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MORTGAGE (ILLINOIS FORM)

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THIS MORTGAGE made this 30th day of January, 19 89, by

INDEPENDENT TRUST CORPORATION, an Illinois corporation, not personally but solely as Trustee under Trust Agreement dated October 22, 1987 and known as Trust No. 20019

(herein, whether one or more, and if more than one jointly and severally, called the "Mortgagor"), whose address is

1301 West 22nd Street
Suite 702
Oak Brook, Illinois 60521

INDEPENDENT TRUST CORPORATION
120 West Madison, 2nd Floor
Chicago, IL 60602

TO PHOENIX MUTUAL LIFE INSURANCE COMPANY, a specially chartered Connecticut corporation

(herein, together with its successors and assigns, including each and every from time to time holder of the Note hereinafter referred to, called the "Mortgagee"), whose address is

One American Row
Hartford, Connecticut 06115

WHEREAS, the Mortgagor has, concurrently herewith, executed and delivered to the Mortgagee, the Mortgagor's installment note (herein called the "Note") dated the date hereof, in the principal sum of FOURTEEN MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$14,500,000.00)

bearing interest at the rate specified therein, due in installments and in any event on February 1, 1996 (the "Maturity Date")

payable to the order of the Mortgagee, and otherwise in the form of Note attached hereto as Exhibit A and incorporated herein and made a part hereof by this reference with the same effect as if set forth in length; and

WHEREAS, the indebtedness evidenced by the Note, including the principal thereof and interest and premium, if any, thereon, and any extensions and renewals thereof, in whole or in part, and any and all other sums which may be at any time due or owing or required to be paid as herein or in Note provided, are herein called the "Indebtedness Hereby Secured."

NOW, THEREFORE, THIS MORTGAGE WITNESSETH:

That to secure the payment of the principal of and interest and premium, if any, on the Note according to its tenor and effect and to secure the payment of all other Indebtedness Hereby Secured and the performance and observance of all the covenants, provisions and agreements herein and in the Note contained (whether or not the Mortgagor is personally liable for such payment, performance and observance) and in consideration of the premises and Ten Dollars (\$10) in hand paid by the Mortgagee to the Mortgagor, and for other good and valuable

IMS BAS NEW TRAVELER (7/77) (11/88)

Street Address

PIN Number

205 West Randolph Street
Chicago, ~~Illinois~~
Cook County, Illinois

17-09-443-006
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Volume 510

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considerations, the receipt and sufficiency of all of which is hereby acknowledged by the Mortgagor, the Mortgagor does hereby GRANT, RELEASE, REMISE, ALIEN, MORTGAGE and CONVEY unto the Mortgagee all and sundry rights, interests and property hereinafter described (all herein together called the "Premises"):

