

UNOFFICIAL COPY

88374246

LNP LAM Loan No. 601055

FIRST MORTGAGE AND SECURITY AGREEMENT

5300

THIS INDENTURE, herein referred to as "Mortgage," made August 11, 1988, by and between FRANKLIN VAN BUREN JOINT VENTURE, an Illinois joint venture, whose address is c/o Centrum Properties, Inc., 566 West Adams Street, Chicago, Illinois 60606, hereinafter called "Mortgagor," and LINCOLN NATIONAL PENSION INSURANCE COMPANY, an Indiana corporation, whose address is 1300 South Clinton Street, P.O. Box 1110, Fort Wayne, Indiana 46801, hereinafter called "Mortgagee,"

W I T N E S S E T H :

THAT, WHEREAS, Mortgagor is justly indebted to Mortgagee in the principal sum of TWENTY-EIGHT MILLION DOLLARS (\$28,000,000), evidenced by the First Mortgage Real Estate Note of Mortgagor of even date herewith (such note and any note(s) issued in exchange therefor or in replacement or substitution thereof, and any modifications thereto are herein collectively called the "Note"), made payable to order of and delivered to Mortgagee, in and by which Note Mortgagor promises to pay at the place designated in the Note, the said principal sum and interest at the rate and in installments as provided in the Note, with a final payment of the balance due on the 1st day of September, 1998;

NOW, THEREFORE, Mortgagor to secure the payment of said principal sum and interest in accordance with the terms, provisions and limitations of this Mortgage, and of the Note secured hereby, and the performance of the covenants and agreements herein contained, by Mortgagor to be performed, and also in consideration of the sum of One Dollar (\$1.00) in hand paid, the receipt whereof is hereby acknowledged, does by these presents, MORTGAGE, GRANT, REMISE, ALIEN, WARRANT and CONVEY unto Mortgagee, its successors and assigns, all that certain lot, piece or parcel of land (the "Property") lying and being in the City of Chicago, County of Cook, and State of Illinois, bounded and described in Exhibit "A" hereto attached and hereby made a part of this Mortgage.

TOGETHER WITH all and singular the tenements, hereditaments, easements, riparian or other rights and appurtenances thereunto belonging or in anywise appertaining, and the rights of Mortgagor, if any, in all adjacent roads, ways, streams and alleys; and all of Mortgagor's rights in the reversion or reversions, remainder and remainders, rents, issues and profits thereof (which are pledged primarily and on a parity with said real estate and not secondarily); and also all the estate, right, title, interest, property, claim and demand whatsoever of Mortgagor, of, in and to the same and of, in and to every part and parcel thereof.

TOGETHER WITH all right, title and interest of Mortgagor in and to all buildings, structures and other improvements now or hereafter erected, constructed or placed upon the above described Property including all building equipment and fixtures of every kind and nature (the "Improvements");

88374246

71-78447

D-3

TOGETHER WITH all rents, issues and profits and accounts receivable thereof under present or future leases, or otherwise, which are hereby specifically assigned, transferred and set over to Mortgagee;

TOGETHER WITH all leasehold estate, right, title and interest of Mortgagor in any Ground Lease(s) covering the above described Property or any portion thereof, now or hereafter existing or entered into, as well as to any after acquired fee.

TOGETHER WITH a lien and/or security interest hereby granted to Mortgagee in all machinery, apparatus, equipment, fittings, fixtures, whether actually or constructively attached to said property and including all trade, domestic and ornamental fixtures, and articles of personal property of every kind and nature whatsoever (hereinafter collectively called "Personal Property"), now or hereafter located in, upon or under said Property or any part thereof and used or usable in connection with any present or future operation of said Property, including but not limiting the generality of the foregoing, all heating, air conditioning, sprinklers, freezing, lighting, laundry, incinerating and dynamo and generating equipment; engines, pipes, pumps, tanks, motors, conduits; switchboards, plumbing and plumbing fixtures; lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating and communications apparatus; boilers, ranges, furnaces, oil burners or units thereof; appliances, air-cooling and air-conditioning apparatus; vacuum cleaning systems; elevators, escalators; shades, awnings, screens; storm doors and windows; stoves; wall beds; refrigerators; cooking apparatus and mechanical equipment; gas and electric fixtures; partitions, mantels, built-in mirrors, window shades, blinds, furniture in public spaces, halls and lobbies; attached cabinets; partitions; ducts and compressors; rugs and carpets; draperies, furniture and furnishings used in the operation of the premises; together with all additions thereto and replacements thereof (Mortgagor hereby agreeing with respect to all additions and replacements, to execute and deliver from time to time such further instruments as may be requested by Mortgagee to confirm the conveyance, transfer and assignment of and granting of a security interest in any of the foregoing).

TOGETHER WITH any and all right, title and interest of Mortgagor to the proceeds of all insurance in effect with respect to the Premises (hereinafter defined) and to any and all awards or payments, including interest thereon, and the right to receive the same which may be made with respect to the Premises as a result of (a) the exercise of the right of eminent domain; (b) the alteration of the grade of any street; (c) any other injury to, taking of, or decrease in the value of, the Premises to the extent of all amounts which may be secured by this Mortgage at the date of receipt of any such award or payment by Mortgagee, and of the reasonable counsel fees, costs and disbursements incurred by Mortgagee in connection with the collection of such proceeds, award or payment, and the rights of Mortgagor under present or future contracts involving said Premises.

TOGETHER WITH (a) all of Mortgagor's rights further to encumber said Premises for debt unless such encumbrance is subordinate to any present or future lease and (b) all of

88374246

Mortgagor's rights to enter into any lease that is or may become subordinate to any mortgage or deed of trust other than this instrument.

TO HAVE AND HOLD the above described and granted property, all of which is collectively referred to herein as the "Premises" (whether now or hereafter acquired), unto Mortgagee, its successors and assigns, forever, for the purposes and uses herein set forth.

ARTICLE I.

THE OBLIGATION

1.1. The Indebtedness and Other Matters Secured by This Mortgage. This Mortgage and all rights, title, interests, liens, security interests, powers and privileges created hereby or arising by virtue hereof are given for the purpose of securing:

(a) Performance of the obligations, covenants, and agreements contained in the Note and any and all modifications, extensions, renewals or substitutions thereof;

(b) Payment of all other sums (including, without limitation, any advances made by Mortgagee for or on account of Mortgagor) becoming due or payable under this Mortgage, or any other instrument given as security for the Note, or under the Commitment (as defined in Section 8.24 hereof), or under the Building Loan Agreement (as defined in Section 2.18 hereof) (collectively, the "Collateral Loan Documents"), together with interest thereon at the maximum rate permitted by applicable law, or alternatively if there is no such maximum rate, then a rate of 5% above the face rate of interest provided for in the Note;

(c) Payment of such additional sums (not exceeding twice the principal sum specified in the Note) and interest thereon which may hereafter be loaned to Mortgagor, or its successors or assigns, by Mortgagee, when evidenced by a promissory note or notes reciting that they are secured by this Mortgage; and

(d) Performance of the obligations, covenants and agreements of Mortgagor contained in this Mortgage or in any of the Collateral Loan Documents heretofore or hereafter executed by Mortgagor having reference to or arising out of the indebtedness represented by the Note, or given as security for the Note.

ARTICLE II.

REPRESENTATIONS, COVENANTS, WARRANTIES AND AGREEMENTS OF MORTGAGOR

Mortgagor represents, covenants, warrants and agrees with Mortgagee as follows:

2.1. Title. Mortgagor has good and marketable fee simple title to the Property and the Improvements (and clear title to the Personal Property), and is lawfully seized and possessed of the same, and has the full power, authority and right to convey the same and to execute and deliver this Mortgage; the Premises

are unencumbered except as may be herein expressly provided, and Mortgagor will forever warrant and defend the title to the Premises unto Mortgagee against the claims of all persons whomsoever.

2.2. Payment of Secured Obligations. Mortgagor will punctually pay, in lawful money of the United States, all sums due Mortgagee at the time and in the manner mentioned in the Note, this Mortgage, the Collateral Loan Documents, or any document evidencing a future advance or any other instrument evidencing and/or securing the indebtedness secured hereby.

2.3. Insurance Premiums and Taxes. Mortgagor will pay, when due and payable, all premiums on insurance policies required to be carried under the terms of this Mortgage as well as all taxes, assessments (general or special) and other charges levied on, or assessed, placed or made against the Premises, this Mortgage or the Note, or any interest of Mortgagee in the Premises or the obligations secured hereby, and promptly deliver to Mortgagee receipts showing payment in full of the same. Notwithstanding the foregoing, if Mortgagor elects to withhold payment of real estate taxes during a period when it is diligently and in good faith contesting such taxes, Mortgagor shall be permitted to do so provided that Mortgagor furnishes Mortgagee with such security as Mortgagee deems adequate to ensure future payment of such taxes (together with interest and penalties thereon), and provided that Mortgagee may, in its sole discretion, elect to pay such taxes if it deems it necessary or desirable in order to protect the lien of this Mortgage or the value of its collateral and any such payments shall be additional indebtedness secured hereby and shall be immediately due and payable.

2.4. Tax and Insurance Deposits. Mortgagor will pay to Mortgagee, on the installment payment dates of the Note, until the Note is fully paid or until notification from Mortgagee to the contrary, an amount sufficient (as estimated by Mortgagee) to pay said insurance premiums, taxes, assessments and other charges next due. Nothing contained herein shall cause Mortgagee to be deemed a trustee of said funds and no interest shall be allowed to Mortgagor on account of any deposit or deposits made hereunder. Said deposits need not be kept separate and apart from any other funds of Mortgagee. Mortgagor shall furnish to Mortgagee, before the date on which the same shall become due, insurance premium invoices and an official statement of the amount of said taxes and assessments next due, and Mortgagee shall pay said premiums and charges but only if the amounts received therefor from Mortgagor are sufficient. An official receipt therefor shall be conclusive evidence of such payment of and the validity of such charges. If such amounts received from Mortgagor are insufficient, Mortgagee shall notify Mortgagor of the shortage whereupon Mortgagor will immediately deposit with Mortgagee the needed funds. Mortgagee may elect to advance any needed funds and any funds so advanced shall become immediately due and payable to Mortgagee, become part of the secured indebtedness, and bear interest at the maximum lawful rate of interest (or if there is no such maximum rate, then a rate of 5% above the face rate of interest provided for in the Note) from the date of such advance. If Mortgagor is in default under this Mortgage or the Note, or the Collateral Loan Documents, Mortgagee, at its option, may

88374246

instead apply such deposits to the indebtedness in such priority as it may determine. The amount of the existing credit hereunder at the time of any permitted transfer of the Premises shall, without assignment thereof, inure to the benefit of the successor-owner of the Premises, and shall be applied under and be subject to all of the provisions hereof. Upon payment in full of the secured indebtedness, the amount of any unused credit shall be paid over to the then owner of record.

2.5. Insurance Coverages. (a) Mortgagor will keep the Improvements insured on a full restoration or replacement cost basis (with full replacement cost endorsement) in an amount equal to the full insurable replacement value of the Improvements for the benefit of Mortgagee and Mortgagor but in no event less than the balance of the sums due under the Note and this Mortgage against all risks, including but not limited to loss or damage by fire, lightning, windstorm, hail, vandalism, explosion, riot, riot attending a strike, civil commotion, aircraft, earthquake, vehicles, smoke, water damage and collapse and (as, when and to the extent insurance against war risks is obtainable from the United States of America or any agency thereof) against war risks, and full contents coverage on the Personal Property as required by Mortgagee, all in amounts approved by Mortgagee.

(b) Mortgagor shall also acquire and maintain premises liability coverage in the amount of \$20,000,000 per occurrence for combined single bodily and property damage or in such amount as required in any collateralized leases, whichever is the greater, with defense appearance cost coverage and naming Mortgagee as an additional insured.

