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89013687

MATTESON JOINT VENTURE, as Mortgagee

DEPT-01

\$55 00

TRAN 9874 01/10/89 16 21:09

to

#7866 # 01 *--017--0 13687
COOK COUNTY RECORDER

CHEMICAL BANK, as Mortgagee

MORTGAGE

Dated: As of December 29, 1988

Location: Cook County
Illinois

RECORD AND RETURN TO:

Battle Fowler
280 Park Avenue
New York, New York 10017

Attention: Dean A. Stiffle, Esq.

89013687

This Mortgage was prepared by:

Dean A. Stiffle, Esq.
Battle Fowler
280 Park Avenue
New York, New York 10017

BOX 334

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51 sold, aliened, encrofted, conveyed, confirmed and assigned, and by these
50 referred to as the Notes), Mortgagor has mortgaged, given, granted, bargained,
49 certain notes described in Exhibit B attached hereto (hereinafter collectively
48 hereunder being hereinafter collectively referred to as the Debt) according to
47 est (said indebtedness, interest and all other sum which may or shall become due
46 States of America, or so much thereof as may be advanced, to be paid with inter-
45 SEVENTY-THREE and 00/100 DOLLARS (\$91,344,773.00), lawful money of the United

44 sum of NINETY-ONE MILLION THREE HUNDRED FORTY-FOUR THOUSAND SEVEN HUNDRED
43 NOW, THEREFORE, to secure payment of an indebtedness in the principal
42

41 Premises);
40 Premises described in Exhibit A attached hereto (hereinafter referred to as the
39 WHEREAS, Mortgagor is the owner and holder of the fee estate in the
38

M I N I S T E R :

37
35
33 New York, New York (hereinafter referred to as Mortgagee),
32 a New York banking corporation having an office at 277 Park Ave-
31 Indiana (hereinafter referred to as Mortgagor, and CHEMICAL BANK,
30 Plaza - 15 East, 115 West Washington Street, Indianapolis,
29 having an office c/o Melvin Simon & Associates, Inc., Merchants
28 between MATTESON JOINT VENTURE, an Indiana general partnership
27 THIS MORTGAGE made as of the 29th day of December, 1988,
25
25

MORTGAGE

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52 presents does mortgage, give, grant, bargain, sell, alien, enclose, convey, con-
 53 firm and assign unto mortgagee forever all right, title and interest of mortga-
 54 gor now owned, or hereafter acquired, in and to the following property, rights
 55 and interests (such property, rights and interests being hereinafter collec-
 56 tively referred to as the mortgaged property):

(a) the premises;

59
60 (b) all the estate, right, title, claim or demand of any nature
 61 whatsoever of mortgagor, either in law or in equity, in possession or
 62 expectancy, in and to the mortgaged property or any part thereof;

63
64 (c) all buildings and improvements now or hereafter located on the
 65 premises (hereinafter referred to as the improvements);

66
67 (d) all easements, rights-of-way, gores of land, streets, ways,
 68 alleys, passages, sewer rights, waters, water courses, water rights and
 69 powers, and all estates, rights, titles, interests, privileges, liberties,
 70 tenements, hereditaments, and appurtenances of any nature whatsoever, in
 71 any way belonging, relating or pertaining to the mortgaged property and all
 72 land lying in the bed of any street, road or avenue, open or proposed, in
 73 front of or adjoining the premises to the center line thereof;

74
75 (e) all machinery, apparatus, equipment, fittings, fixtures and other
 76 property of every kind and nature whatsoever owned by mortgagor, or in
 77 which mortgagor has or shall have an interest, now or hereafter located
 78 upon the mortgaged property, or appurtenances thereto, and usable in

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settlements made in lieu thereof, for damage to the mortgaged property;

104

the right to receive and apply the proceeds of any insurance, judgments, or

103

policies covering the mortgaged property, including, without limitation,

102

(h) all proceeds of and any unearned premiums on any insurance

101

property (hereinafter referred to as the rents) to the payment of the debt;

99

right to receive and apply the rents, issues and profits of the mortgaged

98

entered into (hereinafter collectively referred to as the leases) and the

97

affecting the use or occupancy of the mortgaged property now or hereafter

96

(g) all space leases, ground leases, subleases, and other agreements

95

injury to or decrease in the value of the mortgaged property;

93

any transfer made in lieu of the exercise of said right), or for any other

92

erty, whether from the exercise of the right of eminent domain (including

91

to receive the same, which may be made with respect to the mortgaged prop-

90

(f) all awards or payments, including interest thereon, and the right

89

the lien of this mortgage;

87

code of the state in which the premises are located), superior in lien to

86

subject to any security agreements (as defined in the Uniform Commercial

85

title and interest of mortgagor in and to any of the equipment which may be

84

(hereinafter collectively referred to as the equipment), and the right,

83

have an interest, now or hereafter located upon the mortgaged property

82

nature whatsoever owned by mortgagor, or in which mortgagor has or shall

81

gaged property and all building equipment, materials and supplies of any

80

connection with the present or future operation and occupancy of the mort-

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106 (1) the right, in the name and on behalf of Mortgagor, to appear in
107 and defend any action or proceeding brought with respect to the Mortgaged
108 Property and to commence any action or proceeding to protect the interest
109 of Mortgagee in the Mortgaged Property.

110
111 TO HAVE AND TO HOLD the above granted and described Mortgaged Property
112 unto and to the proper use and benefit of Mortgagee, and the successors and
113 assigns of Mortgagee, forever,

114
115 PROVIDED, ALWAYS, and these presents are upon this express condition,
116 if Mortgagor shall well and truly pay to Mortgagee the Debt at the time and in
117 the manner provided in the Notes and this Mortgage and Mortgagor shall well and
118 truly abide by and comply with each and every covenant and condition set forth
119 in this Mortgage, then these presents and the estate hereby granted shall cease,
120 determine and be void.

121
122 AND Mortgagor covenants with and represents and warrants to Mortgagee
123 as follows:

124
125 1. Payment of Debt. Mortgagor will pay the Debt at the time and in
126 the manner provided for its payment in the Notes and this Mortgage.

127
128 2. Warranty of Title. Mortgagor warrants the title to the Premises,
129 the Improvements and the Equipment, subject only to those exceptions to title
130 specifically set forth in the title policy issued by Lawyers Title Insurance
131 Corporation to Mortgagee and insuring the lien of this Mortgage. Mortgagor also
132 represents, warrants and covenants that Mortgagor is now, and after giving

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133 effect to this Mortgage, will be in a solvent condition, and that no bankruptcy
134 or insolvency proceedings are pending or contemplated by or against Mortgagor.

135

136

3. Insurance. Mortgagor (i) will keep the Improvements and the

137 Equipment insured against loss or damage by fire, standard extended coverage

138 perils and such other hazards as Mortgagee shall from time to time require in

139 amounts approved by Mortgagee, which amounts shall in no event be less than 100%

140 of the full insurable value of the Improvements and the Equipment and shall at

141 all times be sufficient to meet all applicable co-insurance requirements, and

142 (ii) will maintain rental and business interruption insurance and such other

143 forms of insurance coverage with respect to the Mortgaged Property as Mortgagee

144 shall from time to time require in amounts approved by Mortgagee. All policies

145 of insurance (hereinafter referred to as the Policies) shall be issued by an

146 insurer lawfully doing business in New York and in the State in which the Prem-

147 ises are located and acceptable to Mortgagee, shall contain the standard New

148 York mortgagee non-contribution clause endorsement or an equivalent endorsement

149 satisfactory to Mortgagee naming Mortgagee as the person to which all payments

150 made by such insurance company shall be paid. Mortgagor shall pay the premiums

151 for the Policies as the same become due and payable. At the request of Mort-

152 gagee, Mortgagor will assign and deliver the Policies to Mortgagee. Not later

153 than thirty (30) days prior to the expiration date of each of the Policies,

154 Mortgagor will deliver to Mortgagee a renewal policy or policies marked "premium

155 paid" or accompanied by other evidence of payment of premium satisfactory to

156 Mortgagee. If at any time Mortgagee is not in receipt of written evidence that

157 all insurance required hereunder is in force and effect, Mortgagee shall have

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158 the right without notice to Mortgagor to take such action as Mortgagee deems
159 necessary to protect its interest in the Mortgaged Property, including, without
160 limitation, the obtaining of such insurance coverage as Mortgagee in its sole
161 discretion deems appropriate, and all expenses incurred by Mortgagee in connec-
162 tion with such action or in obtaining such insurance and keeping it in effect
163 shall be paid by Mortgagor to Mortgagee upon demand. If the Mortgaged Property
164 shall be damaged or destroyed, in whole or in part, by fire or other casualty,
165 Mortgagor shall give prompt notice thereof to Mortgagee. Mortgagee shall make
166 insurance proceeds received by Mortgagee in accordance with the provisions of
167 this paragraph available for the repair and restoration of the Improvements on
168 the terms and conditions set forth in the Credit Agreement (as hereinafter
169 defined). All insurance proceeds received by Mortgagee pursuant to the provi-
170 sions of this paragraph and not required to be disbursed for the repair and res-
171 toration or to otherwise be remitted to Mortgagor pursuant to the provisions of
172 the Credit Agreement may be retained and applied by Mortgagee toward the payment
173 of the Debt whether or not then due and payable in such order, priority and pro-
174 portions as Mortgagee in its sole and absolute discretion shall deem proper or,
175 at the discretion of Mortgagee, the same may be paid, either in whole or in
176 part, to Mortgagor for such purposes as Mortgagee shall designate. If Mortgagee
177 shall receive and retain insurance proceeds in accordance with the provisions of
178 this paragraph, the lien of this Mortgage shall be reduced only by the amount
179 thereof received and retained by Mortgagee and actually applied by Mortgagee in
180 reduction of the Debt.