- (a) All of the real estate (herein called the "Real Estate") described in Exhibit A attached hereto and made a part hereof;
- (b) All buildings and other improvements now or at any time hereafter constructed or erected upon or located at the Real Estate, together with and including, but not limited to, all fixtures, equipment, machinery, appliances and other articles and attachments now or hereafter forming part of, attached to or incorporated in any such buildings or improvements (all herein generally called the "Improvements");
- (c) All privileges, reservations, allowances, hereditaments, tenements and appurtenances now or hereafter belonging or pertaining to the Real Estate or Improvements;
- (d) All leasehold estates, right, title and interest of Mortgagor in any and all leases, subleases, arrangements or agreements relating to the use and occupancy of the Real Estate and Improvements or any portion thereof, now or hereafter existing or entered into (all herein generally called "Leases"), together with all cash or security deposits, advance rentals and other deposits or payments of similar nature given in connection with any Leases;
- (e) All rents, issues, profits, royalties, income, avails and other benefits now or hereafter derived from the Real Estate and Improvements, under Leases or otherwise (all herein generally called "Rents"), subject to the right, power and authority given to the Mortgagor in the Assignment hereinafter referred to, to collect and apply the Rents;
- (f) All right, title and interest of Mortgagor in and to all options to purchase or lease the Real Estate or Improvements, or any portion thereof or interest therein, or any other rights, interests or greater estates in the rights and properties comprising the Premises, now owned or hereafter acquired by Mortgagor;
- (g) Any interests, estates or other claims, both in law and in equity, which Mortgagor now has or may hereafter acquire in the Real Estate and Improvements or other rights, interests or properties comprising the Premises now owned or hereafter acquired;
- (h) All right, title and interest of Mortgagor now owned or hereafter acquired in and to (i) any land or vaults lying within the right-of-way of any street or alley, open or proposed, adjoining the Real Estate; (ii) any and all alleys, sidewalks, strips and gores of land adjacent to or used in connection with the Real Estate and Improvements, (iii) any and all rights and interests of every name or nature forming part of or used in connection with the Real Estate and/or the operation and maintenance of the Improvements; (iv) all easements, rights-of-way and rights used in connection with the Real Estate or Improvements or as a means of access thereto, and (v) all water rights and shares of stock evidencing the same;
- (i) All right, title and interest of Mortgagor in and to all tangible personal property (herein called "Personal Property"), owned by Mortgagor and now or at any time hereafter located in, on or at the Real Estate or Improvements or used or useful in connection therewith, (whether or not affixed thereto) including, but not limited to:
 - (i) all furniture, furnishings and equipment furnished by Mortgagor to tenants of the Real Estate or Improvements;
 - (ii) all building materials and equipment located upon the Real Estate and intended to be incorporated in the Improvements now or hereafter to be constructed thereon, whether or not yet incorporated in such Improvements;
 - (iii) all machines, machinery, fixtures, apparatus, equipment or articles used in supplying heating, gas, electricity, air-conditioning, water, light, power, sprinkler protection, waste removal, refrigeration and ventilation, and all fire sprinklers, alarm systems, electronic monitoring equipment and devices;
 - (iv) all window or structural cleaning rigs, maintenance equipment and equipment relating to exclusion of vermin or insects and removal of dust, dirt, debris, refuse or garbage;
 - (v) all lobby and other indoor and outdoor furniture, including tables, chairs, planters, desks, sofas, shelves, lockers and cabinets, wall beds, wall safes, and other furnishings;

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- (vi) all rugs, carpets and other floor coverings, draperies, drapery rods and brackets, awnings, window shades, venetian blinds and curtains;
- (vii) all lamps, chandeliers and other lighting fixtures;
- (viii) all recreational equipment and materials;
- (ix) all office furniture, equipment and supplies;
- (x) all kitchen equipment, including refrigerators, ovens, dishwashers, range hoods and exhaust systems and disposal units;
- (xi) all laundry equipment, including washers and dryers;
- (xii) all tractors, mowers, sweepers, snow removal equipment and other equipment used in maintenance of exterior portions of the Real Estate and Improvements, and
- (xiii) all maintenance supplies and inventories;

provided that the enumeration of any specific articles of Personal Property set forth above shall in no way exclude or be held to exclude any items of property not specifically enumerated, but provided that there shall be excluded from and not included within the term "Personal Property" as used herein and hereby mortgaged and conveyed, any equipment, trade fixtures, furniture, furnishings or other property of tenants of the Premises;

owned by

- (j) All the estate, interest, right, title or other claim or demand which Mortgagor now has or may hereafter have or acquire with respect to (i) the proceeds of insurance in effect with respect to the Premises, and (ii) any and all awards, claims for damages and other compensation made for or consequent upon the taking by condemnation, eminent domain or any like proceeding, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Premises, including, without limitation, any awards and compensation resulting from a change of grade of streets and awards and compensation for severance damages (all herein generally called "Awards").

TO HAVE AND TO HOLD all and sundry the Premises hereby mortgaged and conveyed or intended so to be, together with the rents, issues and profits thereof, unto the Mortgagee forever, free from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois (which rights and benefits are hereby expressly released and waived), for the uses and purposes herein set forth, together with all right to retain possession of the Premises after any default in the payment of all or any part of the Indebtedness Hereby Secured, or the breach of any covenant or agreement herein contained, or upon the occurrence of any Event of Default as hereinafter defined.

FOR THE PURPOSE OF SECURING

- (a) Payment of the indebtedness with interest thereon evidenced by the Note and any and all modifications, extensions and renewals thereof, and all other Indebtedness Hereby Secured;
- ~~(b) Performance and observance by Mortgagor of all of the terms, provisions, covenants and agreements on Mortgagor's part to be performed and observed under the Construction Loan Agreement referred to in Section 20 hereof;~~
- (c) Performance and observance by Mortgagor of all of the terms, provisions, covenants and agreements on Mortgagor's part to be performed and observed under the Assignment referred to in Section 26 hereof;
- (d) Performance by any Guarantor of its obligations under any Guaranty or other instrument given to further secure the payment of the Indebtedness Hereby Secured or the performance of any obligation secured hereby;

provided that the aggregate of the Indebtedness Hereby Secured shall at no time exceed \$100,000,000.

