which may affect the Premises, the security hereof or the rights or powers of the Mortgagee; (iv) to pay any Impositions (as defined in Section 2.6 hereof) asserted against the Premises and to do so according to any bill, statement or estimate procured from the appropriate office without inquiry into the accuracy of the bill, statement or estimate or into the validity of any Imposition; (v) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the reasonable judgment of the Mortgagee may affect or appear to affect the Premises or the security of this Mortgage or which may be prior or superior hereto; (vi) to complete the construction of the Improvements and to take such actions in connection therewith as are provided for in the Loan Agreement; and (vii) in exercising such powers, to pay necessary expenses, including employment of and payment of compensation to counsel or other necessary or desirable consultants, contractors, agents and other employees. The Mortgagee irrevocably appoints the Mortgagee its true and lawful attorney in fact, at the Mortgagee's election, to do and cause to be done all or any of the foregoing in the event the Mortgagee shall be entitled to take any or all of the action provided for in this Section. The Mortgagee shall immediately, upon demand therefor by the Mortgagee, pay all costs and expenses reasonably incurred by the Mortgagee in connection with the exercise by the Mortgagee of the foregoing rights, including without limitation, costs of evidence of title, court costs, appraisals, surveys and attorneys' fees, all of which shall constitute so much additional indebtedness secured by this Mortgage immediately due and payable, with interest thereon at or rate two percent (2%) above the then prevailing interest rate on the Note.

Section 2.9. Damage and Destruction.

(a) The Mortgagee shall give the Mortgagee prompt notice of any damage to or destruction of any portion or all of the Premises, and the provisions of paragraphs (b) through (d) of this Section shall apply in the event of any such damage or destruction.

(b) In the case of loss covered by policies of insurance, the Mortgagee is hereby authorized at its option either (i) in the case of losses in excess of \$250,000, to settle and adjust any claim under such policies without the consent of the Mortgagee

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on such terms as the Mortgagee shall reasonably determine, or (ii) to allow the Mortgagee to agree with the insurance company or companies on the amount to be paid upon the loss; and in any case the Mortgagee shall, and is hereby authorized to, collect and receipt for any such insurance proceeds; and the reasonable expenses incurred by the Mortgagee in the adjustment and collection of insurance proceeds shall be so much additional indebtedness secured by this Mortgage, and shall be reimbursed to the Mortgagee upon demand.

(c) In the event of any insured damage to or destruction of the Premises or any part thereof the proceeds of insurance payable as a result of such loss shall be applied upon the indebtedness secured by this Mortgage or applied to the repair and restoration of the Premises, as the Mortgagee in its sole discretion shall elect.

(d) In the event that the Mortgagee shall elect that proceeds of insurance are to be applied to the repair and restoration of the Premises, the Mortgagee hereby covenants promptly to repair and restore the same. In such event such proceeds shall be made available from time to time, to pay or reimburse the costs of such repair and restoration in the manner and on the terms provided in the Loan Agreement for disbursements of construction loan proceeds.

(e) Notwithstanding any provision herein to the contrary and in particular Section 2.9(c) hereof, in the event of any such damage or destruction, the Mortgagee shall make the proceeds of insurance received as a result of such damage or destruction available for the repair and restoration of the Premises, subject to the following conditions: (i) that there does not then exist any event of default under this Mortgage or any of the other Loan Documents, or any condition which with the passage of time or the giving of notice, or both, would constitute such an event of default; (ii) that the Mortgagee shall first be given satisfactory proof that such improvements have been fully repaired and restored, or that by the expenditure of such money will be fully repaired and restored, free and clear of all liens, except the lien of this Mortgage; (iii) that in the event such proceeds shall be insufficient to repair and restore the Premises, the Mortgagee shall deposit promptly with the Mortgagee the amount of such deficiency; (iv) that in the event the Mortgagee shall fail within a reasonable time to repair and restore the Premises, then the Mortgagee at its option, may repair and restore the Premises for or on behalf of the Mortgagee and for such purpose may do all necessary acts, including using said funds deposited by the Mortgagee as aforesaid; (v) that a waiver of the right of subrogation shall be obtained from any insurer under such policies of insurance who, at that time, claims that no liability exists as to the Mortgagee or the then owner or the assured under such policies; (vi) such insurance proceeds shall be disbursed as provided in Section 2.9(d) hereof; and (vii) that the excess of said insurance proceeds above the amount necessary to

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Section 2.11. Inspection of Premises. The Mortgagee, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon or in any part of the Premises for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of this Mortgage or any of the other Loan Documents.