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182 4. Payment of Taxes, etc. Mortgagor shall pay all taxes, assess-
183 ments, water rates, sewer rents and other charges, including vault charges and
184 license fees for the use of vaults, chutes and similar areas adjoining the Prem-
185 ises, now or hereafter levied or assessed against the Mortgaged Property (here-
186 inafter referred to as the Taxes) prior to the date upon which any fine, pen-
187 alty, interest or cost may be added thereto or imposed by law for the nonpayment
188 thereof. Mortgagor shall deliver to Mortgagee, upon request, receipted bills,
189 cancelled checks and other evidence satisfactory to Mortgagee evidencing the
190 payment of the Taxes prior to the date upon which any fine, penalty, interest or
191 cost may be added thereto or imposed by law for the nonpayment thereof. After
192 prior notice to Mortgagee, in the case of any material item, Mortgagor, at its
193 own expense, may contest by appropriate legal proceeding, promptly initiated and
194 conducted in good faith and with due diligence, the amount or validity or appli-
195 cation in whole or in part of any of the Taxes, provided that (i) no default
196 shall have occurred and shall be continuing beyond any applicable grace and cure
197 period under the Notes, this Mortgage, the Loan Agreement (as hereinafter
198 defined) or the Credit Agreement, (ii) Mortgagor is permitted to do so under the
199 provisions of any mortgage superior in lien to this Mortgage, (iii) such pro-
200 ceeding shall suspend the collection of the contested Taxes from Mortgagor and
201 from the Mortgaged Property, (iv) such proceeding shall be permitted under and
202 be conducted in accordance with the provisions of any other instrument to which
203 Mortgagor or the Mortgaged Property is subject and shall not constitute a
204 default thereunder, (v) neither the Mortgaged Property nor any part thereof or
205 interest therein will in the opinion of Mortgagee be in danger of being sold,

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206 forfeited, terminated, cancelled or lost, (vi) Mortgagor shall have set aside
207 adequate reserves for the payment of the contested Taxes, together with all
208 interest and penalties thereon, and (vii) Mortgagor shall have furnished such
209 security as may be required in the proceeding, or as may be requested by Mort-
210 gagee to insure the payment of the contested Taxes, together with all interest
211 and penalties thereon.

213

214

5. Escrow Fund. Mortgagor will, at the option of Mortgagee, pay to
215 Mortgagee on the first day of each calendar month one-twelfth of an amount
216 (hereinafter referred to as the Escrow Fund) which would be sufficient to pay
217 the Taxes payable, or estimated by Mortgagee to be payable, during the ensuing
218 twelve (12) months. Mortgagee will apply the Escrow Fund to the payment of
219 Taxes which are required to be paid by Mortgagor pursuant to this Mortgage. If
220 the amount of the Escrow Fund shall exceed the amount of the Taxes payable by
221 Mortgagor pursuant to the provisions of this Mortgage, Mortgagee shall, in its
222 discretion, (a) return any excess to Mortgagor, or (b) credit such excess
223 against future payments to be made to the Escrow Fund. In allocating such
224 excess, Mortgagee may deal with the person shown on the records of Mortgagee to
225 be the owner of the Mortgaged Property. If the Escrow Fund is not sufficient to
226 pay the Taxes, as the same become payable, Mortgagor shall pay to Mortgagee,
227 upon request, an amount which Mortgagee shall estimate as sufficient to make up
228 the deficiency. Until expended or applied as above provided, any amounts in the
229 Escrow Fund may be commingled with the general funds of Mortgagee and shall con-
230 stitute additional security for the Debt and shall not bear interest. Notwith-
231 standing the foregoing, Mortgagee agrees that it shall not exercise its right to

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232 require the establishment of an Escrow Fund pursuant to this paragraph unless a
233 default shall have occurred and shall be continuing beyond any applicable grace
234 and cure period under the Notes, this Mortgage, the Loan Agreement or the Credit
235 Agreement.

236

237 6. Condemnation. Notwithstanding any taking by any public or quasi-
238 public authority through eminent domain or otherwise, Mortgagor shall continue
239 to pay the Debt at the time and in the manner provided for its payment in the
240 Notes and this Mortgage, and the Debt shall not be reduced until any award or
241 payment therefor shall have been actually received and applied by Mortgagee to
242 the discharge of the Debt. Mortgagee may apply any such award or payment to the
243 discharge of the Debt whether or not then due and payable in such priority and
244 proportions as Mortgagee, in its sole and absolute discretion, shall deem
245 proper. If the Mortgaged Property is sold, through foreclosure or otherwise,
246 prior to the receipt by Mortgagee of such award or payment, Mortgagee shall have
247 the right, whether or not a deficiency judgment on all or any of the Notes shall
248 have been sought, recovered or denied, to receive such award or payment, or a
249 portion thereof sufficient to pay the Debt, whichever is less. Mortgagor shall
250 file and prosecute its claim or claims for any such award or payment in good
251 faith and with due diligence and cause the same to be collected and paid over to
252 Mortgagee, and hereby irrevocably authorizes and empowers Mortgagee, in the name
253 of Mortgagor or otherwise to collect and receipt for any such award or payment
254 and to file and prosecute such claim or claims, and although it is hereby
255 expressly agreed that the same shall not be necessary in any event, Mortgagor
256 shall, upon demand of Mortgagee, make, execute and deliver any and all

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257 assignments and other instruments sufficient for the purpose of assigning any
258 such award or payment to Mortgagee, free and clear of any encumbrances of any
259 kind or nature whatsoever. Notwithstanding anything to the contrary contained
260 in this paragraph, if a non-material part of the Premises is taken through emi-
261 nent domain or otherwise and if such taking does not involve a material physical
262 taking of the Improvements or any portion thereof, any award given as a result
263 of such taking may be retained by Mortgagor, provided (i) no default shall have
264 occurred and shall be continuing under the Notes, this Mortgage, the Loan Agree-
265 ment or the Credit Agreement, (ii) Mortgagor promptly commences and expedi-
266 tiously completes any necessary repair and restoration to the Premises and the
267 Improvements, and (iii) Mortgagee is satisfied that such taking will not have a
268 material adverse effect on the value, use, operation or development of the Prem-
269 ises and the Improvements.