PROVIDED, NEVERTHELESS, and these presents are upon the express condition that if all of the Indebtedness Hereby Secured shall be duly and punctually paid and all the terms, provisions, conditions and agreements herein contained on the part of the Mortgagor to be performed or observed shall be strictly performed and observed, then this Mortgage and the estate, right and interest of the Mortgagee in the Premises shall cease and become void and of no effect.

(e) The performance and observance of all the covenants, provisions and agreements herein, in the Note and in the Loan Documents as defined in the Note;

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AND IT IS FURTHER AGREED THAT:

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1. **Payment of Indebtedness.** The Mortgagor will duly and promptly pay each and every installment of the principal of and interest and premium, if any, on the Note, and all other Indebtedness Hereby Secured, as the same become due, and will duly perform and observe all of the covenants, agreements and provisions herein or in the Note provided on the part of the Mortgagor to be performed and observed.

2. **Maintenance, Repair, Restoration, Prior Liens, Parking.** The Mortgagor will:

- (a) Promptly repair, restore or rebuild any Improvements now or hereafter on the Premises which may become damaged or be destroyed, whether or not proceeds of insurance are available or sufficient for the purpose;
- (b) Keep the Premises in good condition and repair, without waste, and free from mechanics', materialmen's or like liens or claims or other liens or claims for lien;
- (c) Pay when due any indebtedness which may be secured by a lien or charge on the Premises on a parity with or superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such lien to the Mortgagee;
- (d) Complete within a reasonable time any Improvements now or at any time in the process of erection upon the Premises;
- (e) Comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof;

without the prior consent of Mortgagee except for tenant improvements required by the terms of leases for portions of the Premises and

- (f) Make no alterations in the Premises except as required by law or municipal ordinance;
- (g) Suffer or permit no change in the use or general nature of the occupancy of the Premises, without the Mortgagee's prior written consent;
- (h) Pay when due all operating costs of the Premises;
- (i) Initiate or acquiesce in no zoning reclassification with respect to the Premises, without the Mortgagee's prior written consent;
- (j) Provide, improve, grade, surface and thereafter maintain, clean, repair, mark, stripe, police and adequately light parking areas within the Premises of sufficient size to accommodate not less than none standard-size American-made automobiles, or as may be required by law, ordinance or regulation (whichever may be greater), together with any sidewalks, aisles, streets, driveways and sidewalk cuts and sufficient paved areas for ingress, egress and right-of-way to and from the adjacent public thoroughfares necessary or desirable for the use thereof;
- ~~(k) Reserve and use all such parking areas solely and exclusively for the purpose of providing ingress, egress and parking facilities for automobiles and other passenger vehicles of Mortgagor and tenants of the Premises and their invitees and licensees;~~
- (l) Not reduce, build upon, obstruct, redesignate or relocate any such parking areas, sidewalks, aisles, streets, driveways, sidewalk cuts or paved areas or rights-of-way, or lease or grant any rights to use the same to any other person except tenants and invitees of tenants of the Premises, without the prior written consent of the Mortgagee;
- (m) Cause the Premises at all times to be operated in compliance with all federal, state, local and municipal environmental, health and safety laws, statutes, ordinances, rules and regulations (herein called "Environmental Regulations"), so that no cleanup, claim or other obligation or responsibility arises from a violation of any such laws, statutes, ordinances, rules and regulations;
- (n) From time to time at the direction of Mortgagee, obtain and furnish to Mortgagee at Mortgagor's expense, an environmental audit or survey from an expert satisfactory to Mortgagee with respect to the Premises;

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- (o) Complete and cause the Premises to comply with all requirements and recommendations relating to compliance with Environmental Regulations and comply and cause the Premises to comply with the recommendations set forth in any environmental audit or survey with respect to the Premises, whether made or obtained by or at the request or direction of Mortgagee, Mortgagor or any federal, state or local governmental authority or agency, or otherwise; and
- (p) See Page 5-A attached hereto and made a part hereof.