(d) In the event that the Mortgagee shall elect that such proceeds are to be applied to the repair and restoration of the Premises, the Mortgagee hereby covenants promptly to repair and restore the same. In such event such proceeds shall be made available, from time to time, to pay or reimburse the costs of such repair and restoration in the manner and on the terms provided in the Loan Agreement for disbursements of construction loan proceeds.

(c) In the event that any portion of the Premises are taken or damaged as aforesaid, all such proceeds shall be applied upon the indebtedness secured by this Mortgage or applied to the repair and restoration of the Premises, as the Mortgagee in its sole discretion shall elect.

(b) The Mortgagee shall be entitled to all compensation, awards and other payments or relief therefor which are made to the Mortgagee, and shall be entitled at its option to commence, appear in and prosecute in its own name any action or proceedings. The Mortgagee shall also be entitled to make any compromise or settlement in connection with such taking or damage on such terms, as the Mortgagee shall reasonably determine. All proceeds of compensation, awards, damages, rights of action and proceeds awarded to the Mortgagee are hereby assigned to the Mortgagee and the Mortgagee agrees to execute such further assignments of such proceeds as the Mortgagee may require.

(a) Should the Premises or any part thereof or interest therein be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner, or should the Mortgagee receive any notice or other information regarding any such proceeding, the Mortgagee shall give prompt written notice thereof to the Mortgagee, and the provisions of paragraphs (b) through (d) of this Section shall apply.

Section 2.10. Eminent Domain.

complete such repair and restoration shall be applied as a credit upon any portion, as selected by the Mortgagee, of the indebtedness secured hereby. In the event any of the said conditions are not or cannot be satisfied, then the alternate disposition of such insurance proceeds as provided in Section 2.9(c) hereof shall become applicable. Under no circumstances shall the Mortgagee become personally liable for the fulfillment of the terms, covenants and conditions contained in any of the said leases or subleases nor obligated to take any action to repair and restore the Premises.

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(c) In the event that the Mortgagor shall sell, transfer, convey or assign the title to all or any portion of the Premises, or in the event that the Beneficiary shall sell, transfer, convey or assign the beneficial interest under the Trust Agreement by which the Mortgagor was created (including a collateral assignment thereof), in either case whether by operation of law, voluntarily,

(b) In the event title to the Premises is now or hereafter becomes vested in a trustee, any prohibition or restriction contained herein upon the creation of any lien against the Premises shall also be construed as a similar prohibition or limitation against the creation of any lien or security interest upon the beneficial interest under such trust.

(a) Except for Permitted Encumbrances, the Mortgagor shall not, without the prior written consent of the Mortgagor, may be given or withheld in its sole discretion, create, suffer or permit to be created or filed against the Premises, or any part thereof or interest therein, any mortgage lien or other lien, charge or encumbrance, either superior or inferior to the lien of this Mortgage. The Mortgagor shall have the right to contest in good faith the validity of any such lien, charge or encumbrance, provided the Mortgagor shall first deposit with the Mortgagor a bond, title insurance or other security satisfactory to the Mortgagor in such amounts or forms as the Mortgagor shall require; provided further that the Mortgagor shall thereafter diligently proceed to cause such lien, encumbrance or charge to be removed and discharged. If the Mortgagor shall fail to discharge or obtain title insurance over any such lien, encumbrance or charge, then, in addition to any other right or remedy of the Mortgagor, the Mortgagor may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien by depositing in court a bond for the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law and any amounts expended by the Mortgagor in so doing shall be so much additional indebtedness secured by this Mortgage. In the event the Mortgagor shall suffer or permit any superior or junior lien to be attached to the Premises which is not insured over by the Title Policy, the Mortgagor, at its option, shall have the unqualified right to accelerate the maturity of the Note causing the full principal balance and accrued interest on the Note to become immediately due and payable without notice to the Mortgagor.

## Section 2.13. Liens and Conveyances.

Section 2.12. Inspection of Books and Records. The Mortgagor shall keep and maintain full and correct records showing in detail the income and expenses of the Premises and shall make such books and records and all supporting vouchers and data available for examination by the Mortgagor and its agents at any time and from time to time on request at the offices of the Mortgagor, or at such other location as may be mutually agreed upon.

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(a) The Mortgagor hereby represents and warrants to the Mortgagee that neither the Mortgagor, the Beneficiary nor any of their affiliates or subsidiaries, nor, to the best of the

## Section 2.15. Environmental Matters.

(b) In the event of the enactment after the date of this Mortgage of any law of the state in which the Premises are located deducting from the value of the Premises for the purpose of taxation any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the property, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holder hereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments, or reimburse the Mortgagee therefor; provided, however, that if, in the opinion of counsel for the Mortgagee, (i) it might be unlawful to require the Mortgagor to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then, and in such event, all of the indebtedness secured hereby shall become due and payable within 30 days from the giving of such notice. Notwithstanding the foregoing, it is understood and agreed that the Mortgagor is not obligated to pay any portion of Mortgagee's federal or state income tax.