(c) Prior to the commencement of construction of any Improvements on the Property and until such Improvements are completed, Mortgagor shall acquire and maintain Builder's Risk Insurance on an "all risk" basis (including as a minimum, fire, extended coverage, vandalism, water damage and collapse), in an amount equal to the full insurable replacement value of the Improvements.

(d) Mortgagor shall also acquire and maintain insurance against any other risk including Public Liability and Property Damage coverage if required under the terms of any lease(s).

(e) Mortgagor shall also carry boiler and machinery insurance on all equipment and objects customarily covered by such insurance, in an amount equal to the greater of (i) 25% of the full insurable replacement value of the Improvements or (ii) \$1,000,000.

(f) Mortgagor shall also carry flood insurance in accordance with the provisions of the Flood Disaster Protection Act of 1973 (or any replacement or similar legislation) if the area in which the Premises are situated is designated as "flood prone," "a flood risk area," "within a flood plain" or similar designation so as to require flood insurance protection, except that Mortgagor may, in lieu of such flood insurance, furnish Mortgagee with a certification, in form acceptable to Mortgagee, from a surveyor approved by Mortgagee that the Property is not located inside any special flood hazard areas

as shown on the published Flood Hazard Boundary Map ("FHBM") or on the Flood Insurance Rate Map ("FIRM") Zones A, A1-A30, AH, AO, A99, V1-V30, or M.

(g) Mortgagor shall acquire and maintain business interruption insurance or loss of earnings coverage in an amount equal to that, determined by completion of a business interruption worksheet, necessary to pay the continuing expenses for a twelve-month period of the business being conducted at the Premises, including all mortgage payments, real estate taxes, hazard insurance premiums and costs of adequate cleaning, lighting, heating, air conditioning and maintenance of the Premises.

(h) All insurance herein provided for shall be in form and content and be issued by carriers approved by Mortgagee.

(i) Replacement value shall be subject to annual adjustment based on reconstruction indices published by a national appraisal organization such as Marshall Swift or E. H. Boeckh.

(j) Mortgagor will assign and deliver to Mortgagee all policies of insurance which insure against any loss or damage to the Premises, as collateral and further security for the payment of the money secured by this Mortgage, with (i) a standard mortgage clause in favor of Mortgagee giving Mortgagee 30 days' written notice prior to cancellation or material modification of any of said policies, (ii) a replacement cost or restoration endorsement, (iii) a provision stating that the waiver of subrogation rights of the insured does not void the coverage, (iv) an agreed amount endorsement, and (v) such special endorsements as may be required by the terms of any lease(s) assigned as additional security.

(k) If Mortgagor defaults in so insuring the Premises or in so assigning and delivering the policies, Mortgagee may at its option (but without any obligation so to do) effect such insurance from year to year, and pay the premiums therefor, and Mortgagor will reimburse Mortgagee for any premiums so paid, from the time of payment, on demand, with interest at a rate of 5% above the face rate of the Note secured hereby, and the same shall be secured by this Mortgage.

(l) Mortgagee, upon receipt of any money for loss or damage pursuant to such insurance, may retain and apply such monies toward payment of the monies secured by this Mortgage, or pay such monies in whole or in part to Mortgagor for the repair or restoration of the Improvements or for the erection of new Improvements in their place, or for any other purpose or object satisfactory to Mortgagee, but Mortgagee shall not be obligated to see to the proper application of any amount paid over to Mortgagor.

(m) Not less than ten (10) days prior to the expiration dates of each policy required of Mortgagor pursuant to this Section 2.5, Mortgagor will deliver to Mortgagee a paid renewal or replacement policy.

(n) In the event of a foreclosure of this Mortgage or deed in lieu of foreclosure or other transfer of title to the

Premises in extinguishment, in whole or in part, of the indebtedness secured hereby, all right, title and interest of Mortgagor in and to all policies of insurance on the Premises, including any right to unearned premiums, are hereby assigned to and shall inure to the benefit of Mortgagee or any purchaser of the Premises.

(c) Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon under a standard mortgage clause acceptable to Mortgagee. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee the policy or policies of such insurance.

2.6 Sale or Conveyance. (a) Mortgagor agrees that Mortgagee's willingness to enter into the financial transaction represented by the Note and secured by this Mortgage, was expressly based in part upon the consideration of Mortgagor's covenants contained herein and in any agreement given in connection herewith, and upon Mortgagor's financial strength and ability to develop, improve and operate or manage the business to be conducted upon the Premises. Mortgagor agrees that these considerations are material considerations in the transactions out of which this Mortgage arises. Therefore, Mortgagor covenants not to sell, convey, assign, transfer, lease (except to tenant(s) for the Premises) or otherwise dispose of or further encumber the Premises or any part thereof, or any interest therein either voluntarily or involuntarily, or agree so to do, without the written consent of Mortgagee being first obtained; provided, however, that nothing herein contained shall prohibit, or require Mortgagee's consent to, a collateral assignment of any limited partnership interest in Franklin Garage Limited Partnership ("Franklin"), an Illinois limited partnership, which is a joint venturer in Mortgagor, or a collateral assignment of a general partnership interest in Franklin to another limited or general partner of Franklin or to Republic Savings Bank, F.S.B. Any collateral assignee of such general partnership interest shall agree to take no action to realize on its collateral or otherwise enforce its security interest in such partnership interest until final completion of the improvements to be constructed on the Property pursuant to the Building Loan Agreement (as hereinafter defined) and issuance of all necessary permits for the operation of such improvements. Mortgagee shall have the obligation not to withhold unreasonably its consent to a transfer of the Premises to an entity of good reputation which establishes all to Mortgagee's satisfaction that it has financial strength and management ability to develop, improve and operate or manage such business substantially equivalent to that of Mortgagor at the time of consummation of this transaction, and which assumes all obligations of the Note, this Mortgage, and the Collateral Loan Documents. Consent to one such transfer shall not be deemed a waiver of the right to require such consent to future or successive transfers.

(b) Without limitation on the rights and remedies of Mortgagee arising under this Mortgage, in the event that Mortgagor or any subsequent owner of the Premises or any part thereof shall at any time sell, convey or transfer or attempt

88374246

to sell, convey or transfer the Premises or any part thereof in violation of the provisions of Section 2.10(b)(iii) of this Mortgage, then Mortgagee shall, in addition to any other rights and remedies it may have at law or in equity or under this Mortgage, be entitled to a decree or order restraining and enjoining such sale, conveyance or transfer, and Mortgagor or such subsequent owner shall not plead in defense thereof that there would be an adequate remedy at law (it being hereby expressly acknowledged and agreed that damages at law would be an inadequate remedy for breach or threatened breach of the provisions of Section 2.10(b)(iii) of this Mortgage).

2.7. Junior Mortgages. Mortgagor will not, without the prior written consent of Mortgagee, execute or deliver any pledge, security agreement, mortgage or deed of trust covering all or any portion of the Premises ("Junior Mortgage"). If Mortgagee consents to the foregoing or in the event the foregoing prohibition is determined by a court of competent jurisdiction to be unenforceable by the provisions of any applicable law, Mortgagor will not execute or deliver any Junior Mortgage unless there shall have been delivered to Mortgagee not less than ten (10) days prior to the date thereof a copy thereof which shall contain express covenants to the effect that:

(a) The Junior Mortgage (and all additional security for same including but not limited to assignments of leases and rents, security interests, etc.) is subject and subordinate to this Mortgage (and all additional security for the indebtedness secured hereby, including the Collateral Loan Documents) and to all renewals, extensions, modifications, releases, increases, increases in interest rate and future advances hereunder without any obligation on Mortgagee's part to give notice of any kind thereof to anyone;

(b) The Junior Mortgage is subject and subordinate to any and all leases of all or any portion of the Premises made or to be made, and if any action or proceeding shall be brought to foreclose the Junior Mortgage, no occupant or tenant of any portion of the Premises will be named as a party defendant except for officers or principals of Mortgagor who may be occupants thereof, nor will any action be taken with respect to the Premises which would terminate any occupancy or tenancy of the Premises without the consent of Mortgagee;

(c) The rents and profits, if collected through a receiver or by the holder of the Junior Mortgage, will be applied first to the obligations secured by this Mortgage, including principal and interest due and owing on or to become due and owing on the Note and then to the payment of maintenance, operating charges, taxes, assessments and disbursements incurred in connection with the ownership, operation and maintenance of the Premises;

(d) The rights of the holder of such Junior Mortgage to insurance proceeds and condemnation awards will be subject and subordinate to the prior rights of Mortgagee to same; and

(e) If any action or proceeding shall be brought to foreclose the Junior Mortgage, prompt notice of the commencement thereof will be given to Mortgagee.

Notwithstanding the foregoing, Mortgagor will not suffer or permit any act or omission whereby any of the Property, Improvements or any of the Personal Property shall become subject to any attachment, judgment, lien, charge, or other encumbrance or whereby any of the security represented by this Mortgage shall be impaired or threatened.

2.8. Prohibition against Removal or Material Alterations. No Improvements or other property now or hereafter covered by the lien of this Mortgage shall be removed, demolished or materially altered or enlarged, nor shall any new Improvements be constructed, without the prior written consent of Mortgagee, except that Mortgagor shall have the right, without such consent, to remove and dispose of, free from the lien of this Mortgage, such Personal Property as from time to time may become worn out or obsolete, provided that simultaneously with or prior to such removal, any such Personal Property shall be replaced with other Personal Property of a value at least equal to that of the replaced Personal Property and free from any title retention or other security agreement or other encumbrance and from any reservation of title, and by such removal and replacement Mortgagor shall be deemed to have subjected such new Personal Property to the lien of this Mortgage.

2.9. Maintenance; No Waste; Repair; Restoration; No Zoning Changes. Mortgagor will maintain the Premises in good condition and repair and will not commit or suffer any waste of the Premises. Mortgagor will promptly repair, restore, replace or rebuild any part of the Premises now or hereafter subject to the lien of this Mortgage which may be damaged or destroyed by any casualty whatsoever or which may be affected by any eminent domain or similar proceeding. Mortgagor will complete and pay for, within a reasonable time, any structure at any time in the process of construction on the Premises. and Mortgagor will not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance, or other public or private restrictions, limiting or defining the uses which may be made of the Premises or any part thereof.

2.10. Compliance with Laws. (a) Mortgagor represents and warrants that to date it has fully complied with all laws, ordinances, rulings, regulations and orders of all governmental authorities affecting the Premises (including but not limited to zoning, land use, environmental, etc.) and has obtained all necessary and proper permits and licenses for development and use of the Premises. Mortgagor further covenants and agrees that it will comply with or cause to be complied with all present and future laws, statutes, ordinances, rulings, regulations, orders and requirements of all federal, state, municipal, county, and other governmental agencies and authorities applicable to Mortgagor and to the Premises, as well as all covenants, conditions, and restrictions affecting same.

(b) Mortgagor covenants, represents and warrants that (i) no assets of any employee benefit plan, as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974 ("ERISA"), as now or hereafter amended, will be used in the satisfaction, exercise or performance of any of the obligations, rights or transactions specified or contemplated herein or in the Note or in any of the Collateral Loan Documents; (ii) the Premises do not now, and without the prior written

88374246

consent of Mortgagee will not, constitute an asset of any such employee benefit plan; and (iii) notwithstanding any other provisions of this Mortgage, Mortgagor will not sell, convey or transfer the Premises to any person or entity which at the time of such transfer does not satisfy the representations set forth in clauses (i) and (ii) above, regardless of whether any of the above described conditions arises by operation of law or otherwise.

2.11. Further Instruments. Mortgagor shall execute and deliver (and pay the costs of preparation and recording thereof) to Mortgagee and to any subsequent holder from time to time, upon demand, any further instrument or instruments, including, but not limited to, mortgages, security agreements, financing statements, continuation statements, leases, assignments, and renewal and substitution notes, so as to reaffirm, to correct and to perfect the evidence of the obligation hereby secured and the lien and security interest of Mortgagee to all or any part of the Premises intended to be hereby mortgaged, whether now mortgaged, later substituted for, or acquired subsequent to the date of this Mortgage and any extensions or modifications thereof.