Mortgagor shall exercise its best efforts to

Mortgagor's best efforts under this Paragraph 2(o) shall include the eviction of non-complying tenants

3. Taxes. The Mortgagor will pay when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "Taxes"), whether or not assessed against the Mortgagor, if applicable to the Premises or any interest therein, or the Indebtedness Hereby Secured, or any obligation or agreement secured hereby; and Mortgagee will, upon written request, furnish to the Mortgagor duplicate receipts therefor; provided that (a) in the event that any law or court decree has the effect of deducting from the value of land for the purposes of taxation any lien thereon, or imposing upon the Mortgagee the payment in whole or any part of the Taxes or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the interest of the Mortgagee in the Premises or the manner of collection of Taxes, so as to affect this Mortgage or the Indebtedness Hereby Secured or the Holder thereof, then, and in any such event, the Mortgagor upon demand by the Mortgagee, will pay such Taxes, or reimburse the Mortgagee therefor and (b) nothing in this Section 3 contained shall require the Mortgagor to pay any income, franchise or excise tax imposed upon the Mortgagee, excepting only such which may be levied against such income expressly as and for a specific substitute for Taxes on the Premises, and then only in an amount computed as if the Mortgagee derived no income from any source other than its interest hereunder. The Mortgagor may pay such Taxes in installments to the extent permitted by law.

4. Insurance Coverage. The Mortgagor will insure and keep insured the Premises and each and every part and parcel thereof against such perils and hazards as the Mortgagee may from time to time require, and in any event including

- (a) Insurance against loss to the Improvements and Personal Property caused by fire, lightning and risks covered by the so-called "Extended Coverage" endorsement together with "vandalism and malicious mischief" and "sprinkler leakage" endorsements, or by the so-called "all perils" endorsement and such other risks as the Mortgagee may reasonably require, in amounts (but in no event less than the initial stated principal amount of the Note) equal to the full replacement value of the Improvements and Personal Property, plus the cost of debris removal, with full replacement cost endorsement, "agreed amount" endorsement, and "contingent liability from operations of building laws" endorsement;
- (b) Comprehensive general public liability insurance against bodily injury and property damage in any way arising in connection with the Premises with such limits as the Mortgagee may reasonably require and in any event not less than \$3,000,000 single limit coverage;
- (c) Rent and rental value insurance (or, at the discretion of Mortgagee, business interruption insurance) in amounts sufficient to pay during any period of up to one (1) year in which the Improvements may be damaged or destroyed (i) all projected annual rents derived from the Premises, and (ii) all amounts (including, but not limited to, all taxes, assessments, utility charges, operating expenses and insurance premiums) required herein to be paid by the Mortgagor or by tenants of the Premises;
- (d) Broad form boiler and machinery insurance on all equipment and objects customarily covered by such insurance (if any thereof are located at the Premises), providing for full repair and replacement cost coverage, and other insurance of the type and in amounts as the Mortgagee may reasonably require, but in any event not less than that customarily carried by persons owning or operating like properties;
- (e) During the making of any alterations or improvements to the Premises (i) insurance covering claims based on the owner's contingent liability not covered by the insurance provided in subsection (b) above, and (ii) Workmen's Compensation insurance covering all persons engaged in making such alterations or improvements;

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(Section 2(p) continued)

prohibit and prevent any hazardous wastes, toxic substances or pollutants or contaminants of any kind which are or could be detrimental to the Premises, human health or the environment, from being brought onto or within the confines of the Premises.

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- (f) Federal Flood Insurance in the maximum obtainable amount up to the amount of the Indebtedness Hereby Secured evidenced by the Note, if the Premises is in a "flood plain area" as defined by the Federal Insurance Administration pursuant to the Federal Flood Disaster Protection Act of 1973, as amended;
- (g) If any part of the Premises is now or hereafter used for the sale or dispensing of beer, wine, spirits or any other alcoholic beverages, so-called "dram shop" or "inkeeper's liability" insurance against claims or liability arising directly or indirectly to persons or property on account of such sale or dispensing of beer, wine, spirits or other alcoholic beverages, including in such coverage loss of means of support, all in amounts as may be required by law or as the Mortgagee may specify, in an amount not less than \$1,000,000 single limit coverage but in no event providing coverage less than the legal limits then in effect;
- ~~(h) Earthquake insurance in an amount equal to the full replacement cost of the Premises plus the cost of debris removal, with full replacement cost endorsement, "agreed amount" endorsement, and "contingent liability from operations of building laws" endorsement but only if obtainable at reasonable cost.~~
- (i) Such other insurance of the types and in amounts as the Mortgagee may require, but in any event not less than the types and coverages of insurance customarily carried by persons owning and operating like properties.

and Mortgagor shall at its own expense furnish such insurance appraisals as may be required by Mortgagee from time to time (and in any event not less often than once every 5 years) to ascertain the full replacement cost of the Improvements for the purposes of Subsection (a) above.