(a) If at any time any federal, state or municipal law shall require any documentary stamps or other tax hereon or on the Note, or shall require payment of any tax upon the indebtedness secured hereby, then the said indebtedness and the accrued interest thereon shall be and become due and payable at the election of the Mortgagee upon 45 days' notice to the Mortgagor; provided, however, said election shall be unavailing and this Mortgage and the Note shall be and remain in effect, if the Mortgagor lawfully may pay for such stamps or such tax including interest and penalties thereon to or on behalf of the Mortgagee and the Mortgagor does in fact pay, when payable, for all such stamps or such tax, as the case may be, including interest and penalties thereon.

## Section 2.14. Taxes Affecting Mortgage.

(d) Any waiver by the Mortgagee of the provisions of this Section shall not be deemed to be a waiver of the right of the Mortgagee to insist upon strict compliance with the provisions of this Section in the future.

or otherwise, or the Mortgagor or the Beneficiary shall contract to do any of the foregoing, the Mortgagee, at its option, shall have the unqualified right to accelerate the maturity of the Note causing the full principal balance and accrued interest on the Note to become immediately due and payable without notice to the Mortgagor.

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Section 2.16. Estoppel Letters. The Mortgagee shall furnish from time to time within 15 days after the Mortgagee's request, a written statement, duly acknowledged, of the amount due upon this Mortgage and whether any alleged offsets or defenses exist against the indebtedness secured by this Mortgage.

(b) Without limitation on any other provision hereof, the Mortgagee hereby agrees to indemnify and hold the Mortgagee harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any kind whatsoever (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any of the following [collectively, "Environmental Laws"]: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, any so-called "Superfund" or "Superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree, now or hereafter in force, regulating, relating to, or imposing liability or standards on conduct concerning any Hazardous Material) paid, incurred, suffered by or asserted against the Mortgagee as a direct or indirect result of any of the following, regardless of whether or not caused by, or within the control of, the Mortgagee or the Beneficiary: (i) the presence of any Hazardous Material on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release of any Hazardous Material from (A) the Premises or any part thereof, or (B) any other real property in which the Mortgagee, the Beneficiary or any of their affiliates or subsidiaries holds any estate or interest whatsoever (including, without limitation, any property owned by a land trust the beneficial interest in which is owned, in whole or in part, by the Beneficiary or any of its affiliates or subsidiaries), or (ii) any liens against the Premises permitted or imposed by any Environmental Laws, or any actual or asserted liability or obligations of the Mortgagee, the Beneficiary or any of their affiliates or subsidiaries under any Environmental Laws, or (iii) any actual or asserted liability or obligations of the Mortgagee, the Beneficiary or any of their affiliates or subsidiaries under any Environmental Law relating to the Premises.

Mortgagee's knowledge, any other person or entity, has ever caused or permitted any Hazardous Material to be placed, held, located or disposed of on, under or at the Premises or any part thereof, and that the Premises has never been used by the Mortgagee, the Beneficiary or any of their affiliates or subsidiaries, or, to the best of the Mortgagee's knowledge, by any other person or entity, as a temporary or permanent dump or storage site for any Hazardous Material.

Section 3.1. Assignment of Rents. As further security for the indebtedness secured by this Mortgage, the Mortgagee and the Beneficiary have, concurrently herewith, executed and delivered to the Mortgagee the Assignment of Rents, wherein and whereby, among other things, the Mortgagee and the Beneficiary have assigned to the Mortgagee all rents, avails, issues and profits under all leases of the Premises, and all such leases, all as therein more specifically set forth, which Assignment of Rents is hereby incorporated herein by reference as fully and with the same effect as if set forth herein at length. The Mortgagee agrees that it will duly perform and observe all of the terms and provisions on its part to be performed and observed under the Assignment of Rents. The Mortgagee further agrees (i) that it will not enter into any lease of the Premises or any portion thereof without the prior written consent of the Mortgagee, which consent shall not be unreasonably withheld, other than those leases prepared on the lease form which has been previously approved by the Mortgagee and providing for rental of not less than that provided on a rent schedule which has been approved by the Mortgagee; (ii) that it will at all times duly perform and observe all of the terms, provisions, conditions and agreements on its part to be performed and observed under any and all leases of the Premises or any portion thereof, including, but not limited to, the Leases, and shall not suffer or permit any material default or event of default on the part of the lessor to exist thereunder; and (iii) that it will not agree or consent to, or suffer or permit, any termination, modification or amendment of any lease of the Premises or any portion thereof, including, but not limited to, the Leases, without the prior written consent of the Mortgagee, which consent shall not be unreasonably withheld, unless otherwise approved by the Mortgagee, all leases of space in the Premises shall be prepared on the lease form which has been previously approved by the Mortgagee. Nothing herein contained shall be deemed to obligate the Mortgagee to perform or discharge any obligation, duty or liability of the lessor under any lease of the Premises, and the Mortgagee shall and does hereby indemnify and hold the Mortgagee harmless from any and all liability, loss or damage which the Mortgagee may or might incur under any leases of the Premises or by reason of the Assignment of Rents; and any and all such liability, loss or damage incurred by the Mortgagee, together with the costs and expenses, including reasonable attorneys' fees, incurred by the Mortgagee in the defense of any claims or demands therefor (whether successful or not), shall be so much additional indebtedness secured by this Mortgage, and the Mortgagee shall reimburse the Mortgagee therefor on demand.