2.12. No Liens. Except as expressly provided herein, Mortgagor shall not permit any mechanic's, laborer's or materialmen's liens to stand against the Premises. If any such lien shall at any time be recorded against the Premises, then Mortgagor shall (i) give written notice thereof promptly to Mortgagee and (ii) cause the same to be discharged of record within thirty (30) days after the date of recording of the same, either by payment, deposit or bond or by furnishing Mortgagee title insurance acceptable to Mortgagee insuring Mortgagee against loss or damage resulting from such lien. If Mortgagor fails to discharge or insure over any such lien within such period, then Mortgagor, in addition to any other right or remedy hereunder, shall have the option (but not the obligation) to procure the discharge of such lien either by depositing the amount claimed to be due in court, or by bonding. Any amount paid or deposited by Mortgagee to discharge such lien, and all costs and other expenses, including all reasonable attorneys' fees, incurred in defending any action to foreclose such lien, shall be deemed a part of the indebtedness secured hereby and shall be immediately due and payable, without demand.

2.13. Utilities. Mortgagor agrees to pay when due all utility charges which are incurred for the benefit of the Premises or which may become a charge or lien against the Premises for energy, fuel, 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 assessments or charges are liens thereon.

2.14. Annual Operating Statements. Mortgagor shall deliver to Mortgagee within ninety (90) days after the end of each fiscal year of Mortgagor an annual operating statement covering the Premises in such detail as may be required by Mortgagee, and prepared by a qualified accountant, including (i) the gross rent of each lessee, (ii) the operating expenses (taxes, assessments, insurance premiums, repairs and maintenance, salaries and wages), and (iii) the net operating income.

2.15. Collateral Loan Documents. Mortgagor shall promptly, without prior demand from Mortgagee, fully perform each and every agreement, covenant, or undertaking to be performed by Mortgagor under any and all of the Collateral Loan Documents.

2.16. Hazardous Material. (a) Except as provided below, to the best of Mortgagor's knowledge, no previous owner of the Premises, or any third party has used, generated, stored or disposed of any Hazardous Material (as hereinafter defined) on the Premises, and Mortgagor shall not use, generate, store or dispose of any Hazardous Material on the Premises. "Hazardous Material" shall mean (i) any asbestos or insulation or other material composed of or containing asbestos or (ii) any hazardous, toxic or dangerous waste, substance, or material defined as such in (or for the purposes of) the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601 et seq., any so-called state or local "Superfund" or "Superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability, or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, including radioactive materials as now or at any time hereafter in effect (any of the foregoing is referred to herein as an "Environmental Regulation"). Notwithstanding the foregoing, Mortgagee acknowledges that asbestos may have been used in buildings currently on the Property, which are to be demolished. Mortgagor shall cause all such asbestos to be removed by a qualified asbestos removal firm prior to commencing demolition of the existing buildings.

(b) Mortgagor hereby indemnifies Mortgagee and agrees to hold Mortgagee harmless from any and all losses, liabilities, damages, injuries, penalties, fines, costs, expenses and claims of any and every kind whatsoever (including attorneys' fees and costs) paid, incurred or suffered by, or asserted against Mortgagee as a result of any claim, demand, or judicial or administrative action by any person or entity (including governmental or private entities) for, with respect to, or as a direct or indirect result of the presence on, or under, the Premises, or the escape, seepage, leakage, spillage, discharge, emission or release from the Premises of any Hazardous Material (including costs, expenses or claims asserted or arising under any Environmental Regulation), regardless of whether or not caused by, or within the control of, Mortgagor.

(c) The warranties and covenants contained in this Section 2.16 shall survive satisfaction of the indebtedness secured hereby, whether such satisfaction occurs as a result of payment thereof, foreclosure of this Mortgage, or otherwise.

2.17. Mortgagor's Authority. Mortgagor and the persons executing this Mortgage on behalf of Mortgagor represent and warrant to Mortgagee that Mortgagor is a duly formed and validly existing joint venture, and has qualified, to the extent necessary, in the state in which the Premises are located, and has full power and authority to borrow the loan evidenced by the Note and to execute and deliver all of the loan documents and to perform all of the obligations of Mortgagor under the loan documents.

88374246

2.18. Building Loan Agreement. Mortgagor, Mortgagee and First Interstate Mortgage Company of Illinois ("First Interstate"), a Delaware corporation, have entered into a Building Loan Agreement of even date herewith (the "Building Loan Agreement") pursuant to which First Interstate will disburse all or part of the loan secured hereby for construction of the Improvements and other purposes. Mortgagor shall comply with all terms, covenants and conditions contained in the Building Loan Agreement and incorporates by reference all of the representations and warranties contained therein.

ARTICLE III.

LEASES, RENTS AND PROFITS AND ASSIGNMENT THEREOF

3.1. Leases. The ground floor commercial space will be leased on a multi-tenant basis, utilizing one lease form which has been approved by Mortgagee's Property Management Division; said lease form will provide for rental of space of the ground floor commercial space on a net basis, and will include provisions requiring the tenant to reimburse the landlord for any and all expenses, including management fees. Once the lease form has been approved by Mortgagee's Property Management Division, no further approval by the Mortgagee will be necessary, except for economic terms, provided that only the approved lease form is utilized for any rental of the ground floor retail space. Mortgagor is granted permission (which may be rescinded at any time by written notice to Mortgagor from Mortgagee) to make minor modifications in the lease form, provided that such modifications do not materially affect any right of Mortgagee under this Mortgage or any of the Collateral Loan Documents and that Mortgagee is specifically advised of such changes.

3.2. Assignment of Rents. Mortgagor hereby absolutely, unconditionally and irrevocably grants, transfers, conveys and assigns to Mortgagee all the rents, issues and profits from the Premises and hereby gives to and confers upon Mortgagee the right, power, and authority to collect such rents, issues and profits. Mortgagor irrevocably appoints Mortgagee its true and lawful attorney-in-fact, at the option of Mortgagee at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions and to sue, in the name of Mortgagor or Mortgagee, for and otherwise collect all such rents, issues and profits and apply the same to the indebtedness secured hereby; provided, however, that Mortgagor shall have the right to collect such rents, issues and profits, but not more than one (1) month in advance, prior to or at any time there is not an event of Default (as hereinafter defined) hereunder. The assignment of the rents, issues and profits from the Premises in this Article III is intended to be a present and absolute assignment from Mortgagor to Mortgagee and not merely the passing of a security interest. From time to time, upon Mortgagee's request, Mortgagor shall execute, acknowledge and deliver to Mortgagee further assignments of leases, rents, issues and profits and Mortgagor shall, as such leases are executed, deliver to Mortgagee fully executed originals of all leases affecting the Premises.

88374246

3.3. Covenants Regarding Performance of Lessor's Obligations. Mortgagor has assigned, coincident herewith, and may hereafter assign to Mortgagee a certain lease or leases of all or of portions of the Premises. Mortgagor shall perform promptly each and every covenant and agreement of any such lease that is to be kept or performed by the lessor, and neither do nor neglect to do, nor permit to be done, anything which may cause the termination of such leases, or any of them, except with the prior written consent duly issued by Mortgagee, or which may diminish or impair their value, or the rents provided for therein or the interest of Mortgagor or Mortgagee therein.

3.4. Negative Covenants Regarding Leases. Mortgagor will not: (a) execute any further assignment of any of its right, title or interest in the leases or rents and profits from the Premises (except to Mortgagee); (b) terminate or consent to the cancellation or surrender of any lease, now existing or hereafter to be made of the Premises or of any part thereof, provided, however, that Mortgagor may exercise appropriate post-default remedies in leases without prior approval so long as it promptly advises Mortgagee of its actions; (c) except as provided in Section 3.14 hereof, modify any lease of the Premises without the prior written consent of Mortgagee; (d) accept prepayments of any installments of rent to become due under any of said leases, except prepayments in the nature of security for the performance by a lessee of its obligations thereunder; (e) in any other manner impair the value of the Premises or the security of this Mortgage; (f) execute any lease of all or a substantial portion of the Premises except for actual occupancy by the lessee thereunder; or (g) permit any lease of the Premises or any part thereof to become subordinate to any lien other than the lien of this Mortgage. Except as otherwise provided in Section 3.1 hereof, all leases of the Premises or any part thereof are subject to the approval of Mortgagee.

3.5. Breaches Regarding Leases or Assignments Thereof. Any violation on Mortgagor's part of any covenant or agreement in any lease of the Premises or of any part thereof or in the assignment of any such lease that is to be kept or performed by Mortgagor as lessor or as assignor, as the case may be, shall constitute a Default under this Mortgage and thereupon Mortgagee may, at its option, without notice, declare the entire indebtedness secured hereby immediately due and payable and exercise its other rights and remedies set out in Article IV herein.

3.6. Oil, Gas or Mineral Leases. As additional and collateral security for the payment of the indebtedness, Mortgagor hereby assigns to Mortgagee all of the bonuses, rents, royalties, rights and benefits accruing under all oil, gas or mineral leases affecting the Premises, or which may hereafter affect the Premises, including all water and riparian rights, and the lessee or assignee or sublessee is hereby directed upon production by the holder of the indebtedness secured hereby of a certified copy hereof, to pay said bonuses, rents, royalties, rights, and benefits to Mortgagee. This assignment is to become effective, however, only upon Mortgagor's default in any condition or term of this Mortgage or the Note, such direction to terminate and become null and void upon payment in full of the indebtedness hereby secured.

3.7. Estoppel Certificates. Mortgagor shall procure and deliver to Mortgagee at any time within thirty (30) days after notice and demand from Mortgagee an estoppel certificate, in form satisfactory to Mortgagee, from each lessee of the Premises.

3.8. Future Leases. Mortgagor will advise Mortgagee promptly of the execution hereafter of any lease of any part of the Premises and, upon Mortgagee's written request, it will submit to Mortgagee for examination and approval any such lease and, if Mortgagee so requests, Mortgagor will assign such lease to Mortgagee, such assignment to be in form satisfactory to Mortgagee; and it is further agreed that the provisions of this Mortgage with regard to Mortgagor's obligations and Mortgagee's rights with respect to leases and assignments of such leases shall apply to all such additional leases and assignments thereof.

3.9. Application of Rents and Other Income. All earnings, revenues, issues, profits, income and rents collected by Mortgagee shall be applied in the following manner:

- (a) To the payment of taxes, assessments and charges and the expense of insurance, repairs to and improvements on the Premises or to the making of any required deposits in the escrow fund for future payment of taxes, assessments and insurance premiums; Mortgagee, however, shall not be obligated to keep insurance on, make repairs to and/or improvements on the Premises;
- (b) To the payment of all operating expenses and other necessary expenses of the management, protection and/or preservation of the Premises as provided by Mortgagee;
- (c) To the repayment to Mortgagee of any and all amounts advanced by it under the terms of this Mortgage together with interest on the respective advancement from the date of each at the maximum rate set out in this Mortgage for interest on advances;
- (d) To the payment of any and all costs or expenses incurred by Mortgagee in enforcing the obligations of this Mortgage;
- (e) To the payment of principal and interest installments due or to become due under the Note or any extension or renewal thereof and/or to the payment of any judgment rendered thereon together with interest, costs and expenses;
- (f) Any amount not applied as above provided and remaining in the hands of the Mortgagee may, at its option, on the first day of September of each year be applied by Mortgagee to one or both of the following:
 - (i) used for prepayment of principal in inverse order of its maturity; or
 - (ii) be refunded to the Mortgagor.

88374246

3.10. Priority of Application. All rents collected by Mortgagee may be applied to the items in Section 3.9 above listed in any manner that Mortgagee deems advisable and without regard to the aforestated priorities. Receipt by Mortgagee of such rents, issues, and profits shall not constitute a waiver of any right or remedy that Mortgagee may enjoy under this Mortgage or under the laws of Illinois, nor shall the receipt and application thereof cure any Default hereunder nor affect any foreclosure proceeding or any sale authorized by this Mortgage and the laws of Illinois.