270

271 7. Leases and Rents. Subject to the terms of this paragraph, Mort-
272 gagee waives the right to enter the Mortgaged Property for the purpose of col-
273 lecting the Rents, and grants Mortgagor the right to collect the Rents. The
274 right of Mortgagor to collect the Rents may be revoked by Mortgagee upon the
275 occurrence beyond any applicable grace and cure period of a default under the
276 Notes, this Mortgage, the Loan Agreement or the Credit Agreement, by giving
277 notice of such revocation to Mortgagor. Following such notice Mortgagee may
278 retain and apply the Rents toward payment of the Debt in such order, priority
279 and proportions as Mortgagee, in its sole and absolute discretion, shall deem
280 proper, or to the operation, maintenance and repair of the Mortgaged Property.
281 Mortgagor shall not, without the consent of Mortgagee, make, or suffer to be

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282 made, any Leases other than in conformity with the requirements of the Loan
283 Agreement and the Credit Agreement or cancel or modify any Leases other than in
284 conformity with the requirements of the Loan Agreement and the Credit Agreement
285 or (other than security deposits under the Leases) accept prepayments of
286 installments of the Rents for a period of more than one (1) month in advance or
287 further assign the whole or any part of the Rents. Mortgagor shall (a) fulfill
288 or perform each and every provision of the Leases on the part of Mortgagor to be
289 fulfilled or performed, (b) promptly send copies of all notices of default which
290 Mortgagor shall send or receive under the Leases to Mortgagee, and (c) enforce
291 the performance or observance of the provisions thereof by the tenants there-
292 under. In addition to the rights which Mortgagee may have herein, if a default
293 shall occur and shall be continuing beyond any applicable grace and cure period
294 under the Notes, this Mortgage, the Loan Agreement or the Credit Agreement,
295 Mortgagee, at its option, may require Mortgagor to pay monthly in advance to
296 Mortgagee, or any receiver appointed to collect the Rents, the fair and reason-
297 able rental value for the use and occupation of such part of the Mortgaged Prop-
298 erty as may be in possession of Mortgagor. Upon default in any such payment,
299 Mortgagor will vacate and surrender possession of such part of the Mortgaged
300 Property to Mortgagee, or to such receiver and, in default thereof, Mortgagor
301 may be evicted by summary proceedings or otherwise. Nothing contained in this
302 paragraph shall be construed as imposing on Mortgagee any of the obligations of
303 the lessor under the Leases.

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8. Maintenance of the Mortgaged Property. Mortgagor shall cause the
306 Mortgaged Property to be maintained in good condition and repair and will not

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307 commit or suffer to be committed any waste of the Mortgaged Property. The
308 Improvements and the Equipment shall not be removed, demolished or materially
309 altered (except for normal replacement of the Equipment), without the consent of
310 Mortgagee. Mortgagor shall promptly comply with all existing and future govern-
311 mental laws, orders, ordinances, rules and regulations affecting the Mortgaged
312 Property, or any portion thereof or the use thereof, including, without limita-
313 tion, all Federal, state and local environmental, petroleum products and hazard-
314 ous waste laws, orders, ordinances, rules and regulations including those
315 relating to the presence of asbestos (hereinafter referred to collectively as
316 Environmental Requirements). Mortgagor hereby represents and warrants to Mort-
317 gagee that to the best of the Mortgagor's knowledge, there are no materials cur-
318 rently located on the Mortgaged Property that violate any Environmental Require-
319 ments. Mortgagor covenants and agrees that Mortgagor will not place or permit
320 to be placed any such materials on the Mortgaged Property or use or permit the
321 use of the Mortgaged Property in a manner that violates applicable Environmental
322 Requirements, and further, that, if at any time it is determined that the
323 operation or use of the Mortgaged Property violates any applicable Environmental
324 Requirements or that there are materials located on the premises or in the
325 Improvements that, under any Environmental Requirement, require special handling
326 in collection, storage, treatment or disposal, Mortgagor shall, within thirty
327 (30) days after written notice thereof, take or cause to be taken, at its sole
328 expense, such actions as may be necessary to comply with all Environmental
329 Requirements, provided that if such compliance cannot reasonably be completed
330 within such thirty (30) day period, Mortgagor shall commence such necessary

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331 action within such thirty (30) day period and thereafter shall diligently and
332 expeditiously proceed to comply with all Environmental Requirements. If Mortga-
333 gor shall fail to take such action, Mortgagee may make advances or payments
334 towards performance or satisfaction of the same but shall be under no obligation
335 so to do, and all sums so advanced or paid, including, without limitation, rea-
336 sonable counsel fees, fines, or other penalty payments and all sums advanced or
337 paid in connection with any judicial or administrative investigation or proceed-
338 ing relating thereto, shall immediately, upon demand, be due from the Mortgagor
339 and shall bear interest at the rate per annum set forth in paragraph 21 of this
340 Mortgage from the date the same shall become due and payable until the date
341 paid, and all sums so advanced or paid, with interest as aforesaid, shall be
342 added to the Debt and shall be secured by this Mortgage. Mortgagor shall exe-
343 cute and deliver, promptly after request, such instruments as Mortgagee may deem
344 useful or required to permit Mortgagee to take any such action. Failure of
345 Mortgagor to comply with all Environmental Requirements shall be a default under
346 this Mortgage. Mortgagee may, at its option and at its expense, at intervals of
347 not less than one year, cause an environmental audit of the Mortgaged Property
348 or portions thereof to be conducted to confirm Mortgagor's compliance with the
349 provisions of this paragraph, and Mortgagor shall cooperate in all reasonable
350 ways with Mortgagee in connection with any such audit. Mortgagor absolutely and
351 unconditionally agrees to indemnify and to hold Mortgagee harmless from and
352 against any and all loss, liability, cost or expense of any nature whatsoever
353 incurred by Mortgagee as a result of Mortgagor's failure to comply with all
354 existing and future Environmental Requirements effecting the Mortgaged Property,

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355 which indemnification shall, notwithstanding any provisions of the Notes, this
357 Mortgage, the Loan Agreement, the Credit Agreement or any other document or
358 instrument executed and delivered in connection with the loans evidenced by the
359 Notes or in connection with the Revolving Credit Facility (as such term is
360 defined in the Credit Agreement), constitute the personal recourse undertakings,
361 obligations and liabilities of Mortgagor, and shall be secured by this Mortgage.
362 The obligations and liabilities of Mortgagor under this paragraph shall terminate
363 and shall be of no further force and effect as of the date upon which Mortgagor
364 shall pay to Mortgagee, in cash, all principal, interest and other sums secured
365 by this Mortgage or otherwise constituting part of the Debt. If Mortgagor shall
366 fail to pay to Mortgagee, in cash, all principal, interest and other sums
367 secured by this Mortgage or otherwise constituting part of the Debt as and when
368 the same shall become due and payable and if as a result thereof Mortgagee, its
369 nominee or wholly-owned subsidiary shall obtain title to and possession of the
370 Premises and the Improvements as the result of the foreclosure of this Mortgage,
371 the acceptance by Mortgagee, its nominee or wholly-owned subsidiary of a deed or
372 assignment in lieu of foreclosure of this Mortgage or otherwise, then the obli-
373 gations and liabilities of Mortgagor set forth in this paragraph shall remain in
374 full force and effect and shall not be terminated, discharged or released. The
375 personal recourse obligations created by this paragraph shall extend only to
376 Mortgagor and its assets and not to any past, present or future partner of Mort-
377 gagor, other than Realty (as hereinafter defined), or their respective assets.
378 Mortgagor shall promptly repair, replace or rebuild any part of the Mortgaged
379 Property which may be damaged or destroyed by any casualty (including any

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380 casualty for which insurance was not obtained or obtainable) or which may be
381 affected by any taking by any public or quasi-public authority through eminent
382 domain or otherwise, and shall complete and pay for, within a reasonable time,
383 any structure at any time in the process of construction or repair on the Prem-
384 ises. If such casualty shall be covered by the Policies, Mortgagor's obligation
385 to repair, replace or rebuild such portion of the Mortgaged Property shall be
386 contingent upon Mortgagee paying Mortgagor the proceeds of the Policies, or such
387 portion thereof as shall be sufficient to complete such repair, replacement or
388 rebuilding, whichever is less. Mortgagor will not, without obtaining the prior
389 consent of Mortgagee, initiate, join in or consent to any private restrictive
390 covenant, zoning ordinance, or other public or private restrictions, limiting or
391 affecting the uses which may be made of the Mortgaged Property or any part
392 thereof.

393

394 9. Estoppel Certificates. Mortgagor, within ten (10) days after
395 request by Mortgagee and at its expense, will furnish Mortgagee with a state-
396 ment, duly acknowledged and certified, setting forth the amount of the Debt and
397 the offsets or defenses thereto, if any. Mortgagee, within ten (10) days after
398 request by Mortgagor and at its expense, will furnish Mortgagor with a statement
399 setting forth the then outstanding principal balance of the Notes and the inter-
400 est, if any, accrued and unpaid thereon.