Section 3.2. Further Assignment. Without limiting the generality of any other provisions hereof, and without limiting the effectiveness of the Assignment of Rents referred to in Section 3.1 hereof, as additional security, the Mortgagee hereby assigns to the

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ASSIGNMENT OF RENTS; DECLARATION OF SUBORDINATION TO LEASES

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(b) The Mortgagor or any guarantor under the Guaranty shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or shall

(a) Default shall be made in the payment when due of any installment of principal of or interest on the Note or in the payment when due of any other amount required to be paid by the Mortgagor hereunder or under any of the other Loan Documents, or in the payment when due of any other indebtedness secured by this Mortgage, and in each case such default shall continue for a period of five days; or

Section 4.1. Events of Default. Any of the following events shall be deemed an "event of default" hereunder:

EVENTS OF DEFAULT AND REMEDIES

ARTICLE IV

Section 3.3. Declaration of Subordination to Leases. At the option of the Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases of all or any part of the Premises upon the execution by Mortgagee and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds of the county wherein the Premises are situated, of a unilateral declaration to that effect.

Mortgagee the rents, issues and profits of the Premises and upon the occurrence of any event of default (as defined in Section 4.1 hereof), the Mortgagee may receive and collect said rents, issues and profits so long as such event of default shall exist and during the pendency of any foreclosure proceedings and the Mortgagee shall have the right to collect said rents, issues and profits so long as no event of default shall exist hereunder. As of the date of this Mortgage as additional security, the Mortgagee also hereby assigns to the Mortgagee any and all written and oral leases, whether now in existence or which may hereafter come into existence during the term of this Mortgage, or any extension hereof, and the rents thereunder, covering the Premises or any portion thereof, including, but not limited to, the leases and the rents thereunder; provided, that the collection of rents by the Mortgagee pursuant to this Section or pursuant to the Assignment of Rents shall in no way waive the right of the Mortgagee to foreclose this Mortgage in the event of any event of default, but provided always, that nothing herein contained shall be construed as constituting the Mortgagee a mortgagee in possession.



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seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of the Mortgagor or any such guarantor or of all or any part of the Premises, or of any or all of the royalties, revenues, rents, issues or profits thereof, or shall make any general assignment for the benefit of creditors, or shall admit in writing its or his inability to pay its or his debts generally as they become due; or

(c) A court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against the Mortgagor or any guarantor under the Guaranty seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree shall remain unvacated and unstayed for an aggregate of 60 days (whether or not consecutive) from the first date of entry thereof; or any trustee, receiver or liquidator of the Mortgagor or any such guarantor; or of all or any part of the Premises, or of any or all of the royalties, revenues, rents, issues or profits thereof, shall be appointed and such appointment shall remain unvacated and unstayed for an aggregate of 60 days (whether or not consecutive); or

(d) A writ of execution or attachment or any similar process shall be issued or levied against all or any part of or interest in the Premises, or any judgment involving monetary damages shall be entered against the Mortgagor which shall become a lien on the Premises or any portion thereof or interest therein and such execution, attachment or similar process or judgment is not released, bonded, satisfied, vacated or stayed within 60 days after its entry or levy; or

(e) If any representation or warranty of the Mortgagor contained in this Mortgage, or of the Mortgagor, the Beneficiary or the Individual Guarantors contained in any of the other Loan Documents or any certificate or other document delivered in connection with the loan evidenced by the Note, shall prove untrue or incorrect in any material respect; or

(f) If in the judgment of the Mortgagor, the Mortgagor and the Beneficiary will be unable to complete the construction of the Improvements in accordance with the Loan Agreement by the date required thereby; or

(g) If there has occurred any other breach of or default under any term, covenant, agreement, condition, provision, representation or warranty contained in this Mortgage which has not been cured within 30 days after notice to the Mortgagor and the Beneficiary; provided, however, that if such default is of such a nature that it cannot reasonably be cured within such 30-day period, and provided that such default is susceptible of cure, it shall not constitute an event of default if corrective