3.11. Accountability for Rents. Mortgagee shall be required to account for only such rentals and payments as are actually collected by it. Mortgagee shall have no liability for failure to rent the Premises or any part thereof, or for failure to make collections of rentals, or for failure to do any of the things which are authorized herein. This provision is Mortgagor's express agreement to grant all of its rights and privileges to Mortgagee and shall not be held to create any duties or liabilities except as herein expressly set forth. For the purpose of accounting, the books and records of Mortgagee shall be deemed prima facie correct.

3.12. Liability for Rents. Mortgagee shall not be liable for the act or omission of any agent and/or manager, if Mortgagee shall have used reasonable care in the selection of such agent or manager.

3.13. Liability for Premises. Mortgagee shall not, in the exercise of its control and management of the Premises, be deemed the agent of Mortgagor and shall not be liable for any damage to any person or property, where such damage arises out of the operation of, or in connection with, the Premises.

3.14. Status of Leases; Notice of Default. Mortgagor represents and warrants that any and all leases covering all or a portion of the Premises are in full force and effect, rent has not been paid more than one month in advance, Mortgagor and the lessees thereof are in all respects in good standing thereunder and neither Mortgagor nor said lessees are in default with respect to any provisions thereof. Mortgagor will not consent to, cause or allow any modification or alteration of any of the terms (including, without limitation, the amount of rent), conditions or covenants of the leases or any lease hereafter effected, or the termination of any such lease, without the prior written approval of Mortgagee, which will not be unreasonably withheld; provided, however, that Mortgagor may, without Mortgagee's consent, modify or alter any of the terms, conditions and covenants of any lease so long as such modification or alteration does not result in (i) surrender or termination of such lease, (ii) decrease in the amount of any payments due under such lease, (iii) change in the size of the leased premises, or (iv) decrease in the term of such lease. Mortgagor covenants and agrees that in the event Mortgagor shall receive from any of the lessees of said leases notice of any default by Mortgagor under the terms or provisions of any of said leases, or receive from any of said lessees or from any other party any notice or communication in any way respecting a default or alleged default or failure of performance which could become a default after lapse of time, or otherwise, under said leases, or relating to Mortgagor's good standing with

88374246

UNOFFICIAL COPY

respect thereto, Mortgagor shall immediately, and not later than one business day after receipt of such notice or communication, or obtaining knowledge of a default, real or claimed, advise or mail (special delivery in the case of a notice of default), postage prepaid, or deliver in person to Mortgagee a true, exact and full copy of said notice or communication.

3.15. Mortgagee's Right to Perform for Mortgagor/Lessor. Mortgagor agrees that for the purpose of curing any default under any lease, Mortgagee may, but shall not be obligated to, do any act, pay any sum or execute any document in the name of Mortgagor or as its attorney-in-fact, as well as in Mortgagee's own name, as Mortgagee in its discretion may determine, and Mortgagor hereby irrevocably appoints Mortgagee its true and lawful attorney-in-fact, in its name or otherwise, to do any and all acts, pay any sum and/or execute any and all documents that may in the opinion of Mortgagee be necessary or desirable to cure any such default or preserve any right of Mortgagor under any of said leases, or to preserve any rights of Mortgagor whatsoever, or to protect Mortgagee's security interest. If Mortgagee, acting under its authority herein granted, should pay, suffer or incur any expense, costs, charge, fee, obligation, damage or liability of any nature, or be a party to any action or proceeding, whether any of the same be for the purpose of curing any such default or protecting Mortgagee's security or the rights of Mortgagor under any of said leases, or otherwise, all of the same and all sums paid by Mortgagee for prosecution or defense of such actions or proceedings, including in any case reasonable attorneys' fees, shall be payable by Mortgagor to Mortgagee immediately, without demand, together with interest thereon at the maximum lawful rate (or if there is no such maximum rate, then a rate of 5% above the face rate of interest provided for in the Note) until paid, and the same, if not paid, shall be added to Mortgagor's indebtedness to be secured by these presents and be a lien upon the Premises.

ARTICLE IV.

DEFAULTS AND REMEDIES

4.1. Events of Default. Time is of the essence hereof, and the term "Default," as used in this Mortgage, shall mean the occurrence of any one or more of the following events:

(a) Payments. The failure of Mortgagor to make any payment according to the tenor and effect of the Note secured hereby, or any part thereof, or any failure to make any other payment of the principal, interest, or premium, if any, on the Note, or payment of any other sums secured hereby, including but not limited to taxes or insurance premiums, when and as the same shall become due and payable, whether at maturity, by acceleration, or otherwise, as in the Note and this Mortgage provided; or

(b) Performance. The failure of Mortgagor or any guarantor of the indebtedness secured by this Mortgage to punctually and properly perform any other covenant, condition, representation, warranty or agreement contained in this Mortgage or the Note, or in any of the Collateral Loan Documents, or in any other document given or delivered in connection with the loan evidenced by the Note; or

88374246

UNOFFICIAL COPY

Property of Cook County Clerk's Office

(c) Liens. The institution of proceedings to enforce any other lien, including, but not limited to, judgment and mechanic's liens, upon the Premises; or

(d) Bankruptcy and Related Proceedings. The filing of a proceeding in bankruptcy or arrangement or reorganization by or against Mortgagor, any beneficiary thereof or any guarantor of the indebtedness secured hereby pursuant to the Federal Bankruptcy Code or any similar law, federal or state, including, but not limited to, the following:

(1) Mortgagor, any beneficiary thereof or any guarantor of the indebtedness secured by this Mortgage 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 for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Mortgagor, any beneficiary thereof 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 its creditors, or shall admit in writing its inability to pay its debts generally as they become due; or

(2) A court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Mortgagor, any beneficiary thereof or any guarantor of the indebtedness secured by this Mortgage 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 ten (10) days (whether or not consecutive) from the first date of entry thereof, or any trustee, receiver or liquidator of Mortgagor, any beneficiary thereof 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 without the consent or acquiescence of Mortgagor, any beneficiary thereof or any such guarantor and such appointment shall remain unvacated and unstayed for an aggregate of ten (10) days (whether or not consecutive); or

(e) Other Legal Proceedings. 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, and such execution, attachment or similar process is not released, bonded, satisfied, vacated or stayed within ten (10) days after its entry or levy; or

(f) Abandonment. The abandonment of any part of the Premises by Mortgagor; or

(g) Misrepresentation. If any representation or warranty of Mortgagor set forth in this Mortgage, the Note, or in any of the Collateral Loan Documents delivered by Mortgagor to Mortgagee in connection herewith or as required from time to time hereby, shall prove to be false, misleading or erroneous in any material respect; or

(h) Lease Covenants. Mortgagor's failure as lessor, or assignor, to observe, comply or adhere to and/or perform any agreement of Mortgagor in any lease or assignment thereof to Mortgagee relating to the Premises; or

(i) Post Construction Documentation. Mortgagor shall fail to provide any document or item which it is required to provide pursuant to Paragraph 14 of the Commitment (as defined in Section 8.24 hereof) when it is required to be provided; or

(j) Building Loan Agreement. The failure by Mortgagor to comply with any term, condition or covenant contained in the Building Loan Agreement, or the breach by Mortgagor of any warranty contained therein. In the event that there is any cure period provided in the Building Loan Agreement for such default or breach, Mortgagor shall have the longer of (i) the appropriate cure period contained in the Building Loan Agreement, or (ii) any cure period contained herein, but not both.

4.2. Remedies. Then in every such case, if any event of Default shall have occurred and/or be continuing, Mortgagee, at its option, shall have, in addition to any rights at law or in equity, each and all of the following rights and remedies, which may be exercised individually, collectively or cumulatively:

(a) Acceleration. Mortgagee shall have the right to declare all indebtedness secured hereby to be immediately due and payable and the same shall thereupon become immediately due and payable without any presentment, demand, protest or notice of any kind.

(b) Management. Mortgagee may, with or without bringing any action or proceeding, and without regard to the adequacy of any security for the indebtedness or obligations hereby secured, in person or by agent or employee, or by a receiver appointed by a court of competent jurisdiction, enter upon and take possession of all or any part of the Premises, excluding Mortgagor and its agents and servants wholly therefrom; Mortgagor shall on demand peaceably surrender possession thereof to Mortgagee. Upon every such entry, Mortgagee, personally or by its agents or in the name of Mortgagor, at the expense of Mortgagor, from time to time, may maintain and restore the Premises, whereof it shall become possessed as aforesaid; and, from time to time, at the expense of Mortgagor, Mortgagee may make all necessary or proper repairs, renewals and replacements and such useful alterations, additions, betterments and improvements thereto and thereon as to it may seem advisable or necessary to preserve the value, marketability or rentability of the Premises; and in every such case Mortgagee shall have the right to manage, control and operate the Premises and may make, cancel, modify or enforce leases, obtain and evict tenants, rent and lease the same to such persons, for such periods of time, and on such terms and conditions as Mortgagee in its sole discretion may determine, and with or without taking possession of the Premises, may sue for or otherwise collect any and all of the rents, issues and profits thereof, including those past due and unpaid and apply same, less costs and expenses of management, operation and collection, including attorneys' fees, upon any indebtedness secured hereby, all in such order as Mortgagee may determine. In dealing with the

UNOFFICIAL COPY

Premises as a Mortgagee in, or not in, possession, Mortgagee shall be without any liability, charge, or obligation therefor to Mortgagor other than for willful misconduct, and shall be entitled to operate any business then being conducted or which could be conducted thereon or therewith at the expense of and for the account of Mortgagor (and all net losses, costs and expenses thereby incurred shall be advancements, and will be immediately due and payable and if not paid become part of the indebtedness secured hereby), to the same extent as the owner thereof could do. 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 default or notice of default under this Mortgage or invalidate any act done in response to any such default or pursuant to any such notice and, notwithstanding the continuance in possession of the Premises or the collection, receipt and application of rents, issues and profits, Mortgagee shall be entitled to enforce every right and exercise every remedy provided for in the Note, this Mortgage, or any of the Collateral Loan Documents or by law upon the occurrence of any event of Default.

(c) Advances. In the event of the noncompliance of any duty or duties required of Mortgagor under the terms of this Mortgage or the occurrence of any event which, in the judgment of Mortgagee, impairs the value of the Premises herein taken as security for the indebtedness, Mortgagee reserves the right, at its own election, to advance sufficient funds to accomplish said performance or maintain such security. Said sums, on notice from Mortgagee, shall become immediately due and repayable to Mortgagee. In default of said payment, the amount advanced will be added to the outstanding principal balance, bearing interest at the maximum rate set out in this Mortgage for interest on advances from date of advancement.