401

402 10. Transfer or Encumbrance of the Mortgaged Property. Except as
403 otherwise specifically provided to the contrary in the Credit Agreement, no part
404 of the Mortgaged Property nor any interest therein shall in any manner be

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405 further encumbered, sold, transferred or conveyed, or permitted to be further
406 encumbered, sold, transferred or conveyed without the prior written consent of
407 Mortgagee, which consent may be withheld in the sole and absolute discretion of
408 Mortgagee. The provisions of the foregoing sentence of this paragraph shall
409 apply to each and every such further encumbrance, sale, transfer or conveyance,
410 regardless of whether or not Mortgagee has consented to, or waived by its action
411 or inaction its rights hereunder with respect to any such previous further
412 encumbrance, sale, transfer or conveyance. Unless otherwise consented to the
413 contrary by Mortgagee, in its sole and absolute discretion, at all times during
414 the term of this Mortgage, (i) not less than a 50% ownership interest in Mortga-
415 gor and in the profits and losses of Mortgagor shall be owned and controlled on
416 a direct and unencumbered basis by MSA Realty Corporation, an Indiana corpora-
417 tion and a general partner of Mortgagor (hereinafter referred to as Realty),
418 (ii) not less than a 25% ownership interest in Mortgagor and in the profits and
419 losses of Mortgagor shall be controlled (either directly or indirectly) on an
420 unencumbered basis by Melvin Simon, Herbert Simon, members of their immediate
421 families or trusts established for the benefit of members of their immediate
422 families (hereinafter collectively referred to as the Simon Family), and shall
423 be owned (either directly or indirectly) on an unencumbered basis by the Simon
424 Family and key employees of Melvin Simon & Associates, Inc., an Indiana corpora-
425 tion (hereinafter referred to as MSA), (iii) the only general partners of Mort-
426 gagor shall be Realty and an entity controlled (either directly or indirectly)
427 by the Simon Family, and (iv) MSA shall be 100% beneficially owned and con-
428 trolled by the Simon Family. Notwithstanding anything to the contrary

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429 hereinabove set forth in this paragraph, it is expressly understood and agreed
430 that interests in Mortgagor may be conveyed or transferred subsequent to the
431 date of this Mortgage to persons or parties selected by Mortgagor without the
432 consent of Mortgagee, provided that (i) Mortgagor promptly informs Mortgagee of
433 any such conveyance or transfer, and (ii) provisions of this paragraph relating
434 to the ownership of Mortgagor and the profits and losses of Mortgagor continue
435 to be complied with after any such conveyance or transfer. Notwithstanding any-
436 thing to the contrary hereinabove set forth in this paragraph, it is expressly
437 understood and agreed that interests in Mortgagor may be encumbered by assign-
438 ments to Mortgagee by the partners of Mortgagor of their respective economic
439 interests in Mortgagor.

440

441 11. Notice. Any notice, request, demand, statement, authorization,
442 approval or consent made hereunder shall be in writing and shall be hand
443 delivered or sent by Federal Express, or other reputable courier service, or by
444 postage pre-paid registered or certified mail, return receipt requested, and
445 shall be deemed given (i) when received at the following addresses if hand
446 delivered or sent by Federal Express, or other reputable courier service, and
447 (ii) three (3) business days after being postmarked and addressed as follows if
448 sent by registered or certified mail, return receipt requested:

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452 If to Mortgagor:

453
454 Matteson Joint Venture
455 c/o MSA Realty Corporation
456 Merchants Plaza--15 East
457 115 West Washington Street
458 Indianapolis, Indiana 46204
459 Attention: J. A. Rosenfeld
460 President
461

462 With a copy to:

463
464 Melvin Simon & Associates, Inc.
465 Merchants Plaza--15 East
466 115 West Washington Street
467 Indianapolis, Indiana 46204
468 Attention: James Schmidt, Esq.
469

470 If to Mortgagee:

471
472 Chemical Bank
473 Chemical Realty Group - 12th Floor
474 277 Park Avenue
475 New York, New York 10172
476 Attention: Stephen D. Plavin
477 Vice President
478

479 With a copy to:

480
481 Battle Fowler
482 280 Park Avenue
483 New York, New York 10017
484 Attention: Dean A. Stiffle, Esq.
485

488 Each party may designate a change of address by notice to the other parties,
489 given at least fifteen (15) days before such change of address is to become
490 effective. Any notice, request, demand, statement, authorization, approval or
491 consent given by Mortgagee to Realty pursuant to the terms of the Notes, this
492 Mortgage, the Loan Agreement, the Credit Agreement or the other Loan Documents
493 (as defined in the Loan Agreement) shall be fully binding on Mortgagor.

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495 12. Sale of Mortgaged Property. If this Mortgage is foreclosed, the
496 Mortgaged Property, or any interest therein, may, at the discretion of Mort-
497 gagee, be sold in one or more parcels or in several interests or portions and in
498 any order or manner.

499
500 13. Changes in Laws Regarding Taxation. In the event of the passage
501 after the date of this Mortgage of any law of the State in which the Premises
502 are located deducting from the value of real property for the purpose of taxa-
503 tion any lien or encumbrance thereon or changing in any way the laws for the
504 taxation of mortgages or debts secured by mortgages for state or local purposes
505 or the manner of the collection of any such taxes, and imposing a tax, either
506 directly or indirectly, on this Mortgage, the Notes or the Debt, Mortgagor
507 shall, if permitted by law, pay any tax imposed as a result of any such law
508 within the statutory period or within fifteen (15) days after demand by Mort-
509 gagee, whichever is less, provided, however, that if, in the opinion of the
510 attorneys for Mortgagee, Mortgagor is not permitted by law to pay such taxes,
511 Mortgagee shall have the right, at its option, to declare the Debt due and pay-
512 able on a date specified in a prior notice to Mortgagor of not less than thirty
513 (30) days.

514
515 14. No Credits on Account of the Debt. Mortgagor will not claim or
516 demand or be entitled to any credit or credits on account of the Debt for any
517 part of the Taxes assessed against the Mortgaged Property or any part thereof
518 and no deduction shall otherwise be made or claimed from the taxable value of
519 the Mortgaged Property, or any part thereof, by reason of this Mortgage or the
520 Debt.

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522 15. Other Security for the Debt. Mortgagor shall observe and perform
523 all of the terms, covenants and provisions contained in the Notes, the Loan
524 Agreement, the Credit Agreement, and in all other mortgages and other instru-
525 ments or documents evidencing, securing or guaranteeing payment of the Debt, in
526 whole or in part, or otherwise executed and delivered in connection with the
527 Notes, this Mortgage, or the Revolving Credit Facility.

528
529 16. Documentary Stamps. If at any time the United States of America,
530 any state thereof or any governmental subdivision of any such state, shall
531 require revenue or other stamps to be affixed to the Notes or this Mortgage,
532 Mortgagor will pay for the same, with interest and penalties thereon, if any.

533
534 17. Right of Entry. Mortgagee and its agents shall have the right to
535 enter and inspect the Mortgaged Property at all reasonable times.

536
537 18. Books and Records. Mortgagor will keep and maintain or will
538 cause to be kept and maintained on a fiscal year basis in accordance with sound
539 accounting practices consistently applied proper and accurate books, records and
540 accounts reflecting all of the financial affairs of Mortgagor and all items of
541 income and expense in connection with the operation of the Mortgaged Property or
542 in connection with any services, equipment or furnishings provided in connection
543 with the operation of the Mortgaged Property, whether such income or expense be
544 realized by Mortgagor or by any other person whatsoever excepting lessees
545 unrelated to and unaffiliated with Mortgagor who have leased from Mortgagor por-
546 tions of the Mortgaged Property for the purpose of occupying the same. Mort-
547 gagee shall have the right from time to time at all times during normal business

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548 hours to examine such books, records and accounts at the office of Mortgagor or
549 other person maintaining such books, records and accounts and to make copies or
550 extracts thereof as Mortgagee shall desire. Mortgagor will furnish Mortgagee
551 annually, within one hundred twenty (120) days next following the end of each
552 fiscal year of Mortgagor, with a complete executed copy of an audited financial
553 statement prepared by a certified public accountant acceptable to Mortgagee
554 covering the operation of the Mortgaged Property for such fiscal year, which
555 financial statement shall show the actual performance of the Mortgaged Property
556 for the immediately preceding fiscal year of Mortgagor and shall otherwise be in
557 form acceptable to Mortgagor. Within one hundred twenty (120) days after the
558 end of each fiscal year of Mortgagor, Mortgagor shall furnish to Mortgagee a
559 certificate signed by a duly authorized representative of Mortgagor certifying
560 on the date thereof either that there does or does not exist an event which con-
561 stitutes, or which upon notice or lapse of time or both would constitute, a
562 default under the Notes, this Mortgage, the Credit Agreement or the Loan Agree-
563 ment and if such event exists, the nature thereof and the period of time it has
564 existed. Mortgagor shall furnish to Mortgagee, within ten (10) days after
565 request, such further detailed information covering the operation of the Mort-
566 gaged Property and the financial affairs of Mortgagor, any affiliate of Mortga-
567 gor, or any Guarantor (as hereinafter defined), as may be requested by Mort-
568 gagee.