(c) If permitted by applicable law, sell the Premises, or any part thereof, or cause the same to be sold, and to convey the same to the purchaser thereof, pursuant to the statute in such case made and provided, and out of the proceeds of such sale to retain all of the indebtedness secured by this Mortgage

(b) Commence an action to foreclose this Mortgage, appoint a receiver, or specifically enforce any of the covenants hereof; or

(a) Either in person or by agent, with or without bringing any action or proceeding, it applicable law permits, enter upon and take possession of the Premises, or any part thereof, in its own name, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Premises, or any part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Premises, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same to the payment of taxes, insurance premiums and other charges against the Premises or in reduction of the indebtedness secured by this Mortgage; and the entering upon and taking possession of the Premises, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any event of default or notice of default hereunder or invalidate any act done in response to such event of default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Premises or the collection, receipt and application of rents, issues or profits, the Mortgagee shall be entitled to exercise every right provided for in any of the other Loan Documents or by law upon occurrence of any event of default; or

Section 4.2. Acceleration upon Default; Additional Remedies. Upon or at any time after the occurrence of any event of default the Mortgagee may declare the Note and all indebtedness secured by this Mortgage to be due and payable and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind. Thereafter the Mortgagee may:

(1) If any event of default has occurred or been declared under any other mortgage or trust deed on the Premises.

(h) If there has occurred any other breach of or default under any term, covenant, agreement, condition, provision, representation or warranty contained in any of the other Loan Documents which has not been cured within any applicable grace period; or

action is instituted by the Mortgagor and the Beneficiary within such 30-day period and diligently pursued until the default is cured; or

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Section 4.4. Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Premises or of the exercise of any other remedy hereunder shall be distributed and

at any foreclosure sale of the Premises or any part thereof, be sold in one or more parcels. The Mortgagee may be the purchaser in the event of any foreclosure sale of the Premises, the same may be so much additional indebtedness secured by this Mortgage, immediately due and payable, with interest thereon at a rate of two percent (2%) above the then prevailing interest rate on the Note. In the event of any proceeding or threatened suit or proceeding, shall or defense of any proceeding or threatened suit or proceeding, shall and bankruptcy proceedings, or in preparations for the commencement any of the other Loan Documents or the Premises, including probate Mortgagee in any litigation or proceeding affecting this Mortgage, including the reasonable fees of any attorney employed by the the Premises and the maintenance of the lien of this Mortgage, and such expenses and fees as may be incurred in the protection of expenditures and expenses of the nature in this Section mentioned, true condition of the title to or the value of the Premises. All bidders at any sale which may be had pursuant to such decree the reasonably necessary either to prosecute such suit or to evidence to assurances with respect to title as the Mortgagee may deem procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of Mortgagee or the Note, there shall be allowed and included as hereof or enforce any other remedy of the Mortgagee under this additional indebtedness in the decree for sale or other judgment or decree, all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for reasonable attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof. In any suit to foreclose the lien hereof or enforce any other remedy of the Mortgagee under this Mortgage or the Note, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree, all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for reasonable attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as the Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this Section mentioned, and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by the Mortgagee in any litigation or proceeding affecting this Mortgage, any of the other Loan Documents or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding, shall be so much additional indebtedness secured by this Mortgage, immediately due and payable, with interest thereon at a rate of two percent (2%) above the then prevailing interest rate on the Note. In the event of any foreclosure sale of the Premises, the same may be sold in one or more parcels. The Mortgagee may be the purchaser at any foreclosure sale of the Premises or any part thereof.

Section 4.3. Foreclosure; Expense of Litigation. When the indebtedness secured by this Mortgage, or any part thereof, shall become due, whether by acceleration or otherwise, the Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof. In any suit to foreclose the lien hereof or enforce any other remedy of the Mortgagee under this Mortgage or the Note, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree, all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for reasonable attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as the Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this Section mentioned, and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by the Mortgagee in any litigation or proceeding affecting this Mortgage, any of the other Loan Documents or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding, shall be so much additional indebtedness secured by this Mortgage, immediately due and payable, with interest thereon at a rate of two percent (2%) above the then prevailing interest rate on the Note. In the event of any foreclosure sale of the Premises, the same may be sold in one or more parcels. The Mortgagee may be the purchaser at any foreclosure sale of the Premises or any part thereof.