(d) Legal Proceedings. Mortgagee, with or without entry, personally or by its agents or attorneys, insofar as applicable shall have the following rights:

- (i) Mortgagee may institute proceedings for the complete or partial foreclosure of this Mortgage. In any suit to foreclose the lien hereof, there shall be allowed and included, as additional indebtedness in the decree for sale, all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs (which may be estimated as to costs to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens certificates and similar data and assurances with respect to title, as Mortgagee may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale pursuant thereto the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature mentioned in this clause shall become so much additional indebtedness secured hereby and

immediately due and payable, with interest thereon at the maximum rate set out in this Mortgage for interest on advances from the date of the expenditure until paid. The proceeds of any sale of the Premises or any part thereof shall be applied to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the maximum rate set out in this Mortgage for interest on advances; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto; and/or

- (ii) Mortgagee shall have the right from time to time to enforce any legal or equitable remedy against Mortgagor and to sue for any sums whether interest, damages for failure to pay principal or any installment thereof, taxes, installments of principal, or any other sums required to be paid under the terms of this Mortgage, as the same become due, without regard to whether or not the principal sum secured or any other sums secured by this Mortgage shall be due and without prejudice to the right of Mortgagee thereafter to enforce any appropriate remedy against Mortgagor including an action of foreclosure, or any other action, for a Default or Defaults by Mortgagor existing at the time such earlier action was commenced; and/or
- (iii) Mortgagee may enforce its rights, whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note, in this Mortgage or in any of the Collateral Loan Documents contained, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee shall deem most advisable to protect and enforce any of its rights hereunder or under the Note and the Collateral Loan Documents. Mortgagee, at its option, shall have the power of sale, if any, provided for by statute or otherwise permitted under the laws of the State of Illinois; and/or
- (iv) Mortgagee is hereby appointed the true and lawful attorney of Mortgagor, in its name and stead or in the name of Mortgagee, to make all necessary conveyances, assignments, transfers and deliveries of the property rights so sold, and, for that purpose, Mortgagee may execute all necessary deeds and instruments of assignment and transfer, and may substitute one or more persons with like power. Mortgagor hereby ratifies and confirms all that its said attorney or attorneys or such substitute or substitutes shall lawfully do by virtue hereof. Mortgagor shall, nevertheless, if so requested in writing by Mortgagee, ratify and confirm any such sale or sales by

88374246

executing and delivering to Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of Mortgagee, for the purpose and as may be designated in such request. Any such sale or sales made under or by virtue of this Article IV shall operate to divest all the estate, right, title, interest, claim and demand, whether at law or in equity, of Mortgagor in and to the property and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and its successors and assigns.

(e) Effectuating Lease Assignments. Mortgagee, at its sole option, may send notifications to any and all lessees and tenants of the Premises that future payments under or relating to their leases and tenancies shall be made to Mortgagee. Thereafter Mortgagee shall be entitled to collect said rents and payments until Mortgagor cures all Defaults hereunder, and shall apply such rents and payments collected in the manner set forth in Article III hereof.

(f) Secured Party Remedies. Mortgagee, at its sole option, may exercise any or all of the remedies available to a secured party under the Illinois Uniform Commercial Code (the "Code"), including, but not limited to the following:

- (i) Either personally or by means of a court-appointed receiver, take possession of all or any of the Personal Property (which term, for purposes hereof, shall mean the same thing as the term "Collateral" is same is used in Section 5.1 hereof) and exclude therefrom Mortgagor and all others claiming under Mortgagor and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Mortgagor with respect to the Personal Property or any part thereof. In the event Mortgagee demands or attempts to take possession of the Personal Property in the exercise of any rights under the Mortgage or any of the Collateral Loan Documents, Mortgagor promises and agrees to promptly turn over and deliver complete possession thereof to Mortgagee, and/or
- (ii) Without notice to or demand upon Mortgagor, make such payments and do such acts as Mortgagee may deem necessary to protect its security interest in the Personal Property, including, without limitation, paying, purchasing, contesting or compromising any encumbrance, charge or lien which is prior to or superior to the security interest granted hereunder, and in exercising any such powers or authority to pay all expenses incurred in connection therewith; and/or
- (iii) Require Mortgagor to assemble the Personal Property or any portion thereof at a place designated by Mortgagee and reasonably convenient to both parties and promptly to deliver such

Personal Property to Mortgagee, and Mortgagee's agents and representatives shall have the right to enter upon any or all of Mortgagor's premises and property to exercise Mortgagee's rights hereunder; and/or

(iv) Sell, lease or otherwise dispose of the Personal Property at public sale, with or without having the Personal Property at the place of sale, and upon such terms and in such manner as Mortgagee may determine. Mortgagee may be a purchaser at any such sale; and/or

(v) Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Mortgagee shall give Mortgagor at least ten (10) days' prior written notice of the time and place of any public sale of the Personal Property or other intended disposition thereof. Such notice may be mailed to Mortgagor at the address set forth at the beginning of this Mortgage.

Upon occurrence of an event of Default under this Mortgage, Mortgagee reserves the option, pursuant to the appropriate provisions of the Code, to proceed with respect to the Personal Property as part of the real property which constitutes a portion of the Premises in accordance with its rights and remedies with respect to such real property, in which event the default provisions of the Code shall not apply. If Mortgagee shall elect to proceed with respect to the Personal Property separately from the real property, ten (10) days' notice of the sale of the Personal Property shall be deemed to be reasonable notice.

(g) Appointment of Receiver. If an event of Default under this Mortgage occurs and is continuing, Mortgagee, as a matter of right and without notice to Mortgagor or anyone claiming under Mortgagor, and without regard to the then value of the Premises or the interest of Mortgagor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Premises, and Mortgagor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases including the power to collect the rents, issues and profits of the Premises during the pendency of a foreclosure suit, and in case of a sale and a deficiency during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits. The court having jurisdiction may authorize the receiver to apply the net income in his hands to payment in whole or in part to (i) the indebtedness secured hereby, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or such decree, provided such application is made prior to foreclosure sale; and (ii) to the deficiency in case of a sale and deficiency. Said receiver shall continue as such and exercise all such powers until the date of sale of the Premises,

unless such receivership is sooner terminated. Mortgagee or any holder of the Note may be appointed as such receiver.

(h) Retention of Possession. Notwithstanding the appointment of any receiver, liquidator or trustee of Mortgagor, or of any of Mortgagor's property, or of the Premises or any part thereof, Mortgagee shall be entitled to retain possession and control of all property now or hereafter granted, bargained, sold, mortgaged, warranted, conveyed, pledged and/or assigned to or held by Mortgagee under this Mortgage.

(i) Remedies Not Exclusive. The cumulative rights of Mortgagee arising under the clauses and covenants contained in this Mortgage shall be separate, distinct and cumulative and none of them shall be construed to be exclusive nor an election to proceed under any one provision herein to the exclusion of any other provision, anything herein or otherwise to the contrary notwithstanding. In addition to any remedies provided herein for Default hereof, Mortgagee shall have all other remedies allowed under the laws of the State of Illinois, and the laws of the United States. No failure on the part of Mortgagee to exercise any of its rights hereunder arising upon any Default shall be construed to prejudice its rights in the event of any other or subsequent Default. No delay on the part of Mortgagee in exercising any of such rights shall be construed to preclude it from the exercise thereof at any time during the continuance of such Default. Mortgagee may enforce any one or more remedies or rights hereunder in such order and manner as it may determine, successively or concurrently at its option. By accepting payment or partial payment of any sum secured hereby after its due date, Mortgagee shall not make an accommodation or thereby waive the agreement herein contained that time is of the essence, nor shall Mortgagee waive either any of its remedies or options or its right to require prompt payment when due of all sums secured or to consider failure so to pay a Default hereunder. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to other powers herein contained, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee.

4.3 Cure Periods. Notwithstanding anything contained in the Note or elsewhere in this Mortgage, following a failure to pay any monetary amount when and as due (a "Monetary Default"), which would constitute a Default under this Mortgage, Mortgagor shall be entitled to a period of five (5) days following notice from Mortgagee to Mortgagor, within which to cure such Monetary Default; provided, however, that Mortgagor may avail itself of such cure period regarding Monetary Defaults, not more than once during any twelve-month period, each such twelve-month period commencing with either the date of this Mortgage or an anniversary date thereof. In the case of any Default other than in the payment of money which does not also constitute a Monetary Default (any such event of Default herein being called a "Non-Monetary Default"), Mortgagor shall be entitled to receive written notice of, and the opportunity to cure, such Non-Monetary Default, such notice to be given at least thirty (30) days prior to the exercise of any remedy based upon such Non-Monetary Default; provided, however, that if a Non-Monetary Default is not by its nature susceptible to cure within said

thirty (30) day period, then Mortgagor shall have such additional time to cure the Non-Monetary Default as may be reasonably necessary, provided that Mortgagor commences to cure the Non-Monetary Default promptly and in no event later than the thirty (30) day period and diligently pursues the cure to completion, and provided further that in no event shall such cure period extend for more than sixty (60) days after the written notice. Notwithstanding the foregoing, in no event shall any period permitted for the cure of Non-Monetary Defaults exceed any comparable cure periods permitted by applicable taxing authorities, by the provisions of insurance policies covering the Premises, or by contracts, including but not limited to leases, to which Mortgagor is bound; and further provided that the granting of such additional cure period for a non-monetary default does not, in the reasonable judgment of Mortgagee, jeopardize the lien of this Mortgage or the value of the Premises.

ARTICLE V.

SECURITY AGREEMENT

5.1. Creation of Security Interest. Mortgagor and Mortgagee agree:

(a) This Mortgage shall constitute a Security Agreement within the meaning of the Code with respect to (i) any and all sums at any time on deposit for the benefit of Mortgagee or held by Mortgagee (whether deposited by or on behalf of Mortgagor or any one else) pursuant to any of the provisions of this Mortgage ("Deposits"), and (ii) with respect to any Personal Property included in the granting clauses of this Mortgage, which Personal Property may not be deemed to form a part of the Property described in Exhibit A hereto or may not constitute a "fixture" (within the meaning of Section 9-313 of the Code), and all replacements of such Personal Property, substitutions for such Personal Property, additions to such Personal Property and the proceeds thereof (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as the "Collateral"), and that a security interest in and to the Collateral and the Deposits is hereby granted to Mortgagee, and the Collateral and the Deposits and all of Mortgagor's right, title and interest therein are hereby assigned to Mortgagee, all to secure payment of the indebtedness hereby secured and to secure performance by Mortgagor of the terms, covenants and provisions hereof. In the event of a Default under this Mortgage, Mortgagee shall have the option of exercising any or all of the "Secured Party Remedies" as set forth in Section 4.2(f) hereof, above. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by Mortgagee shall include, but not be limited to, reasonable attorneys' fees and legal expenses incurred by Mortgagee. Mortgagor shall, from time to time, on request of Mortgagee, deliver to Mortgagee an inventory of the Collateral in reasonable detail.

(b) In addition to the foregoing, the parties acknowledge and agree that this Mortgage is a "construction mortgage" (as defined in Section 9-313(c) of the Code). Mortgagor further covenants that (i) the indebtedness secured by this Mortgage

shall, as provided in the recitals set forth above, be used for paying the construction and equipping of the Premises, (ii) no fixtures have been installed in the Premises as of the date hereof, and (iii) all goods which are to become fixtures within the Premises shall be installed in accordance with the plans and specifications for the Premises heretofore delivered to Mortgagee and in accordance with the terms and conditions of the Commitment, and such installation of fixtures shall be completed prior to the completion of construction.

5.2. Representations, Warranties and Covenants. Mortgagor hereby represents, warrants and covenants as follows:

(a) Except for the security interest granted hereby, Mortgagor is, and as to portions of the Personal Property to be acquired after the date hereof will be, the sole owner of the Personal Property, free from any adverse lien, security interest, encumbrance or adverse claims thereon of any kind whatsoever. Mortgagor will notify Mortgagee of, and will defend the Personal Property against, all claims and demands of all persons at any time claiming the same or an interest therein.

(b) Mortgagor will not lease, sell, convey or in any manner transfer the Personal Property without the prior written consent of Mortgagee, except as may be expressly permitted under Section 5.2 (d) hereof.

(c) The Personal Property is not used or bought for personal, family or household purposes.

(d) The Personal Property will be kept on or at the Premises and Mortgagor will not remove the Personal Property from the Premises without the prior written consent of Mortgagee, except that so long as Mortgagor is not in default hereunder, Mortgagor shall be permitted to dispose of such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Mortgagor with property of like kind and quality and at least equal in value to that replaced and in such manner so that said new Personal Property shall be subject to the security interest created hereby and so that the security interest of Mortgagee shall be first in priority, it being expressly understood that all replacements of the Personal Property and any additions to the Personal Property shall be and become immediately subject to the security interest of this Mortgage and be covered hereby.

(e) Mortgagor maintains a place of business in the State of Illinois and Mortgagor will immediately notify Mortgagee in writing of any change in its place of business as set forth in the beginning of this Mortgage.