5. Insurance Policies. All policies of insurance to be maintained and provided as required by Section 4 hereof shall:

- (a) Be in forms, companies and amounts reasonably satisfactory to Mortgagee, and all policies of casualty insurance shall have attached thereto mortgagee clauses or endorsements in favor of and with loss payable to Mortgagee;
- (b) Contain endorsements that no act or negligence of the insured or any occupant and no occupancy or use of the Premises for purposes more hazardous than permitted by the terms of the policies will affect the validity or enforceability of such policies as against Mortgagee;
- (c) Be written in amounts sufficient to prevent Mortgagor from becoming a co-insurer;
- (d) Provide for thirty (30) days' prior written notice of cancellation to Mortgagee;
- (e) Contain no deductible amount in excess of \$10,000 except as approved by Mortgagee;
- (f) Provide that any waiver of the insured's subrogation rights shall not void coverage;

and Mortgagor will deliver all policies, including additional and renewal policies, to Mortgagee, and in case of insurance policies about to expire, the Mortgagor will deliver renewal policies not less than thirty (30) days prior to the respective dates of expiration.

6. Deposits for Taxes and Insurance Premiums. In order to assure the payment of Taxes and insurance premiums payable with respect to the Premises as and when the same shall become due and payable:

- (a) The Mortgagor shall deposit with the Mortgagee on the first day of each and every month, commencing with the date the first payment of interest and/or principal and interest shall become due on the Indebtedness Hereby Secured, an amount equal to:

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EXHIBIT A

LEGAL DESCRIPTION

LOT 1 IN BLOCK 41 IN ORIGINAL TOWN OF CHICAGO, IN SECTION 9,
TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL
MERIDIAN, IN COOK COUNTY, ILLINOIS.

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- (i) One-Twelfth (1/12) of the Taxes next to become due upon the Premises, provided that, in the case of the first such deposit, there shall be deposited in addition, an amount as estimated by Mortgagee which, when added to monthly deposits to be made thereafter as provided for herein, shall assure to Mortgagee's satisfaction that there will be sufficient funds on deposit to pay Taxes as they come due, plus
- (ii) One-Twelfth (1/12) of the annual premiums on each policy of insurance upon the Premises, provided that, with the first such deposit there shall be deposited in addition, an amount equal to one-twelfth (1/12) of such annual insurance premiums multiplied by the number of months elapsed between the date premiums on each policy were last paid to and including the date of deposit;

provided that the amount of such deposits (herein generally called "Tax and Insurance Deposits") shall be based upon Mortgagee's reasonable estimate as to the amount of Taxes and premiums of insurance next to be payable;

(b) The aggregate of the monthly Tax and Insurance Deposits, together with monthly payments of interest and/or principal and interest payable on the Note, shall be paid in a single payment each month, to be applied to the following items in the order stated:

(i) Taxes and insurance premiums;

(ii) Indebtedness Hereby Secured other than principal and interest on the Note;

(iii) Interest on the Note.

(c) The Mortgagee will, out of the Tax and Insurance Deposits, upon the presentation to the Mortgagee by the Mortgagor of the bills therefor, pay the insurance premiums and Taxes or will, upon presentation of receipted bills therefor, reimburse the Mortgagor for such payments made by the Mortgagor, provided that (i) if the total Tax and Insurance Deposits on hand shall not be sufficient to pay all of the Taxes and insurance premiums when the same shall become due, then the Mortgagor shall pay to the Mortgagee on demand any amount necessary to make up the deficiency, and (ii) if the total of such Deposits exceed the amount required to pay the Taxes and insurance premiums, such excess shall be credited on subsequent payments to be made for such items;

(d) In the event of a default in any of the provisions contained in this Mortgage, in the Note or in other Loan Documents, the Mortgagee, at its option, without being required to do, may apply any Tax and Insurance Deposits on hand on any of the Indebtedness Hereby Secured, in such order and manner as the Mortgagee may elect, and in such case the Mortgagor will replenish any Tax and Insurance Deposits so applied within 5 days after Mortgagee's demand, provided that when the Indebtedness Hereby Secured has been fully paid, then any remaining Tax and Insurance Deposits shall be paid to the Mortgagor;