(d) Exercise any or all of the remedies available to a secured party under the Uniform Commercial Code of Illinois and any notice of sale, disposition or other intended action by the Mortgagee, sent to the Mortgagee at the address specified in Section 5.14 hereof, at least five days prior to such action, shall constitute reasonable notice to the Mortgagee.

including, without limitation, principal, accrued interest, costs and charges of such sale, the attorneys' fees provided by such statute (or in the event of a suit to foreclose by court action, a reasonable attorney's fee), rendering the surplus moneys, if any, to the Mortgagee; provided, that in the event of public sale, such property may, at the option of the Mortgagee, be sold in one parcel or in several parcels as the Mortgagee, in its sole discretion, may elect; or

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Section 4.5. Appointment of Receiver. Upon or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises or any portion thereof. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of the Mortgagor at the time of application for such receiver and without regard to the then value of the Premises and the Mortgage or any holder of the Note may be appointed as such receiver. Such receiver shall have power (1) to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit, as well as during any further times when the Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits; (2) to extend or modify any then existing leases and to make new leases, which extension, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness secured by this Mortgage and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon the Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding discharge of the indebtedness secured by this Mortgage, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser; and (iii) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of the indebtedness secured by this Mortgage, or found due or secured by any judgment foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale.

Section 4.6. Insurance after foreclosure. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in repairing and restoring the Premises, shall be used to pay the amount due in accordance with any judgment of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct.

Section 4.3 hereof, including all such items as are mentioned in such other remedy, including all such items which under the terms hereof constitute indebtedness secured by this Mortgage additional to that evidenced by the Note, with interest thereon as therein provided; third, all principal and interest remaining unpaid on the Note; and fourth, any overplus to the Mortgagor, its successors or assigns, as their rights may appear.

applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings or such other remedy, including all such items as are mentioned in



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Section 4.9. Waiver of Certain Rights. The Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but rather waives the benefit of such laws. The Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the

Section 4.8. No Mortgage in Possession. Nothing herein contained shall be construed as constituting the Mortgage a mortgage in possession.

(b) In the event the Mortgage at any time holds additional security for any of the indebtedness secured by this Mortgage, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before or concurrently with exercising remedies under this Mortgage or after a sale is made hereunder.

(a) The Mortgagee shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Mortgage or under any of the other Loan Documents or other agreement or any laws now or hereafter in force, notwithstanding that some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or other powers herein contained, shall prejudice or in any manner affect the Mortgagee's right to realize upon or enforce any other security now or hereafter held by the Mortgagee, it being agreed that the Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by the Mortgagee in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to the Mortgagee is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to the Mortgagee or to which it may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as it may be deemed expedient by the Mortgagee and the Mortgagee may pursue inconsistent remedies. Failure by the Mortgagee to exercise any right which it may exercise hereunder, or the acceptance by the Mortgagee of partial payments, shall not be deemed a waiver by the Mortgagee of any default or of its right to exercise any such rights thereafter.

Section 4.7. Remedies Not Exclusive; No Waiver of Remedies.

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Section 5.1. Recitals The recitals hereto are hereby incorporated into and made a part of this mortgage.

Section 5.2. Time of Essence Time is of the essence of this mortgage and of each and every provision hereof.

Section 5.3. Usury Covenant. The mortgagor hereby represents and covenants that the proceeds of the Note will be used for the purposes specified in paragraph (c) contained in Section 6404 of Chapter 17 of the Illinois Revised Statutes (1987), and that the indebtedness secured hereby constitutes a "business loan" within the meaning of that Section.

Section 5.4. Lien for Service Charges and Expenses. At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures (in addition to any loan proceeds disbursed from time to time) the payment of any and all origination fees, loan commissions, service charges, liquidated damages, expense and advances due to or incurred by the Mortgagee in connection with the loan to be secured hereby, all in accordance with the application and any loan commitment issued in connection with this transaction.

MISCELLANEOUS

ARTICLE V

Section 4.10. Mortgagee's Use of Deposits. With respect to any deposits made with or held by the Mortgagee or any depository pursuant to any of the provisions of this Mortgage, in the event of a default in any of the provisions contained in this Mortgage or in the Note or any of the other Loan Documents, the Mortgagee may, at its option, without being required to do so, apply any moneys or securities which constitute such deposits on any of the obligations under this Mortgage, the Note or the other Loan Documents, in such order and manner as the Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to the Mortgagee. Such deposits are hereby pledged as additional security for the prompt payment of the Note and any other indebtedness hereunder and shall be held to be irrevocably applied by the depository for the purposes for which made hereunder and shall not be subject to the direction or control of the Mortgagee.

Premises sold as an entirety. The Mortgagor hereby waives any and all rights of redemption from sale under any order or decree of foreclosure, pursuant to rights herein granted, on behalf of the Mortgagor and all persons beneficially interested therein and each and every person acquiring any interest in or title to the Premises subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by the provisions of the laws of the State in which the Premises are located.