(f) At the request of Mortgagee, Mortgagor will join Mortgagee in executing one or more financing statements and renewals and amendments thereof as well as any continuation statements pursuant to the Code in form satisfactory to Mortgagee, and will pay the cost of filing the same in all public offices wherever filing is deemed by Mortgagee to be necessary or desirable. Mortgagor authorizes Mortgagee to file financing and continuation statements, and amendments and supplements thereto relating to the Personal Property signed only by Mortgagee.

(g) Mortgagor will do all acts and things as Mortgagee may require or as may be necessary or appropriate to establish and maintain a first perfected security interest in the Personal Property, subject to no liens, encumbrances or security interests of others.

(h) All covenants and obligations of Mortgagor contained in this Mortgage shall be deemed to apply to the Personal Property whether or not expressly referred to herein.

(i) This Mortgage constitutes a security agreement (and financing statement) for all purposes under the Code.

5.3. Security Interest to Include Leases. To the extent permitted by applicable law, the security interest created hereby (and/or by the financing statements being filed simultaneously herewith) is specifically intended to cover and include all leases of the Premises (herein, together with all amendments and supplements thereto made as provided therein, called the "Leases"), between Mortgagor, as lessor, and various tenants named therein, as lessee, including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacement of the Leases, together with all the right, title and interest of Mortgagor, as lessor thereunder, including, without limiting the generality of the foregoing, the present and continuing right to make claim for, collect, receive and receipt for any and all of the rents, income, revenues, accounts receivable, issues and profits and moneys payable as damages or in lieu of the rent and moneys payable as the purchase price of the Premises or any part thereof or of any other awards or claims for money and other sums of money payable or receivable thereunder, howsoever payable, and to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which Mortgagor or any lessor is or may become entitled to do under the Leases, all as assigned to Mortgagee in accordance with the separate Blanket Assignment of Leases, provided that the assignments made by this provision and the Blanket Assignment of Leases shall not impair or diminish any obligation of Mortgagor under the Leases, nor shall any such obligation be imposed upon Mortgagee.

ARTICLE VI.

DAMAGE OR DESTRUCTION; INSURANCE PROCEEDS

6.1. Notice. In case of casualty to the Premises resulting in damage or destruction, Mortgagor shall promptly give written notice thereof to Mortgagee.

6.2. Assignment of Insurance Proceeds; Authority to Settle Claims. Mortgagor hereby grants, transfers and assigns to Mortgagee any insurance proceeds which Mortgagor is otherwise entitled to receive in connection with any damages to the Premises or part thereof and the same shall be paid to Mortgagee. Mortgagor hereby authorizes and directs any affected insurance carrier to make payment of such proceeds directly to Mortgagee. Mortgagee is hereby authorized and empowered by Mortgagor to settle, adjust or compromise any claims for loss, damage or destruction under any policy or policies of insurance; provided, however, that Mortgagor may

settle, adjust or compromise any such claims which are less than \$500,000. No interest shall be allowed to Mortgagor on any proceeds of insurance paid to and held by Mortgagee.

6.3. Mortgagee's Election Regarding Insurance Proceeds. The insurance loss proceeds shall be delivered to Mortgagee and be applied (pursuant to the provisions of this Article VI) to reduction or to the full payment of the indebtedness secured hereby unless Mortgagee elects to make said proceeds available for restoration purposes. Within thirty (30) days after receipt of the written notice referred to in Section 6.1, Mortgagee shall advise Mortgagor in writing as to whether Mortgagee elects to apply the insurance loss proceeds on the indebtedness secured hereby or for restoration of the Premises. Notwithstanding the provisions of Section 6.5 hereof, if the insurance proceeds are used to reduce the principal balance of the loan secured by this Mortgage, the monthly payments of interest provided in the Note shall be proportionately reduced. No prepayment premium shall be charged in the event of any prepayment of principal resulting from the application of insurance proceeds to reduce or pay the principal balance of the loan. Notwithstanding anything to the contrary contained herein, Mortgagee shall make the insurance proceeds available for repair or restoration of the Premises, pursuant to the other provisions of this Article VI, if, in Mortgagee's judgment, by the use of such insurance proceeds together with any additional funds paid to Mortgagee by Mortgagor, the Premises can be restored to an architectural and economic facility of the same character and utility and not less valuable than the Premises were before the casualty.

6.4. Total Destruction. If at any time during the term of this Mortgage all or substantially all of the Premises are damaged or destroyed, and if Mortgagee elects to have all insurance proceeds applied to payment of the indebtedness secured hereby but such insurance proceeds are not sufficient to pay in full the then unpaid balance of said indebtedness, with accrued interest thereon, Mortgagor shall, within ten (10) days after application of the insurance proceeds, pay such deficiency to Mortgagee.

6.5. Application of Proceeds. If Mortgagee elects to have the insurance loss proceeds applied to pay in full or reduce the unpaid balance of the indebtedness secured hereby, said proceeds shall, promptly after receipt by Mortgagee, be applied by Mortgagee, first, to pay the actual costs, fees and expenses, if any, incurred in connection with the adjustment of the loss, and, second, to reduction or satisfaction of the indebtedness secured hereby. If the damage or destruction is less than total as treated in Section 6.4 above, and if part of the Premises is to remain open or be reopened for business, and if such proceeds are not sufficient to pay the indebtedness in full, then such reduction shall be applied in inverse order of payment in the Note provided, and unless Mortgagee agrees in writing, any application of such insurance proceeds to reduction of principal shall not extend or postpone the due date of the monthly installments or change the amount of such installments as provided for in the Note.

6.6. Restoration. If the insurance proceeds are made available for restoration, Mortgagor shall at its sole cost and

expense, whether or not the insurance proceeds, if any, shall be sufficient for the purpose, restore, repair, replace, and rebuild (hereinafter referred to as "Restoration") the Premises as nearly as possible to its value, condition and character immediately prior to such damage or destruction. In such event, all insurance money paid to Mortgagee on account of such damage or destruction, less the actual costs, fees and expenses, if any, incurred in connection with adjustment of the loss, shall be released by Mortgagee to be applied to payment (to the extent of actual restoration performed) of the cost of the aforesaid Restoration, including the cost of temporary repairs or for the protection of property pending the completion of permanent Restoration. Disbursement of such proceeds will be in installments pursuant to a construction escrow with a title insurer acceptable to Mortgagee. If the insurance proceeds are so made available by Mortgagee for Restoration, any surplus which may remain out of said proceeds after payment of the cost of Restoration shall, at the option of Mortgagee, be applied to the indebtedness secured hereby or be paid to any party entitled thereto and under the conditions that Mortgagee may require. Insurance proceeds released for Restoration shall at Mortgagee's option be paid out from time to time as such Restoration progresses or at one time upon completion of such Restoration subject to the following conditions:

(a) that Mortgagor is not then in default under any of the terms, covenants and conditions hereof or under the Note or any Leases assigned to Mortgagee; and

(b) that the Mortgagee shall first be given satisfactory proof that all Property, Improvements and Personal Property affected by the loss or damage have been fully restored, or that by the expenditure of such proceeds will be fully restored, free and clear of all liens except the lien of this Mortgage; and

(c) that in the event such proceeds shall be insufficient to restore or rebuild the Property, Improvements, and Personal Property, Mortgagor shall either (i) deposit promptly with Mortgagee funds which, together with the insurance proceeds, shall be sufficient to restore and rebuild the same, or (ii) provide other assurance satisfactory to Mortgagee of such restoration or rebuilding; and

(d) that in the event Mortgagor shall fail within a reasonable time to restore or rebuild or cause to be restored or rebuilt the Property, Improvements and Personal Property, Mortgagee, at its option, may restore or rebuild same or cause same to be restored or rebuilt for or on behalf of Mortgagor and for such purpose may do all necessary acts.

In the event any of such conditions are not or cannot be satisfied, then the alternate disposition of such proceeds as provided herein shall again become applicable. Under no circumstances shall Mortgagee become personally liable for the fulfillment of the terms, covenants and conditions contained in any of the Leases with respect to the matters referred to in this Section 6.6 nor obligated to take any action to restore the Premises. Mortgagee shall not be obligated to take any action to restore the Premises. Mortgagee shall not be obligated to see to the proper application of any funds released

hereunder, nor shall any amount so released or used be deemed a payment of any indebtedness secured hereby.

If any of such conditions are not satisfied, and if Mortgagee is unwilling to waive that condition and thereby to make said proceeds so available, Mortgagor shall have the right to prepay, without penalty, the balance of the indebtedness secured hereby which remains unpaid after application of the proceeds or awards thereto.

6.7. Payment of Deposited Funds. Upon (i) completion of all the Restoration in good workmanlike manner and substantially in accordance with the plans and specifications therefor, if any, and (ii) receipt by Mortgagee of satisfactory evidence of the character required by conditions (b) and (c) of Section 6.6 hereof, that the Restoration has been completed and paid for in full (or, if any part of such Restoration has not been paid for, adequate security for such payment shall exist in form satisfactory to Mortgagee) and that there are no liens of the character referred to in said condition (b), any balance of the insurance money at the time held by Mortgagee shall be paid, as provided in this Article VI, to Mortgagor or its designee provided Mortgagor is not then in default of any of the terms and provisions of this Mortgage.

6.8. Application of Insurance Proceeds in Event of Default. If, while any insurance proceeds are being held by Mortgagee to reimburse Mortgagor for the cost of rebuilding or restoration of buildings or improvements on the Premises, Mortgagee shall be or become entitled to, and shall accelerate the indebtedness secured hereby, then and in such event, Mortgagee shall be entitled to apply all such insurance proceeds then held by it in reduction of the indebtedness hereby secured and any excess held by it over the amount of indebtedness then due hereunder shall be returned to Mortgagor or any party entitled thereto without interest.

ARTICLE VII.

EMINENT DOMAIN; CONDEMNATION AWARDS

7.1. Notice. In the event that the Premises, or any part thereof, shall be taken in condemnation proceedings or by exercise of any right of eminent domain or by conveyance(s) in lieu of condemnation (hereinafter called collectively, "condemnation proceedings"), or should Mortgagor receive any notice or information regarding any such condemnation proceedings, Mortgagor shall give prompt written notice thereof to Mortgagee. Mortgagor and Mortgagee shall have the right to participate in any such condemnation proceedings and the proceeds thereof shall be deposited with Mortgagee and be distributed in the manner set forth in this Article VII. Mortgagor agrees to execute any and all further documents that may be required in order to facilitate collection of any award or awards and the making of any such deposit.

7.2. Assignment of Condemnation Awards. Mortgagor hereby grants, transfers and assigns to Mortgagee the proceeds of any and all awards or claims for damages, direct or consequential, which Mortgagor is otherwise entitled to receive, in connection with any condemnation of or injury to the Premises, or part

86374246

thereof, or for conveyances in lieu of condemnation, and the same shall be paid to Mortgagee. Mortgagor hereby authorizes and directs any such condemning authority to make payment of such award(s) and claim(s) directly to Mortgagee. No interest shall be allowed to Mortgagor on any such condemnation awards paid to and held by Mortgagee.

7.3. Total Taking. If at any time during the term of this Mortgage title to the whole or substantially all of the Premises shall be taken in condemnation proceedings or by agreement among Mortgagor, Mortgagee and those authorized to exercise such right, Mortgagee shall apply such award or proceeds which it receives pursuant to Section 7.2 hereof, first, to pay the actual costs, fees and expenses, if any, incurred in connection with the collection of the award, and, second, to fully pay all remaining indebtedness secured by this Mortgage, and any excess award funds then remaining after payment of the indebtedness in full shall be paid to Mortgagor. In the event that the amount of the award or proceeds received by Mortgagee shall not be sufficient to pay in full the then unpaid balance of the said indebtedness, with the accrued interest thereon, Mortgagor shall, within ten (10) days after the application of the award or proceeds as aforesaid, pay such deficiency to Mortgagee. For the purposes of this Section, "substantially all of the Premises" shall be deemed to have been taken if the portion of the Premises not so taken cannot be so repaired or reconstructed to constitute a complete, rentable structure or structures capable of producing a fair and reasonable net annual income sufficient, after the payment of all operating expenses thereof, to retire the indebtedness evidenced by the Note in accordance with the payment terms of the Note.