569

570

19. Performance of Other Agreements. Mortgagor shall observe and

571 perform each and every term to be observed or performed by Mortgagor pursuant to

572 the terms of any agreement or recorded instrument affecting or pertaining to the

573 Mortgaged Property.

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575 20. Defaults. The Debt shall become due at the option of Mortgagee
576 upon the occurrence of any one of the following events:

577
578 (a) if any portion of the Debt is not paid within ten (10) days after
579 notice by Mortgagee to Mortgagor that the same is past due;

580
581 (b) if any material Federal tax lien is filed against Mortgagor, MSA,
582 Realty or any other general partner of Mortgagor or any Guarantor or the
583 Mortgaged Property and the same is not discharged of record, bonded or oth-
584 erwise reserved for or secured to the satisfaction of Mortgagee within
585 thirty (30) days after the same is filed;

586
587 (c) if (except as specifically provided to the contrary in the Credit
588 Agreement or paragraph 10 of this Mortgage) without the consent of Mort-
589 gagee (which consent may be withheld in the sole and absolute discretion of
590 Mortgagee) any part of the Mortgaged Property or any interest therein is in
591 any manner further encumbered, sold, transferred or conveyed;

592
593 (d) if without the consent of Mortgagee any Improvement or the Equip-
594 ment (except for normal replacement of the Equipment) is removed, demol-
595 ished or materially altered, or if the Mortgaged Property is not kept in
596 good condition and repair;

597
598 (e) if (except as specifically provided to the contrary in
599 paragraph 10 of this Mortgage) without the consent of Mortgagee (which con-
600 sent may be withheld in the sole and absolute discretion of Mortgagee)
601 Realty shall cease to own and control on a direct and unencumbered basis at

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602 least a 50% ownership interest in Mortgagor and the profits and losses of
603 Mortgagor;

604
605 (f) if (except as specifically provided to the contrary in
606 paragraph 10 of this Mortgage) without the consent of Mortgagee (which con-
607 sent may be withheld in the sole and absolute discretion of Mortgagee) the
608 Simon Family shall cease to control (either directly or indirectly) on an
609 unencumbered basis at least a 25% ownership interest in Mortgagor and the
610 profits and losses of Mortgagor, or if (except as specifically provided to
611 the contrary in paragraph 10 of this Mortgage) without the consent of Mort-
612 gagee (which consent may be withheld in the sole and absolute discretion of
613 Mortgagee) the Simon Family and key employees of MSA shall cease to own
614 (either directly or indirectly) on an unencumbered basis at least a 25%
615 ownership interest in Mortgagor and in the profits and losses of Mortgagor;

617
618 (g) if without the consent of Mortgagee (which consent may be with-
619 held in the sole and absolute discretion of Mortgagee) Realty and an entity
620 controlled (either directly or indirectly) by the Simon Family shall cease
621 to be the only general partners of Mortgagor;

622
623 (h) if without the consent of Mortgagee (which consent may be
624 withheld in the sole and absolute discretion of Mortgagee) MSA or a wholly
625 owned subsidiary or affiliate of MSA shall no longer be active in the
626 development, management, operation and leasing of the Improvements and the
627 Premises, or if without the consent of Mortgagee (which consent may be
628 withheld in the sole and absolute discretion of Mortgagee) MSA shall cease
629 to be 100% beneficially owned and controlled by the Simon Family;

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631 (i) if the Policies are not kept in full force and effect, or if the
632 Policies are not assigned and delivered to Mortgagee upon request;

633
634 (j) if without the consent of Mortgagee any Leases are made (other
635 than in conformity with the provisions of the Loan Agreement and the Credit
636 Agreement), or are cancelled or modified (other than in conformity with the
637 requirements of the Loan Agreement and the Credit Agreement) or if without
638 the consent of Mortgagee any portion of the Rents (other than security
639 deposits under the Leases) is paid for a period of more than one (1) month
640 in advance or if without the consent of Mortgagee any of the Rents are fur-
641 ther assigned;

642
643 (k) if any representation or warranty of Mortgagor, or of any person
644 (hereinafter referred to as a Guarantor) guaranteeing payment of the Debt
645 or any portion thereof or performance by Mortgagor of any of the terms of
646 the Notes, this Mortgage, the Loan Agreement or the Credit Agreement, made
647 in the Notes, this Mortgage, the Loan Agreement, the Credit Agreement, any
648 such guaranty or in any certificate, report, financial statement or other
649 instrument furnished in connection with the making of the Notes, this Mort-
650 gage, the Loan Agreement, the Credit Agreement or any such guaranty, shall
651 prove false or misleading in any material respect;

652
653 (l) if Mortgagor, MSA, Realty or any other general partner of Mortga-
654 gor or any Guarantor shall make an assignment for the benefit of creditors;

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657 (m) if a court of competent jurisdiction enters a decree or order for
658 relief with respect to Mortgagor, MSA, Realty or any other general partner
659 of Mortgagor or any Guarantor under Title 11 of the United States Code as
660 now constituted or hereafter amended or under any other applicable Federal
661 or state bankruptcy law or other similar law, or if such court enters a
662 decree or order appointing a receiver, liquidator, assignee, trustee,
663 sequestrator (or similar official) of Mortgagor, MSA, Realty or any other
664 general partner of Mortgagor or any Guarantor, or of any substantial part
665 of their respective properties, or if such court decrees or orders the
666 winding up or liquidation of the affairs of Mortgagor or any Guarantor;

667 (n) if Mortgagor, MSA, Realty or any other general partner of Mortga-
668 gor or any Guarantor files a petition or answer or consent seeking relief
669 under Title 11 of the United States Code as now constituted or hereafter
670 amended, or under any other applicable Federal or state bankruptcy law or
671 other similar law, or if Mortgagor, MSA, Realty or any other general part-
672 ner of Mortgagor or any Guarantor consents to the institution of proceed-
673 ings thereunder or to the filing of any such petition or to the appointment
674 of or taking possession by a receiver, liquidator, assignee, trustee, cus-
675 todian, sequestrator (or other similar official) of Mortgagor, MSA, Realty
676 or any other general partner of Mortgagor or any Guarantor, or of any sub-
677 stantial part of their respective properties, or if Mortgagor, MSA, Realty
678 or any other general partner of Mortgagor or any Guarantor fails generally
679 to pay their respective debts as such debts become due, or if Mortgagor,
680 MSA, Realty or any other general partner of Mortgagor or any Guarantor

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682 takes any action in furtherance of any action described in this
683 subparagraph;

684
685 (o) if a default shall occur and be continuing beyond any applicable
686 grace period under the Notes, the Loan Agreement, the Credit Agreement or
687 under any other mortgage or other instrument or document evidencing,
688 securing or guaranteeing payment of the Debt, in whole or in part, or oth-
689 erwise executed and delivered in connection with the Notes, this Mortgage,
690 the Loan Agreement, the Credit Agreement or otherwise in connection with
691 the Revolving Credit Facility;

692
693 (p) if a default shall occur and be continuing beyond any applicable
694 grace period under any mortgage covering any part of the Mortgaged Property
695 whether superior or inferior in lien to this Mortgage;

696
697 (q) if the Mortgaged Property shall become subject (i) to any tax
698 lien, other than a lien for local real estate taxes and assessments not due
699 and payable, or (ii) to any mechanic's, materialman's or other lien and
700 such lien shall remain undischarged or unbonded for thirty (30) days; or

701
702 (r) if Mortgagor shall continue to be in default under any of the
703 other terms, covenants or conditions of this Mortgage for ten (10) days
704 after notice from Mortgagee in the case of any default which can be cured
705 by the payment of a sum of money or for thirty (30) days after notice from
706 Mortgagee in the case of any other default, provided that if such default
707 cannot reasonably be cured within such thirty (30) day period and Mortgagor

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708 shall have commenced to cure such default within such thirty (30) day
709 period and thereafter diligently and expeditiously proceeds to cure the
710 same, such thirty (30) day period shall be extended for so long as it shall
711 require Mortgagor in the exercise of due diligence to cure such default, it
712 being agreed that no such extension shall be for a period in excess of one
713 hundred fifty (150) days and that nothing contained in this subparagraph
714 shall be construed as having the effect of extending the Completion Date
715 (as defined in the Loan Agreement).