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Section 5.5. Subrogation. To the extent that proceeds of the indebtedness secured by this mortgage are used to pay any outstanding lien, charge or prior encumbrance against the Premises, the Mortgagee shall be subrogated to any and all rights and liens owned by any owner or holder of such outstanding liens, charges and prior encumbrances, and shall have the benefit of the priority thereof, irrespective of whether said liens, charges or encumbrances are released.

Section 5.6. Recording. The Mortgagee shall cause this Mortgage and all other documents securing the indebtedness secured by this Mortgage at all times to be properly filed and/or recorded at the Mortgagee's own expense and in such manner and in such places as may be required by law in order to fully preserve and protect the rights of the Mortgagee.

Section 5.7. Further Assurances. The Mortgagee will do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurances necessary or advisable, in the judgment of the Mortgagee, for the better assuring, conveying, mortgaging, assigning and confirming unto the Mortgagee all property mortgaged hereby or property intended so to be, whether now owned by the Mortgagee or hereafter acquired.

Section 5.8. No Defenses. No action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Note.

Section 5.9. Invalidity of Certain Provisions. If the lien of this mortgage is invalid or unenforceable as to any part of the indebtedness secured by this mortgage, or if such lien is invalid or unenforceable as to any part of the Premises, the unsecured or partially secured portion of the indebtedness secured by this mortgage shall be completely paid prior to the payment of the remaining and secured or partially secured portion thereof, and all payments made on the indebtedness secured on this mortgage, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion thereof which is not secured or fully secured by the lien of this mortgage.

Section 5.10. Illegality of Terms. Nothing herein or in the Note contained nor any transaction related thereto shall be construed or shall so operate either presently or prospectively, (i) to require the Mortgagee to pay interest at a rate greater than is now lawful in such case to contract for, but shall require payment of interest only to the extent of such lawful rate, or (ii) to require the Mortgagee to make any payment or do any act contrary to law; and if any provision herein contained shall otherwise so operate to invalidate this mortgage, in whole or in part, then such provision only shall be held for naught as though not herein contained and the remainder of this mortgage shall remain operative.



and in full force and effect, and the Mortgagee shall be given a reasonable time to correct any such error.

Section 5.11. Mortgagee's Right to Deal with Transferee. In the event of the voluntary sale, or transfer by operation of law, or otherwise, of all or any part of the Premises, the Mortgagee is hereby authorized and empowered to deal with such vendee or transferee with reference to the Premises, or the debt secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might with the Mortgageor, without in any way releasing or discharging the Mortgageor from the covenants and/or undertakings hereunder, specifically including Section 2.13(c) hereof, and without the Mortgagee waiving its rights to accelerate the Note as set forth in Section 2.13(c).

Section 5.12. Releases. The Mortgagee, without notice, and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens, may release any part of the Premises, or any person liable for any indebtedness secured hereby, without in any way affecting the liability of any party to the Note, this Mortgage, the Guaranty, or any other guaranty given as additional security for the indebtedness secured hereby and without in any way affecting the priority of the lien of this Mortgage, and may agree with any party obligated on said indebtedness to extend the time for payment of any part or all of the indebtedness secured hereby. Such agreement shall not, in any way, release or impair the lien created by this Mortgage, or reduce or modify the liability, if any, of any person or entity personally obligated for the indebtedness secured hereby, but shall extend the lien hereof as against the title of all parties having any interest in said security which interest is subject to the indebtedness secured by this Mortgage.

Section 5.13. Construction Mortgage. This Mortgage secures an obligation incurred for the construction of an improvement on the land mortgaged herein, including the acquisition cost of the land, and constitutes a "construction mortgage" within the meaning of Section 9-313(1)(c) of the Illinois Uniform Commercial Code.

Section 5.14. Giving of Notice. All communications provided for herein shall be in writing and shall be deemed to be given or made when served personally or when deposited in the United States mail, registered or certified, return receipt requested, postage prepaid, addressed as follows:

If to the Mortgageor: Lasalle National Bank Trust No. 113252  
135 South LaSalle Street  
Chicago, Illinois 60690  
Attention: Land Trust Department

with copies to:

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Mortgage are declared to be severable. This instrument cannot be conflicting provision, and to this end the provisions of this affect other provisions hereof which can be given effect without the Mortgage conflicts with applicable laws, such conflicts shall not Illinois. In the event that any provision or clause of this This Mortgage shall be governed by the laws of the State of

Section 5.17. Governing Law; Severability; Modification.