(e) All Tax and Insurance Deposits are hereby pledged as additional security for the Indebtedness Hereby Secured, and shall be held in trust to be irrevocably applied for the purposes for which made as herein provided, and shall not be subject to the direction or control of the Mortgagor;

(f) Notwithstanding anything to the contrary herein contained, the Mortgagee shall not be liable for any failure to apply to the payment of Taxes and insurance premiums any amounts deposited as Tax and Insurance Deposits unless the Mortgagor, while no default exists hereunder, and within a reasonable time prior to the due date, shall have requested the Mortgagee in writing to make application of such Deposits on hand to the payment of the particular Taxes or insurance premiums for the payment of which such Deposits were made, accompanied by the bills therefor;

(g) All Tax and Insurance Deposits in the hands of Mortgagee shall be held without allowance of interest and need not be kept separate and apart but may be commingled with any funds of the Mortgagee until applied in accordance with the provisions hereof.

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7. Proceeds of Insurance. The Mortgagor will give the Mortgagee prompt notice of any damage to or destruction of the Premises, and

in which the proceeds of such insurance policies are in excess of \$40,000,

- (a) In case of loss covered by policies of insurance, the Mortgagee (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be) is hereby authorized at its option either (i) to settle and adjust any claim under such policies without the consent of the Mortgagor, or (ii) allow the Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss,

provided further that in any case the Mortgagee shall, and is hereby authorized to, collect and receipt for any such insurance proceeds, and the expenses incurred by the Mortgagee in the adjustment and collection of insurance proceeds shall be so much additional Indebtedness Hereby Secured, and shall be reimbursed to the Mortgagee upon demand;

See Page 8-A attached hereto and made a part hereof.

- (b) ~~In the event of any insured damage to or destruction of the Premises or any part thereof (herein called an "Insured Casualty") and if, in the reasonable judgment of the Mortgagee, the Premises can be restored prior to Loan maturity, to an architectural and economic unit of the same character and not less valuable than the same was prior to the Insured Casualty, and adequately securing the outstanding balance of the Indebtedness Hereby Secured, and the insurers do not deny liability to the insureds, then, if none of the Leases are subject to termination on account of such casualty and if no Event of Default, as hereinafter defined, shall have occurred and be then continuing, and if there was no Event of Default, whether continuing or not, at the time of occurrence of damage or destruction, which resulted in said loss, the proceeds of insurance shall be applied to reimburse the Mortgagor for the cost of restoring, repairing, replacing or rebuilding (herein generally called "Restoring") the Premises or any part thereof subject to Insured Casualty, as provided for in Section 9 hereof;~~

- (c) Notwithstanding the foregoing, proceeds of rent and rental value insurance or business interruption insurance provided as set forth in section 4(c) hereof collected by the Mortgagee, shall be held and applied as follows:
- (i) So long as no Event of Default shall have occurred, such proceeds shall be applied in payment of periodic installments of principal and interest provided for in the Note and to payment of any Tax and Insurance Deposits required by Section 6 hereof, and any surplus shall be remitted to Mortgagor; and
- (ii) Upon the occurrence of an Event of Default, such proceeds shall be applied as set forth in Subsection (e) below.
- (d) ~~If, in the reasonable judgment of Mortgagee, the Premises cannot be restored to an architectural and economic unit as provided for in Subsection (b) above, then at any time from and after the Insured Casualty, upon thirty (30) days' written notice to Mortgagor, Mortgagee may declare the entire balance of the Indebtedness Hereby Secured to be, and at the expiration of such thirty (30) day period the Indebtedness Hereby Secured shall be and become, immediately due and payable;~~
- (e) Except as provided for in this Section 7, Mortgagee may apply the proceeds of insurance (including amounts not required for Restoring effected in accordance with Subsection (b) above) consequent upon any Insured Casualty upon the Indebtedness Hereby Secured, in such order or manner as the Mortgagee may elect, provided that no premium or penalty shall be payable in connection with any prepayment of the Indebtedness Hereby Secured made out of insurance proceeds as aforesaid;
- (f) In the event that proceeds of insurance, if any, shall be made available to the Mortgagor for the Restoring of the Premises, Mortgagor hereby covenants to Restore the same to be of at least equal value and of substantially the same character as prior to such damage or destruction; all to be effected in accordance with plans and specifications to be first submitted to and approved by the Mortgagee;
- (g) Any portion of insurance proceeds remaining after payment in full of the Indebtedness Hereby Secured shall be paid to Mortgagor or as ordered by a court of competent jurisdiction;
- (h) No interest shall be payable by Mortgagee on account of any insurance proceeds at any time held by Mortgagor;