716
717 21. Right to Cure Defaults. If a default shall occur and shall be
718 continuing beyond any applicable grace and cure period in the performance of any
719 of the covenants of Mortgagor herein occurs, Mortgagee may, at its discretion,
720 remedy the same and for such purpose shall have the right to enter upon the
721 Mortgaged Property or any portion thereof without thereby becoming liable to
722 Mortgagor or any person in possession thereof holding under Mortgagor. If Mort-
723 gagee shall remedy such a default or appear in, defend, or bring any action or
724 proceeding to protect their interest in the Mortgaged Property or to foreclose
725 this Mortgage or collect the Debt, the costs and expenses thereof (including
726 reasonable attorneys' fees to the extent permitted by law), with interest as
727 provided in this paragraph, shall be paid by Mortgagor to Mortgagee upon demand.
728 All such costs and expenses incurred by Mortgagee in remedying such default or
729 in appearing in, defending, or bringing any such action or proceeding shall be
730 paid by Mortgagor to Mortgagee upon demand, with interest (calculated for the
731 actual number of days elapsed on the basis of a 360-day year) at a rate per
732 annum equal to the greater on a daily basis of (i) 13%, or (ii) 3% plus the

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733 Prime Rate, provided, however, that such interest rate shall in no event exceed
734 the maximum interest rate which Mortgagor may by law pay, for the period after
735 notice from Mortgagee that such costs or expenses were incurred to the date of
736 payment to Mortgagee. The term "Prime Rate" as used in this paragraph shall
737 mean such rate of interest as is publicly announced by Mortgagee at its princi-
738 pal office from time to time as its prime rate. All such costs and expenses
739 incurred by Mortgagee pursuant to the terms of this Mortgage, with interest,
740 shall be secured by this Mortgage.

741

742 22. Appointment of Receiver. Mortgagee, in any action to foreclose
743 this Mortgage or upon the actual or threatened waste to any part of the Mort-
744 gaged Property or upon the occurrence of any default hereunder, shall be at lib-
745 erty, without notice, to apply for the appointment of a receiver of the Rents,
746 and shall be entitled to the appointment of such receiver as a matter of right,
747 without regard to the value of the Mortgaged Property as security for the Debt,
748 or the solvency or insolvency of any person then liable for the payment of the
749 Debt.

750

751 23. Non-Waiver. The failure of Mortgagee to insist upon strict per-
752 formance of any term of this Mortgage shall not be deemed to be a waiver of any
753 term of this Mortgage. Mortgagor shall not be relieved of Mortgagor's obliga-
754 tion to pay the Debt at the time and in the manner provided for its payment in
755 the Notes and this Mortgage by reason of (i) failure of Mortgagee to comply with
756 any request of Mortgagor to take any action to foreclose this Mortgage or other-
757 wise enforce any of the provisions hereof or of the Notes, the Loan Agreement,

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758 the Credit Agreement or any other mortgage, instrument or document evidencing,
759 securing or guaranteeing payment of the Debt or any portion thereof, (ii) the
760 release, regardless of consideration, of the whole or any part of the Mortgaged
761 Property or any other security for the Debt, or (iii) any agreement or stipula-
762 tion between Mortgagee and any subsequent owner or owners of the Mortgaged Prop-
763 erty or other person extending the time of payment or otherwise modifying or
764 supplementing the terms of the Notes, this Mortgage, the Loan Agreement, the
765 Credit Agreement or any other mortgage, instrument or document evidencing,
766 securing or guaranteeing payment of the Debt or any portion thereof, without
767 first having obtained the consent of Mortgagor, and in the latter event, Mortga-
768 gor shall continue to be obligated to pay the Debt at the time and in the manner
769 provided in the Notes and this mortgage, as so extended, modified and supple-
770 mented, unless expressly released and discharged by Mortgagee. Regardless of
771 consideration, and without the necessity for any notice to or consent by the
772 holder of any subordinate lien, encumbrance, right, title or interest in or to
773 the Mortgaged Property, Mortgagee may release any person at any time liable for
774 the payment of the Debt or any portion thereof or any part of the security held
775 for the Debt and may extend the time of payment or otherwise modify the terms of
776 the Notes, this Mortgage, the Loan Agreement, or the Credit Agreement, includ-
777 ing, without limitation, a modification of the interest rate payable on the
778 principal balance of the Notes, without in any manner impairing or affecting
779 this Mortgage or the lien thereof or the priority of this Mortgage as so
780 extended and modified, as security for the Debt over any such subordinate lien,
781 encumbrance, right, title or interest. Mortgagee may resort for the payment of

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782 the Debt to any other security held by Mortgagee in such order and manner as
783 Mortgagee, in its discretion, may elect. Mortgagee may take action to recover
784 the Debt, or any portion thereof, or to enforce any covenant hereof without
785 prejudice to the right of Mortgagee thereafter to foreclose this Mortgage.
786 Mortgagee shall not be limited exclusively to the rights and remedies herein
787 stated but shall be entitled to every additional right and remedy now or hereaf-
788 ter afforded by law. The rights of Mortgagee under this Mortgage shall be sepa-
789 rate, distinct and cumulative and none shall be given effect to the exclusion of
790 the others. No act of Mortgagee shall be construed as an election to proceed
791 under any one provision herein to the exclusion of any other provision.

793

794 24. Liability. If Mortgagor consists of more than one person, the
795 obligations and liabilities of each such person hereunder shall be joint and
796 several.

797

798 25. Construction. The terms of this Mortgage shall be construed in
799 accordance with the laws of the State in which the Premises are located.

800

801 26. Security Agreement. The Mortgage constitutes both a real prop-
802 erty mortgage and a "security agreement", within the meaning of the Uniform Com-
803 mercial Code, and the Mortgaged Property includes both real and personal prop-
804 erty and all other rights and interest, whether tangible or intangible in nature
805 of Mortgagor in the Mortgaged Property. Mortgagor by executing and delivering
806 this Mortgage has granted, as security for the Debt, a security interest in the
807 Equipment in favor of Mortgagee. If a default shall occur under the Notes, this
808 Mortgage, the Loan Agreement or the Credit Agreement and shall be continuing

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809 beyond any applicable grace and cure period, Mortgagee, in addition to any other
810 rights and remedies which it may have, shall have and may exercise immediately
811 and without demand, any and all rights and remedies granted to a secured party
812 upon default under the Uniform Commercial Code, including, without limiting the
813 generality of the foregoing, the right to take possession of the Equipment or
814 any part thereof, and to take such other measures as Mortgagee may deem neces-
815 sary for the care, protection and preservation of the Equipment. Upon request
816 or demand of Mortgagee, Mortgagor shall at its expense assemble the Equipment
817 and make it available to Mortgagee at a convenient place acceptable to Mort-
818 gagee. Mortgagor shall pay to Mortgagee on demand any and all expenses, includ-
819 ing legal expenses and attorneys' fees, incurred or paid by Mortgagee in pro-
820 tecting the interest in the Equipment granted hereby and in enforcing the rights
821 granted hereunder with respect to the Equipment. Any notice of sale, disposi-
822 tion or other intended action by Mortgagee with respect to the Equipment sent to
823 Mortgagor in accordance with the provisions hereof at least five (5) days prior
824 to such action, shall constitute reasonable notice to Mortgagor. The proceeds
825 of any disposition of the Equipment, or any part thereof, may be applied by
826 Mortgagee to the payment of the Debt in such priority and proportions as Mort-
827 gagee in its discretion shall deem proper.

828

829 27. Further Acts, etc. Mortgagor will, at the cost of Mortgagor, and
830 without expense to Mortgagee, do, execute, acknowledge and deliver all and every
831 such further acts, deeds, conveyances, mortgages, assignments, notices of
832 assignments, transfers and assurances as Mortgagee shall, from time to time,
833 require for the better assuring, mortgaging, conveying, assigning, transferring

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834 and confirming unto Mortgagee, as the case may be, of the property and rights
835 hereby mortgaged, conveyed, assigned or transferred or intended now or hereafter
836 so to be, or which Mortgagor may be or may hereafter become bound to mortgage,
837 convey, assign or transfer to Mortgagee, or for carrying out the intention or
838 facilitating the performance of the terms of this Mortgage or for filing, regis-
839 tering or recording this Mortgage and, on demand, will execute and deliver and
840 hereby authorizes Mortgagee to execute in the name of Mortgagor to the extent it
841 may lawfully do so, one or more financing statements, chattel mortgages or com-
842 parable security instruments, to evidence more effectively the lien hereof upon
843 the Mortgaged Property.

844

845 28. Headings, etc. The headings and captions of the various para-
846 graphs of this Mortgage are for convenience of reference only and are not to be
847 construed as defining or limiting, in any way, the scope or intent of the provi-
848 sions hereof.