Section 5.16. Covenants to Run with the Land. All the covenants hereof shall run with the land.

was herein by name designated the Mortgagee. granted such rights, privileges, powers, options and benefits and if such from time to time holder were herein by name specifically hereof, as fully and to the same extent and with the same effect as hereunder, and may enforce all and every of the terms and provisions privileges, powers, options and benefits afforded hereby and holder of the Note shall have and enjoy all of the rights, to time of the Note, whether so expressed or not; and each such to, such reference shall be deemed to include the holder from time successors and assigns. Wherever herein the Mortgagee is referred therein), and shall inure to the benefit of the Mortgagee and its record owner of the Premises or any other person having an interest (including, without limitation, each and every from time to time binding upon the Mortgagee and its successors and assigns every covenant, agreement and other provision hereof shall be Section 5.15. Binding Effect. This Mortgage and each and

or to such party at such other address as such party may designate by notice duly given in accordance with this Section to the other parties.

Attention: John E. Cline  
Commercial Real Estate  
Division

The Northern Trust Company  
50 South LaSalle Street  
Chicago, Illinois 60675

Marc S. Joseph, Esq.  
D'Ancona & Pflaum  
30 North LaSalle Street  
Suite 3100  
Chicago, Illinois 60602

and

M. P. Associates Limited Partnership  
c/o Horizon Development I, Inc.  
1930 Thoreau Drive  
Suite 200  
Schauamburg, Illinois 60173

If to the Mortgagee:

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waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

Section 5.18. Meanings. Wherever in this Mortgage the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

Section 5.19. Captions. The captions or headings at the beginning of each Article and Section hereof are for the convenience of the parties and are not a part of this Mortgage.

Section 5.20. Approval or Consent of Mortgagee. Wherever in this Mortgage provision is made for the approval or consent of the Mortgagee, or that any matter is to be to the Mortgagee's satisfaction, or the like, unless specifically stated to the contrary, such approval, consent, satisfaction or the like shall be made, given or determined by the Mortgagee in its sole discretion.

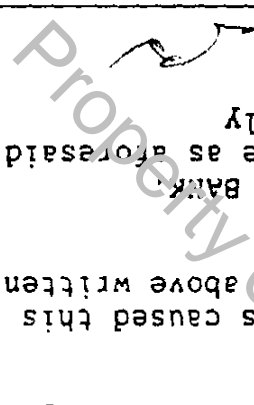
Section 5.21. Execution by Mortgagee. This Mortgage is executed by Lasalle National Bank, not personally but as trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such trustee and it is expressly understood and agreed that nothing herein or in the Note contained shall be construed as creating any liability on Lasalle National Bank personally to pay the 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 every person now or hereafter claiming any right or security hereunder. Nothing contained in this Section shall modify or discharge the personal liability of any guarantor or any person under or by virtue of the Guaranty or any of the other Loan Documents.

IN WITNESS WHEREOF, the Mortgagee has caused this instrument to be executed as of the date first above written.

LASALLE NATIONAL BANK, solely as Trustee as aforesaid and not personally

BY \_\_\_\_\_  
Title: \_\_\_\_\_  
Corinne Bok  
Assistant Secretary

ATTEST: \_\_\_\_\_  
Title: \_\_\_\_\_  
Clifford Scott-Budnick  
Assistant Secretary



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Property of Cook County Clerk's Office

The foregoing instrument was acknowledged before me  
 this 20th day of July, 1988, by Clifford Scott-Rudolph  
 ASSISTANT VICE PRESIDENT and Corinne Beck  
 ASSISTANT SECRETARY, respectively, of LaSalle National Bank, a national banking  
 association, Trustee under a Trust Agreement dated May 17, 1988, and  
 known as Trust No. 113252, on behalf of said Trustee.

Walter Racena  
 Notary Public

My Commission Expires on 6-11-92

STATE OF ILLINOIS )  
 )  
 COUNTY OF COOK )

UNOFFICIAL COPY

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Property of Cook County Clerk's Office

The East 297.46 feet of Lot 3 of the subdivision of the Southwest 1/4 of the Southeast 1/4 of Section 34, Township 40 North, Range 12 East of the Third Principal Meridian (except that part thereof lying North of a line 469.13 feet North of and parallel to the South line of said Section 34), and (except that part thereof taken for widening of North Avenue) and (except the East 25 feet falling in 15th Avenue) in Cook County, Illinois.

LEGAL DESCRIPTION OF THE PREMISES

EXHIBIT A

UNOFFICIAL COPY

01/01/2025

Property of Cook County Clerk's Office

UNOFFICIAL COPY

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Property of Cook County Clerk's Office

EXHIBIT B

SCHEDULE OF LEASES

<u>Lessor</u>	<u>Lessee</u>	<u>Date of Lease</u>	<u>Premises</u>
Horizon Development, Fretter, Inc. I, Inc. or its assignee	Horizon Development, Fretter, Inc.	April 8, 1988	1500 West North Avenue, Melrose Park, Illinois