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(Section 7 continued)

- (b) In the event of any insured damage to or destruction of the Premises or any part thereof (herein called an "Insured Casualty") and if: (i) in the reasonable judgment of the Mortgagee, the Premises can be restored prior to Loan maturity to an architectural and economic unit of the same character and not less valuable than the same was prior to the Insured Casualty, and adequately securing the outstanding balance of the Indebtedness Hereby Secured; (ii) the insurers do not deny liability to the insureds; (iii) in Mortgagee's judgment the rent payable under the leases remaining in effect plus the proceeds of Mortgagor's insurance is sufficient to secure the outstanding balance of the Indebtedness Hereby Secured and pay the cost of Restoring (as defined below) the Premises; and (iv) no Event of Default, as hereinafter defined, shall have occurred and be then continuing, and there was no Event of Default, whether continuing or not, at the time of occurrence of the damage or destruction which resulted in said loss; the proceeds of insurance shall be applied to reimburse the Mortgagor for the cost of restoring, repairing, replacing or rebuilding (herein generally called "Restoring") the Premises or any part thereof subject to such Insured Casualty, as provided for in Section 9 hereof.

In the event that all of the above conditions are not fully satisfied, then Mortgagee may apply the proceeds of insurance consequent upon any Insured Casualty upon the Indebtedness Hereby Secured in such order or manner as Mortgagee may elect; provided that no premium or penalty shall be payable in connection with any such application of proceeds.

(Section 7 continued)

- (d) If, in the reasonable judgment of Mortgagee, the Premises cannot be restored to an architectural and economic unit as provided for in Section (b) above or prior to the Maturity Date, then at any time from and after the Insured Casualty, upon thirty (30) days' written notice to Mortgagor, Mortgagee may declare the entire balance of the Indebtedness Hereby Secured to be, and at the expiration of such thirty (30) day period the Indebtedness Hereby Secured shall be and become immediately due and payable;

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- (i) Nothing contained in this Mortgage shall create any responsibility or liability upon the Mortgagee to (i) collect any proceeds of any policies of insurance, or (ii) Restore any portion of the Premises damaged or destroyed through any cause.

8. Condemnation. The Mortgagor will give Mortgagee prompt notice of any proceedings, instituted or threatened, seeking condemnation or taking by eminent domain or any like process (herein generally called a "Taking"), of all or any part of the Premises, including damages to grade, and:

- (a) Mortgagor hereby assigns, transfers and sets over unto Mortgagee the entire proceeds of any Award consequent upon any Taking;
- (b) ~~If, in the reasonable judgment of the Mortgagee, the Premises can be restored to an architectural and economic unit of the same character and not less valuable than the Premises prior to such Taking and adequately securing the outstanding balance of the Indebtedness Hereby Secured, then if no Event of Default, as hereinafter defined, shall have occurred and be then continuing, the Award shall be applied to reimburse Mortgagee for the cost of Restoring the portion of the Premises remaining after such Taking, as provided for in Section 9 hereof;~~
- (c) ~~If, in the reasonable judgment of Mortgagee, the Premises cannot be restored to an architectural and economic unit as provided for in Subsection (b) above, then at any time from and after the Taking, upon thirty (30) days' written notice to Mortgagor, Mortgagee may declare the entire balance of the Indebtedness Hereby Secured to be due and at the expiration of such thirty (30) day period the Indebtedness Hereby Secured shall be and become immediately due and payable.~~
- (d) Except as provided for in Subsection (b) of this Section 8, Mortgagee shall apply any Award (including the amount not required for Restoration elected in accordance with Subsections (b) above) upon the Indebtedness Hereby Secured in such order, or manner as the Mortgagee may elect; provided that no premium or penalty shall be payable in connection with any prepayment of the Indebtedness Hereby Secured made out of any Award as aforesaid;
- (e) In the event that any Award shall be made available to the Mortgagor for Restoring the portion of the Premises remaining after a Taking, Mortgagor hereby covenants to Restore the remaining portion of the Premises to be of at least equal value and of substantially the same character as prior to such Taking, all to be effected in accordance with plans and specifications to be first submitted to and approved by the Mortgagee;
- (f) Any portion of any Award remaining after payment in full of the Indebtedness Hereby Secured shall be paid to Mortgagor or as ordered by a court of competent jurisdiction;
- (g) No interest shall be payable by Mortgagee on account of any Award at any time held by Mortgagee.