7.4. Partial Taking - Mortgagee's Election. If at any time during the term of this Mortgage, title to less than the whole or substantially all of the Premises is taken as aforesaid, then Mortgagee will elect within thirty (30) days after receipt of notice of such taking, whether to have the proceeds of the award applied to reduction of the unpaid principal balance of the indebtedness secured hereby or to have such proceeds made available to Mortgagor for the repair and reconstruction necessary to restore the Premises. If Mortgagee elects to have the award or proceeds applied to reduce the unpaid principal balance, said proceeds shall, promptly after receipt by Mortgagee, be applied by Mortgagee, first, to pay the actual costs, fees and expenses, if any, incurred in connection with the collection of the award, and, second, to reduce the indebtedness (without prepayment premium) secured hereby. If Mortgagee elects to have the proceeds of the award used for repair and restoration, all of the award or proceeds collected by Mortgagee shall be applied first to pay the actual costs, fees and expenses, if any, incurred in connection with the collection of the award, and the balance shall be paid toward the cost of demolition, repair and restoration, substantially in the same manner and subject to the same conditions as those provided in Section 6.6 hereof with respect to insurance proceeds and other monies. Any balance of such award proceeds remaining in the hands of Mortgagee after payment of such costs of demolition, repair and restoration as aforementioned, shall be retained by Mortgagee and applied in reduction of the indebtedness secured hereby in inverse order of payments as set forth in the Note. In the event that such costs shall exceed

the net award amount collected by Mortgagee, Mortgagor shall pay the deficiency, on demand. If condemnation proceeds are used to reduce the principal balance of the loan secured by this Mortgage, the monthly payments of interest provided in the Note shall be proportionately reduced.

7.5. Abandonment; Failure of Mortgagor to Respond to Offer, etc. If the Premises are abandoned by Mortgagor or, if after notice to Mortgagee and/or Mortgagor, the condemnor offers to make an award or settle a claim for damages, Mortgagor fails to respond to the offer and fails to advise Mortgagee within thirty (30) days of the date of such notice, then Mortgagee is authorized to collect and apply the proceeds at Mortgagee's option either to restoration or repair of the Premises or to the sums secured by this Mortgage.

7.6. Application of Proceeds. In the event that the principal balance secured hereby is reduced under the provisions of Sections 7.4 or 7.5 hereof, the application of such proceeds to principal shall not extend or postpone the due date of the monthly installments or change the amount of such installments as provided in the Note secured by this Mortgage unless Mortgagee agrees otherwise in writing.

7.7. Expenses. In the case of any taking covered by the provisions of this Article VII, Mortgagor and Mortgagee shall be entitled to reimbursement from any award or awards of all reasonable costs, fees and expenses incurred in the determination and collection of any such awards.

7.8. Application of Condemnation Awards in Event of Default. If, while any condemnation awards are being held by Mortgagee to reimburse Mortgagor for the cost of rebuilding or restoration of buildings or improvements on the Premises, Mortgagee shall be or become entitled to, and shall accelerate the indebtedness secured hereby, then and in such event, Mortgagee shall be entitled to apply all such condemnation awards then held by it in reduction of the indebtedness hereby secured, and any excess held by it over the amount of indebtedness then due hereunder shall be returned to Mortgagor or any party entitled thereto without interest.

ARTICLE VIII.

MISCELLANEOUS

8.1. Maximum Interest Payable. Neither the provisions of this Mortgage nor the Note secured hereby shall have the effect of, or be construed as requiring or permitting the Mortgagor to pay interest in excess of the highest rate per annum allowed by the laws of the State of Illinois on any item or items of indebtedness referred to in this Mortgage. If under any circumstances Mortgagee shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due hereunder and not to the payment of interest. This provision shall control every other provision of all agreements between Mortgagor and Mortgagee.

8.2. Payment by Any Party. Any payment made in accordance with the terms of this Mortgage by any person at any time:

liable for the payment of the whole or any part of the sums now or hereafter secured by this Mortgage, or by any subsequent owner of the Premises, or by any other person whose interest in the Premises might be prejudiced in the event of a failure to make such payment, or by any stockholder, officer or director of a corporation which at any time may be liable for such payment or may own or have such an interest in the Premises, shall be deemed, as among Mortgagee and all persons who at any time may be liable as aforesaid or may own the Premises, to have been made on behalf of all such persons.

8.3. Right to Inspect. Mortgagee and any persons authorized by Mortgagee shall have the right to enter and inspect the Premises at all reasonable times.

8.4. Certain Additional Powers of Mortgagee; Sale No Effect on Liability. Mortgagor consents to any and all renewals and extensions in the time of payment of the secured indebtedness, and agrees further that at any time and from time to time without notice, the terms of payment provided for in the Note may be modified or the security described in this Mortgage released (in whole or in part) or increased, changed or exchanged by agreement between Mortgagee and any owner of the Premises affected by this Mortgage without in any way affecting the liability of any party to the Note, or any person liable or to become liable with respect to the secured indebtedness. No sale of the Premises, or any forbearance by Mortgagee in exercising any right or remedy hereunder or otherwise afforded by applicable law, shall be a waiver of or preclude the exercise of any right or remedy hereunder. Nor shall any sale of the Premises in anywise affect the liability of any party to the Note, or any person liable or to become liable with respect to the secured indebtedness.

8.5. Mortgagor's Duty to Defend and Pay Expenses. Mortgagor, at its sole expense, will appear in and affirmatively defend all actions or proceedings purporting to affect the security hereof or any right or power of Mortgagee hereunder. Mortgagor shall save Mortgagee harmless from all costs and expenses, including but not limited to reasonable attorneys' fees, costs of title search, continuation of abstract(s) and preparation of survey incurred by reason of any action, suit, proceeding, hearing, motion or application before any court or administrative body in which Mortgagee may be or become a party by reason of this Mortgage, including but not limited to condemnation, bankruptcy, and administrative proceedings, as well as any other of the foregoing where a proof of claim is by law required to be filed, or in which it becomes necessary to defend or uphold the terms or lien of this Mortgage. Mortgagee, in its sole discretion, may appear in and defend any such action or proceeding, and Mortgagee is authorized to pay, purchase or compromise on behalf of Mortgagor any encumbrance or claim which in its judgment appears to or purports to affect the security hereof or to be superior hereto. All expenditures and expenses of the nature in this paragraph mentioned and collection efforts regarding Mortgage payments, costs of exercising the rights granted under the Collateral Loan Documents, as well as recordkeeping costs resulting therefrom 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 fees of any attorneys

employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the Premises, including appellate, probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagor. All sums expended or costs incurred by Mortgagee referred to in this Section, if not repaid on demand, shall with interest at the maximum rate set out in this Mortgage for interest on advances be deemed a part of the indebtedness secured hereby.

8.6. Documentary or Internal Revenue Stamps. If at any time the State of Illinois shall determine that the documentary stamps affixed to this Mortgage or the Note are insufficient or if no documentary stamps have been affixed for lawful reasons, that such stamps should thereafter be affixed, Mortgagor shall pay for the same, together with any interest or penalties imposed in connection with such determination; provided, however, that Mortgagee may elect to purchase and offer such stamps and pay such penalties and interest, and, if Mortgagee so elects, the amount of money needed to pay for such stamps and penalties shall, from the time that such stamps are purchased and affixed, be a portion of the indebtedness secured by this Mortgage and shall bear interest from the date of such determination at the highest lawful rate or at the rate of interest provided in the Note (whichever is lower). The same provisions and obligations shall apply with respect to any Internal Revenue Stamps or similar stamps that may be required at any time to be affixed to this Mortgage or the Note.

8.7. Tax on Mortgage. In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes so as to affect adversely Mortgagee, the entire balance of the principal sum secured by this Mortgage and all interest accrued thereon shall without prior notice become due and payable forthwith at the option of Mortgagee. Provided, however, if Mortgagor is permitted by law to pay the same, and provided such payment will not make the loan secured by this Mortgage usurious, then and so long as Mortgagor does in fact pay and continue to pay same to Mortgagee's satisfaction, Mortgagee agrees not to exercise its option under this Section 8.7 to accelerate the indebtedness secured by this Mortgage. If Mortgagee elects to accelerate the indebtedness pursuant to this Section 8.7, the indebtedness shall begin to bear interest at the post maturity rate specified in the Note thirty (30) days after Mortgagee's election to accelerate.

8.8. Forbearance, etc. Not a Waiver. Failure to accelerate the maturity of all indebtedness secured hereby upon the occurrence of any event of Default hereunder, or acceptance of any sum after the same is due, or acceptance of any sum less than the amount then due, or failure to demand strict performance by Mortgagor of the provisions of this Mortgage or any forbearance by Mortgagee in exercising any right or remedy hereunder or otherwise afforded by law shall not constitute a waiver by Mortgagee of any provision of this Mortgage nor nullify the effect of any previous exercise of any such option to accelerate or other right or remedy.

8.9. Fee for Services Rendered. Mortgagee reserves the right to assess Mortgagor and Mortgagor agrees to pay to Mortgagee out-of-pocket expenses to third parties incurred by Mortgagee for services rendered in connection with the debt or property held as security for its repayment including but not limited to modification of any documents, collection efforts regarding Mortgage payments, costs of exercising rights under any of the Collateral Loan Documents, as well as recordkeeping costs resulting therefrom and attorneys' fees and court costs in connection with foreclosure proceedings under this Mortgage. Such fees shall, on notice to Mortgagor, become immediately due and payable to Mortgagee. In default of said payment, such fee shall be added to the secured indebtedness with interest at the maximum rate set out in this Mortgage for interest on advances and Mortgagee may avail itself of any rights and remedies under Article IV hereof.

8.10. Mortgagee's Expenses. If Mortgagee shall incur or expend any sums including reasonable attorneys' fees, whether or not in connection with any action or proceeding, to sustain the lien of this Mortgage or its priority, or to protect or enforce any of its rights hereunder, or to recover any indebtedness hereby secured, or for any title examination or title insurance policy relating to the title to the Premises, all such sums shall on notice and demand be paid by Mortgagor, together with interest at the maximum rate set out in this Mortgage for interest on advances and shall be a lien on the Premises, prior to any right or title to, or claim upon, the Premises subordinate to the lien of this Mortgage, and shall be deemed to be secured by this Mortgage.

8.11. Mortgagor Certifications. Mortgagor, upon request, made either personally or by mail, shall certify, by a writing duly acknowledged, to Mortgagee, or to any proposed assignee of this Mortgage, (1) the amount of principal and interest then owing on this Mortgage and whether any offsets or defenses exist against such indebtedness, and (2) a then current list of lessees of the Premises, if any, with beginning date and the term, minimum annual rent, amount of square footage, and status of each Lease, within ten (10) days of such request.

8.12. Filing and Recording Fees. Mortgagor will pay all filing, registration or recording fees, and all expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county, and municipal taxes, and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note, this Mortgage and the Collateral Loan Documents.

8.13. Tender of Payment after Default. Upon any Default by Mortgagor and following the acceleration of maturity of the indebtedness secured hereby, as herein provided, a tender of payment of the amount necessary to satisfy the entire indebtedness secured hereby made at any time prior to foreclosure sale by Mortgagor or by anyone on behalf of Mortgagor, shall constitute an evasion of the prepayment terms of the Note secured hereby and be deemed to be a voluntary prepayment thereunder and any such payment will, therefore, include the additional payment required under the prepayment privilege, if any, contained in the Note secured hereby; or if at that time there be no prepayment privilege, then such payment will include an

88374246

additional payment equal to the difference between (1) the effective annual compounded yield (at the time of such prepayment) of United States Treasury issues with maturity dates matching the maturity date of the Note (or if there are no such issues with such matching maturity dates, then United States Treasury issues with maturity dates the closest to the maturity date of the Note), and (2) and the effective annual compounded yield on the Note (at the time of prepayment), times the principal amount paid, times the number of years (and any fraction thereof to the nearest 360th) remaining to the maturity date of the Note.