849

850 29. Filing of Mortgage, etc. Mortgagor forthwith upon the execution
851 and delivery of this Mortgage and thereafter, from time to time, will cause this
852 Mortgage, and any security instrument creating a lien or evidencing the lien
853 hereof upon the Mortgaged Property and each instrument of further assurance to
854 be filed, registered or recorded in such manner and in such places as may be
855 required by any present or future law in order to publish notice of and fully to
856 protect the lien hereof upon, and the interest of Mortgagee in the Mortgaged
857 Property. Mortgagor will pay all filing, registration and recording fees, and
858 all expenses incident to the preparation, execution and acknowledgment of this

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859 Mortgage, any mortgage supplemental hereto, any security instrument with respect
860 to the Mortgaged Property, and any instrument of further assurance, and all Fed-
861 eral, state, county and municipal taxes, duties, imposts, assessments and
862 charges arising out of or in connection with the execution and delivery of this
863 Mortgage, any mortgage supplemental hereto, any security instrument with respect
864 to the Mortgaged Property or any instrument of further assurance. Mortgagor
865 shall hold harmless and indemnify Mortgagee, its successors and assigns, against
866 any liability incurred by reason of the imposition of any tax on the making and
867 recording of this Mortgage.

868
869 30. Usury Laws: This Mortgage and the Notes are subject to the
870 express condition that at no time shall Mortgagor be obligated or required to
871 pay interest on the principal balance due under the Notes at a rate which could
872 subject the holder of the Notes to either civil or criminal liability as a
873 result of being in excess of the maximum interest rate which Mortgagor is per-
874 mitted by law to contract or agree to pay. If by the terms of this Mortgage or
875 the Notes Mortgagor is at any time required or obligated to pay interest on the
876 principal balance due under the Notes at a rate in excess of such maximum rate,
877 the rate of interest under the Notes shall be deemed to be immediately reduced
878 to such maximum rate and the interest payable shall be computed at such maximum
879 rate and all prior interest payments in excess of such maximum rate shall be
880 applied and shall be deemed to have been payments in reduction of the principal
881 balance of the Notes.

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883 31. Business Purpose. Mortgagor represents that the obligations evi-
884 denced by the Notes constitute a business loan which comes within the purview of
885 subparagraph (1)(c) of Section 4 of "an act in relation to the rate of interest
886 and any other changes in connection with sales on credit and the lending of
887 money," approved May 24, 1879, as amended (Ill. Rev. Stats., 1981 ed., Ch. 17,
888 Sec 6404(1)(c)).

889
890 32. Recovery of Sums Required to be Paid. Mortgagee shall have the
891 right from time to time to take action to recover any sum or sums which consti-
892 tute a part of the debt as the same become due, without regard to whether or not
893 the balance of the Debt shall be due, and without prejudice to the right of
894 Mortgagee thereafter to bring an action of foreclosure, or any other action, for
895 a default or defaults by Mortgagor existing at the time such earlier action was
896 commenced.

897
898 33. Marshalling. Mortgagor hereby waives and releases any right to
899 have the Mortgaged Property marshalled.

900
901 34. Authority. Mortgagor (and the undersigned representatives of
902 Mortgagor) have full power, authority and legal right to execute this Mortgage,
903 and to mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm and
904 assign the Mortgaged Property pursuant to the terms hereof and to keep and
905 observe all of the terms of this Mortgage on Mortgagor's part to be performed.

906
907 35. Actions and Proceedings. Mortgagee shall have the right to
908 appear in and defend any action or proceeding brought with respect to the

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909 Mortgaged Property and to bring any action or proceeding, in the name and on
910 behalf of Mortgagor, which Mortgagee, in its discretion, feels should be brought
911 to protect its interest in the Mortgaged Property.

912

913 36. Inapplicable Provisions. If any term, covenant or condition of
914 this Mortgage shall be held to be invalid, illegal or unenforceable in any
915 respect, this Mortgage shall be construed without such provision.

916

917 37. Duplicate Originals. This Mortgage may be executed in any number
918 of duplicate originals and each such duplicate original shall be deemed to con-
919 stitute but one and the same instrument.

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921 38. Certain Definitions. Unless the context clearly indicates a con-
922 trary intent or unless otherwise specifically provided herein, words used in
923 this Mortgage shall be used interchangeably in singular or plural form and the
924 word "Mortgagor" shall mean each Mortgagor and any subsequent owner or owners of
925 the Mortgaged Property or any part thereof or interest therein, the word "Mort-
926 gagee" shall mean Mortgagee or any subsequent holder of the Notes, the word
927 "Notes" shall mean the Notes or any other evidence of indebtedness secured by
928 this Mortgage, the word "Guarantor" shall mean each person guaranteeing payment
929 of the Debt or any portion thereof or performance by Mortgagor of any of the
930 terms of this Mortgage and their respective heirs, executors, administrators,
931 legal representatives, successors and assigns, the word "person" shall include
932 an individual, corporation, partnership, trust, unincorporated association, gov-
933 ernment, governmental authority, or other entity, the words "Mortgaged Property"
934 shall include any portion of the Mortgaged Property or interest therein, and the

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935 word "Debt" shall mean all sums secured by this Mortgage. Whenever the context
936 may require, any pronouns used herein shall include the corresponding masculine,
937 feminine or neuter forms, and the singular form of nouns and pronouns shall
938 include the plural and vice versa.

939

940 39. Waiver of Notice. Mortgagor shall not be entitled to any notices
941 of any nature whatsoever from Mortgagee except with respect to matters for which
942 this Mortgage specifically and expressly provide for the giving of notice by
943 Mortgagee to Mortgagor, and Mortgagor hereby expressly waives the right to
944 receive any notice from Mortgagee with respect to any matter for which this
945 Mortgage does not specifically and expressly provide for the giving of notice by
946 Mortgagee to Mortgagor.

947

948 40. No Oral Change. This Mortgage may only be modified or amended by
949 an agreement in writing signed by Mortgagor and Mortgagee, and may only be
950 released, discharged or satisfied of record by an agreement in writing signed by
951 Mortgagee.

952

953 41. Credit Agreement. The loan being made by Mortgagee to Mortgagor
954 pursuant to the Loan Agreement has been extended by Mortgagee to Mortgagor in
955 accordance with the provisions of a certain Credit Agreement dated as of Decem-
956 ber 29, 1988, entered into between Mortgagee and Realty (herein referred to as
957 the Credit Agreement). The Credit Agreement and all of the terms, covenants and
958 conditions thereof are by this reference incorporated herein and made a part
959 hereof with the same force and effect as if set forth at length herein. All
960 advances made and all indebtedness arising and accruing under the Credit

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961 Agreement from time to time shall be secured hereby. Mortgagor shall observe
962 and perform all of the terms, covenants and conditions of the Credit Agreement
963 on Mortgagor's part to be observed or performed, and Mortgagor expressly
964 acknowledges and agrees that upon the occurrence of an Event of Default (as
965 defined in the Credit Agreement), Mortgagee shall have the absolute and uncondi-
966 tional right to declare the Debt evidenced and secured by the Notes and this
967 Mortgage immediately due and payable. Mortgagor expressly acknowledges and
968 agrees that Mortgagor shall be fully bound by all of the terms, covenants and
969 provisions of the Credit Agreement, as the same may be modified and amended
970 after the date hereof by Mortgagee and Realty, with the same force and effect as
971 if Mortgagor was a party to and a signatory of the Credit Agreement and each
972 ammendment and modification thereto. In the event of any conflict or ambiguity
973 between the terms, covenants or conditions of this Mortgage and the Credit
974 Agreement, the terms, covenants and conditions which shall enlarge the rights
975 and remedies of Mortgagee and the interest of Mortgagee in the Mortgaged Prop-
976 erty, afford Mortgagee greater financial security in the Mortgaged Property and
977 better assure the payment of the Debt in full, shall control.

978

979 42. Loan Agreement. This is a "construction loan" mortgage, the pro-
980 ceeds of which are loaned in part for the purpose of financing the construction
981 of certain improvements on the Premises. This Mortgage is subject to all of the
982 terms, covenants and conditions of a certain Loan Agreement dated the date
983 hereof entered into between Mortgagee and Mortgagor (herein referred to as the
984 Loan Agreement), which Loan Agreement and all of the terms, covenants and condi-
985 tions thereof are by this reference incorporated herein and made a part hereof

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986 with the same force and effect as if set forth at length herein. The proceeds
987 of the loan being made by Mortgagee to Mortgagor in accordance with the Credit
988 Agreement shall be advanced by Mortgagee to Mortgagor in accordance with the
989 provisions of the Loan Agreement. Mortgagor shall observe and perform all of
990 the terms, covenants and conditions of the Loan Agreement on Mortgagor's part to
991 be observed or performed. All advances made and all indebtedness arising and
992 accruing under the Loan Agreement from time to time shall be secured hereby.