8.14. Notices. Any notice, demand or other communication given pursuant to the terms hereof shall be in writing and shall be delivered by personal service or sent by certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

If to Mortgagor: Franklin Van Buren Joint Venture
c/o Centrum Properties, Inc.
566 West Adams Street
Chicago, Illinois 60606

If to Mortgagee: Lincoln National Pension Insurance
Company
1300 South Clinton Street
P.O. Box 1110
Fort Wayne, Indiana 46801
Attn: Property Management Division

or at such other address within the United States or to the attention of such other person as either party shall have designated in writing to the other. Any notice, demand or other communication given by certified or registered mail shall be deemed received on the date of the return receipt, if accepted, or on the date rejected or returned, if not accepted.

8.15. Waiver of Rights by Mortgagor. Mortgagor waives the benefit of all laws now existing or that hereafter may be enacted providing for (a) any appraisal before sale of any portion of the Premises, or (b) extension of the time for the enforcement or collection of the Note or the indebtedness evidenced thereby, or (c) creation of an extension of the period of redemption from or a moratorium on any sale made pursuant to this Mortgage. To the full extent Mortgagor may do so, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension, redemption or moratorium and Mortgagor, for Mortgagor, Mortgagor's successors and assigns, and for any and all persons ever claiming any interest in the Premises, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisal, moratorium, stay of execution, notice of election to mature or declare due the whole of the secured indebtedness and marshalling in the event of a foreclosure of the liens hereby created. If any law referred to in this Section 8.15 and now in force, of which Mortgagor, Mortgagor's successors and assigns or other person might take advantage despite this Section 8.15, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the

application of this Section 8.15. Mortgagor expressly waives and relinquishes any and all rights and remedies which Mortgagor may have or be able to assert by reason of the laws pertaining to the rights and remedies of sureties. Mortgagor waives, to the full extent permitted by law, all statutes of limitations as a defense to this Mortgage and any obligation secured by this Mortgage. 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 Premises sold as an entirety. Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure, pursuant to rights herein granted, on behalf of Mortgagor, the trust estate and all persons beneficially interested therein if Mortgagor is a land trust, and each and every person acquiring any interest in, or title to, the Premises described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by the provisions of the Illinois Revised Statutes, including, without limitation, Chapter 110, Sections 15-1601.

8.16. Joint and Several Liability. If Mortgagor consists of more than one party, such Mortgagors shall be jointly and severally liable under any and all obligations, covenants and agreements of Mortgagor contained herein.

8.17. Severability. In case any one or more of the covenants, agreements, terms or provisions contained herein or in the Note secured hereby, or in any of the Collateral Loan Documents, shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions shall in no way be affected, prejudiced or disturbed thereby, and to this end the provisions of all such loan documents are declared to be severable.

8.18. Covenants "to Run with Land"; Successors and Assigns. This Mortgage and all the terms, covenants, conditions, agreements and requirements hereof, whether stated herein at length or incorporated herein by reference, shall be covenants running with the land so long as this Mortgage is in effect and shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of Mortgagor and Mortgagee.

8.19. Definitions. Wherever used in this Mortgage, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word "Mortgagor" shall mean "Mortgagor and/or any subsequent owner or owners of the Premises"; the word "Mortgagee" shall mean "Mortgagee or any subsequent holder or holders of this Mortgage"; the word "Note" shall mean "Note of even date herewith secured by this Mortgage and any additional or substitute note or notes at any time secured by this Mortgage"; the word "person" shall mean "an individual, corporation, partnership or unincorporated association"; pronouns of any gender shall include the other gender; and either the singular or plural shall include the other.

8.20. Governing Law. This Mortgage has been executed and delivered in the State of Illinois and is to be construed and enforced according to and governed by the laws of the State of Illinois. Any provision of this Mortgage which provides, in substance, that any advance, expense or other payment by Mortgagee shall bear interest at the maximum rate permitted by applicable law shall be deemed to mean the maximum rate of interest under the law of the State of Illinois which may be agreed by contract between parties to debt instruments, or, if there is no such maximum rate, then a rate of 5% above the face rate of interest in the Note secured hereby.

8.21. Modification Procedure. Neither this Mortgage, the Note nor any Collateral Loan Document can be modified except by an instrument in writing executed by the party against whom enforcement of the change is sought. No requirement of this Mortgage, the Note or any Collateral Loan Document can be waived at any time except by a writing signed by Mortgagee, nor shall any waiver be deemed a waiver of any subsequent breach or default of Mortgagor.

8.22. Captions. The headings or captions of the Articles, sections, paragraphs, and subdivisions of this Mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof.

8.23. Business Purpose. Mortgagor represents and warrants that the proceeds of the loan secured by this Mortgage will be used for the purpose specified in Paragraph 6404 §(1)(c) of Chapter 17, Illinois Revised Statutes, and that the principal obligations secured hereby constitute a "business loan" which comes within the purview of said paragraph.

8.24. Commitment. Mortgagor represents and agrees that the indebtedness hereby secured, represented by the Note, represents the proceeds of a loan made and to be made by Mortgagee to Mortgagor pursuant to Commitment dated June 17, 1988, (herein, together with any subsequent amendments to the Commitment, being called the "Commitment"; a copy of the Commitment being attached to and incorporated by reference in the Building Loan Agreement; and in connection herewith:

(a) The Commitment is hereby incorporated herein by reference as fully and with the same effect as if set forth herein at length;

(b) If the Commitment runs to any person other than Mortgagor, Mortgagor hereby adopts and ratifies the Commitment as its own act and agreement;

(c) Mortgagor hereby covenants and agrees duly and punctually to do and perform and observe all the terms, provisions, covenants and agreements on its part to be done, performed or observed by Mortgagor pursuant to the Commitment and further represents that all of the representations and statements of or on behalf of Mortgagor in the Commitment and in any documents and certificates delivered pursuant thereto are true and correct.

8.25. No Personal Liability for Debt. The execution of the Note secured hereby shall impose no personal liability on Mortgagor for payment of the indebtedness represented thereby. Mortgagee shall look only to the Premises and to the rents, issues and profits thereof and in the event of Default hereunder will not seek any deficiency or personal judgment against Mortgagor except such judgment or decree as may be necessary to foreclose and bar Mortgagor's interests in the Premises. Nothing herein stated shall:

(a) impair the right of Mortgagee to accelerate the maturity of the Note (or to avail itself of any of its other rights and remedies) upon the occurrence of a default thereunder or a default under this Mortgage or under any other instruments securing this loan; nor

(b) relieve Mortgagor of any of the covenants or obligations set forth in this Mortgage or in any of the Collateral Loan Documents except personal liability for payment of the debt represented by the Note.

Notwithstanding any provision to the contrary contained herein, Mortgagor shall be personally liable for (i) security deposits of tenants of the Premises held by Mortgagor or any agent of Debtor; (ii) rents collected more than one month in advance from any such tenants; (iii) rents or other income from the Premises collected after a default and not properly applied to the loan or expended for the customary operating expenses of the Premises; (iv) misappropriation or misapplication of insurance or condemnation proceeds; (v) intentional misrepresentations or intentional breaches of covenants or warranties contained in the Note, this Mortgage, the Building Loan Agreement, or any of the other Collateral Loan Documents (excluding the covenant to repay the debt.); and (vi) any liability resulting from the presence of hazardous waste and/or asbestos located on the Property as it is to be improved, but not on or in the existing improvements thereon.

UNOFFICIAL COPY

WITNESS the due execution hereof this 11th day of August, 1988.

FRANKLIN VAN BUREN JOINT VENTURE,
an Illinois joint venture

By: The Lincoln National Life
Insurance Company, an Indiana
corporation, a joint venturer

By: Lincoln National Investment
Management Company,
Attorney-in-Fact

By: [Signature]
Title: VICE PRESIDENT

Attest: [Signature]
Title: ASSISTANT SECRETARY

By: Franklin Garage Limited
Partnership, an Illinois limited
partnership, a joint venturer

By: [Signature]
Laurence B. Ashkin,
General Partner

By: [Signature]
Arthur Slaven,
General Partner

Prepared by and Return to:
GEORGE M. COVINGTON
CRYSTAL PRUESS BUSH
GARDNER, CARTON & DOUGLAS
321 North Clark Street
Suite 3400 - Quaker Tower
Chicago, Illinois 60610-4795
(312) 245-8423

50266

P4333

BOX 333 - TH

1988 AUG 17 PM 2:47

COOK COUNTY, ILLINOIS
FILED FOR RECORD

88374246

88374246

UNOFFICIAL COPY

STATE OF INDIANA)
COUNTY OF Allen) SS.

I, Julie A. Romine, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Robert D. Hartman personally known to me to be the President of Lincoln National Investment Management Company, an Indiana corporation, and Robert D. Hartman personally known to me to be the Secretary of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Secretary, they signed and delivered the said instrument and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation as their free and voluntary act and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 11th day of August, 1988.

Julie A. Romine
Notary Public

Commission Expires:

JULIE A. ROMINE
Notary Public
Resident of Allen County, Indiana
My Commission Expires February 15, 1990

50256

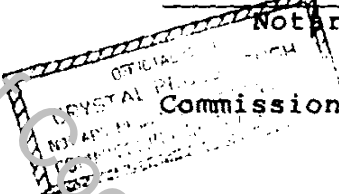
UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

I, Crystal P. Bush, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Laurence B. Ashkin, as general partner of Franklin Garage Limited Partnership, an Illinois limited partnership, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act and as the free and voluntary act and deed of said limited partnership, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 11th day of August, 1988.

Crystal P. Bush
Notary Public



Commission Expires: Oct. 2, 1990

5026F

UNOFFICIAL COPY

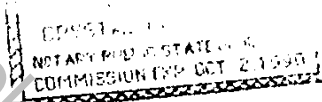
STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

I, Crystal P. Bush, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Arthur Slaven, as general partner of Franklin Garage Limited Partnership, an Illinois limited partnership, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act and as the free and voluntary act and deed of said limited partnership, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 11th day of October, 1988.

Crystal P. Bush
Notary Public

Commission Expires: Oct 2, 1990



5026 F

EXHIBIT A

LEGAL DESCRIPTION

Parcel 1:

Lot 2 (except the North 77.00 feet 9 inches thereof) in the Subdivision of the West Half of Block 91 in School Section Addition to Chicago in Section 16, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 2:

The North Half of private alley lying South and adjoining Lot 2 (except the North 77.00 feet 9 inches thereof) in the Subdivision of the West Half of Block 91 in School Section Addition to Chicago in Section 16, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 3:

Lots 3, 4, 5, 6, 7, 8 and 9, all inclusive, in the Subdivision of the West Half of Block 91 in School Section Addition to Chicago, according to the plat thereof recorded April 10, 1869 in Book 168 of plats, page 190, in Section 16, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 4:

That part of the South Half of the private alley South of and adjoining Lot 2 and North of and adjoining Lots 3, 4, 5, 6, 7, 8 and 9, all inclusive, in the Subdivision of the West Half of Block 91 in School Section Addition to Chicago according to the plat of said subdivision recorded April 10, 1869 in Book 168 of plats, page 190, in Section 16, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois, which lies North of and adjoining Lots 3, 4, 5, 6, 7, 8 and 9 aforesaid, in Cook County, Illinois.

P.I.N. 17-16-228-003-0000
17-16-228-004-0000
17-16-228-005-0000
17-16-228-016-0000
17-16-228-017-0000

Street Address: 323-337 South Franklin Street
Chicago, Illinois