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43. Waiver of Statutory Rights. Mortgagor shall not and will not
995 apply for or avail itself of any appraisal, valuation, stay, extension or
996 exemption laws, or any so-called "Moratorium Laws", now existing or hereafter
997 enacted, in order to prevent or hinder the enforcement or foreclosure of this
998 Mortgage, but hereby waives the benefit of such laws to the full extent that
999 Mortgagor may do so under applicable law. Mortgagor for itself and all who may
1000 claim through or under it waives any and all right to have the property and
1001 estates comprising the Mortgaged Property marshalled upon any foreclosure of the
1002 lien hereof and agrees that any court having jurisdiction to foreclose such lien
1003 may order the Mortgaged Property sold as an entirety. Mortgagor hereby waives
1004 any and all rights of redemption from sale under any order or decree of foreclo-
1005 sure of this Mortgage.

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44. Exculpation. Notwithstanding anything to the contrary contained
1008 in the Notes, this Mortgage, the Loan Agreement, the Credit Agreement, or the
1009 other Loan Documents (as defined in the Loan Agreement), the liability and obli-
1010 gation of Mortgagor to perform and observe and make good the obligations

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1011 contained in the Notes, this Mortgage, the Loan Agreement, the Credit Agreement
1012 and the other Loan Documents and to pay the Debt in accordance with the provi-
1013 sions of the Notes and this Mortgage shall not be enforced by any action or pro-
1014 ceeding wherein damages or any money judgment or any deficiency judgment or any
1015 judgment establishing any personal obligation or liability shall be sought, col-
1016 lected or otherwise obtained against Mortgagor or against any past, present or
1017 future partner of Mortgagor, other than Realty, and Mortgagee for itself and its
1018 successors and assigns irrevocably waives any and all right to sue for, seek or
1019 demand any such damages, money judgment, deficiency judgment or personal judg-
1020 ment against Mortgagor or any past, present or future partner of Mortgagor,
1021 other than Realty, under or by reason of or in connection with the Note, this
1022 Mortgage, the Loan Agreement, the Credit Agreement or the other Loan Documents,
1023 and agrees to look solely to the security and collateral held under or in con-
1024 nection with the Note, this Mortgage, the Loan Agreement, the Credit Agreement
1025 and the other Loan Documents for the enforcement of such liability and obliga-
1026 tion of Mortgagor. Nothing contained in this paragraph shall be construed (1)
1027 as preventing Mortgagee from naming Mortgagor or any past, present or future
1028 partner of Mortgagor in any action or proceeding brought by Mortgagee to enforce
1029 and to realize upon the security and collateral provided under or in connection
1030 with the Note, this Mortgage, the Loan Agreement, the Credit Agreement and the
1031 other Loan Documents so long as no judgment, order, decree or other relief in
1032 the nature of a personal or deficiency judgment or otherwise establishing any
1033 personal obligation shall be asked for, taken, entered or enforced against Mort-
1034 gagor or any past, present or future partner of Mortgagor, other than Realty, in

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1035 any such action or proceeding, or (ii) as modifying, qualifying or affecting in
1036 any manner whatsoever the lien and security interests created by this Mortgage
1037 and the other Loan Documents or the enforcement thereof by Mortgagee, or (iii)
1038 as modifying, qualifying or affecting in any manner whatsoever the personal
1039 recourse undertakings, obligations and liabilities of Mortgagor under para-
1040 graph 8 of this Mortgage, or (iv) as modifying, qualifying or affecting in any
1041 manner whatsoever the personal recourse undertakings, obligations and liabili-
1042 ties of Realty, as a general partner of Mortgagor, under the Notes, this Mort-
1043 gage, the Loan Agreement or the other Loan Documents or the personal recourse
1044 undertakings, obligations and liabilities of Realty under the Credit Agreement
1045 or under any guaranty of payment, completion guaranty, other guaranty or indem-
1046 nification agreement now or hereafter executed and delivered by Realty in accor-
1047 dance with the provisions of the Credit Agreement or otherwise in connection
1048 with the Revolving Credit Facility (including, without limitation, any such
1049 guaranty of payment, completion guaranty, other guaranty or indemnification
1050 agreement executed and delivered by Realty in connection with the loan made by
1051 Mortgagee to Mortgagor in accordance with the provisions of the Loan Agreement)
1052 or under any of the other Credit Facility Documents (as defined in the Credit
1053 Agreement).

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1164 STATE OF INDIANA)

1165 : ss.:

1166 COUNTY OF MARION)

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1169 I, Debra K. Burns, a Notary Public in and for said County, in
1170 the State aforesaid, do hereby certify that J.A. Rosenfeld, personally known to
1171 me to be the President of MSA REALTY CORPORATION, an Indiana corporation, duly
1172 licensed to transact business in the State of Indiana and the State of Illinois,
1173 which corporation is a general partner of MATTESON JOINT VENTURE, an Indiana
1174 general partnership, and Bruce Gobeyn, personally known to me to be the
1175 Assistant Secretary of said corporation and personally known to me to be the
1176 same persons whose names are subscribed to the foregoing instrument, appeared
1177 before me this day in person and severally acknowledged that they signed and
1178 delivered the said instrument as President and Assistant Secretary of said cor-
1179 poration, pursuant to authority given by the Board of Directors of said corpora-
1180 tion, as their free and voluntary act and as the free and voluntary act and deed
1181 of said corporation, for the uses and purposes therein set forth.

1182

1183 GIVEN under my hand and Notarial Seal this 30th day of December, 1988.

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1189 My Commission Expires:

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Debra K. Burns
Notary Public
My Commission Expires: 12/31/1991

Cook County Clerk's Office

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Property of Cook County Clerk's Office

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EXHIBIT A

Parcel 1:

A tract of land in the East 1/2 of the Southeast 1/4 of Section 22, Township 35 North, Range 13 East of the Third Principal Meridian, described as follows:

Commencing at the intersection of the West right-of-way line of Governors Highway as dedicated and the North right-of-way line of St. Lawrence Avenue; thence South 89 degrees 46 minutes 13 seconds West 337.20 feet along said North line to a place of beginning; thence continuing South 89 degrees 46 minutes 13 seconds West 733.93 feet to the East line of Keeler Avenue as dedicated; thence North 0 degrees 30 minutes 37 seconds West 1041.40 feet along last said line to the South right-of-way line of U.S. route 30; thence due East 330.29 feet; thence South 84 degrees 17 minutes 22 seconds East 100.50 feet; thence due East 285.0 feet; thence due South 20.0 feet; thence due East 80.0 feet; thence due North 20.0 feet; thence due East 226.0 feet all along the Southerly right-of-way line of U.S. Route 30; thence South 0 degrees 30 minutes 30 seconds East 164.0 feet; thence due East 250.0 feet; thence South 0 degrees 30 minutes 30 seconds East 30.0 feet; thence South 89 degrees 29 minutes 30 seconds West 20.0 feet; thence South 0 degrees 30 minutes 30 seconds East 80.0 feet; thence North 89 degrees 29 minutes 30 seconds East 20.0 feet; thence South 0 degrees 30 minutes 30 seconds East 131.30 feet to a point on curve; thence Westerly on a curve convex to the North having a radius of 50.0 feet, an arc distance of 38.77 feet and a chord bearing of North 68 degrees 17 minutes 41 seconds West to a point of tangent; thence South 89 degrees 29 minutes 30 seconds West 177.0 feet to a point of curve; thence Westerly on a curve convex to the South having a radius of 406.60 feet, an arc distance of 206.65 feet, and a chord bearing of North 75 degrees 56 minutes 54 seconds West; thence South 0 degrees 13 minutes 47 seconds East 352.36 feet; thence South 89 degrees 46 minutes 13 seconds West 79.00 feet; thence South 0 degrees 13 minutes 47 seconds East 253.00 feet; thence South 89 degrees 46 minutes 13 seconds West 45.00 feet; thence South 0 degrees 13 minutes 47 seconds East 79.33 feet to the North right-of-way line of St. Lawrence Avenue and the place of beginning, all in Cook County, Illinois.

Parcel 2:

P.I.N. 31-22-101-012

Easement appurtenant to Parcel 1 for ingress, egress, access, parking, drainage and detention over the common areas as described and set forth in Declaration of Easements, Restrictions and Operating Agreements made by and between K Mart Corporation and Matteson Associates Limited Partnership dated April 19, 1988 and recorded April 21, 1988 as Document Number 88167508.

89013687