that Mortgagee elects, in Mortgagee's sole discretion, to reimburse Mortgagee out of

9. Disbursement of Insurance Proceeds and Condemnation Awards. In the event the Mortgagor is entitled to reimbursement out of insurance proceeds or any Award held by the Mortgagee, such proceeds shall be disbursed from time to time upon the Mortgagee being furnished with satisfactory evidence of the estimated cost of completion of the Restoring, with funds (or assurances satisfactory to the Mortgagee that such funds are available) sufficient in addition to the proceeds of insurance or Award, to complete the proposed Restoring, and with such architect's certificates, waivers of lien, contractor's sworn statements and such other evidence of costs and payments as the Mortgagee may reasonably require and approve; and the Mortgagee may, in any event, require that all plans and specifications for such Restoring be submitted to and approved by the Mortgagee prior to commencement of work; and in each case:

(See Page 9-A attached hereto and made a part hereof)

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(Section 9 continued)

, and in such manner as Mortgagee elects, provided, however, that at the request of Mortgagor, Mortgagee shall deposit such funds in an escrow trust established with a third party escrowee at Mortgagor's sole cost and expense, for the benefit of Mortgagor and Mortgagee, to be disbursed in accordance with such procedures as may be established by Mortgagee, and escrowee at the request of Mortgagor shall invest such funds in an interest bearing account for the benefit of Mortgagor at a financial institution designated by Mortgagor but acceptable to Mortgagee so long as the interest earned thereon is reported for tax purposes as paid to Mortgagor

(Section 3(a) continued)

Mortgagee, at its sole and absolute election, may apply any Award consequent upon any Taking either (i) to payment of the Indebtedness Hereby Secured; or (ii) to reimburse Mortgagor for the cost of Restoring of the property damaged, in which event such reimbursement shall be subject to such conditions and shall be on such terms as Mortgagee deems appropriate; notwithstanding anything to the contrary contained herein, if there is a Taking of a portion of the Real Estate and in the judgment of Mortgagee said Taking does not diminish the value of the Improvements, then Mortgagor shall be entitled to any Award consequent upon said Taking.

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- (a) No payment made prior to the final completion of the Restoring shall exceed ninety percent (90%) of the value of the work performed from time to time.
- (b) Funds other than proceeds of insurance or the Award shall be disbursed prior to disbursement of such proceeds or Award, and
- (c) At all times the undisbursed balance of such proceeds or Award remaining in the hands of the Mortgagee, together with funds deposited for the purpose or irrevocably committed to the satisfaction of the Mortgagee by or on behalf of the Mortgagor for the purpose, shall be at least sufficient in the reasonable judgment of the Mortgagee to pay for the cost of completion of the Restoring, free and clear of all liens or claims for lien.

See Page 10-A attached hereto and made a part hereof
10. **Stamp Tax.** If, by the laws of the United States of America, or of any state having jurisdiction over the Mortgagor, any tax is due or becomes due in respect of the issuance of the Note, the Mortgagor shall pay such tax in the manner required by such law.

11. **Prepayment Privilege.** ~~At such time as the Mortgagor is not in default under the terms of the Note or under the terms of this Mortgage, the Mortgagor shall have the privilege of making prepayments on the principal of the Note (in addition to the required payments hereunder) in accordance with the terms and conditions, if any, set forth in the Note, but not otherwise.~~ Prepayment of the Indebtedness Hereby Secured may be made only in accordance with the terms and conditions set forth in the Note and not otherwise.

12. **Effect of Extensions of Time, Amendments on Junior Liens and Others.** Mortgagor covenants and agrees that:

- (a) If the payment of the Indebtedness Hereby Secured, or any part thereof, be extended or varied, or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability, if any, and the lien and all provisions hereof shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding any such extension, variation or release;
- (b) Any person, firm or corporation taking a junior mortgage or other lien upon the Premises or any interest therein, shall take such lien, subject to the rights of the Mortgagee to amend, modify and supplement this Mortgage, the Note, the Assignment and the Construction Lien Agreement hereinafter referred to, and to vary the rate of interest and the method of computing the same, and to impose additional fees and other charges, and to extend the maturity of the Indebtedness Hereby Secured, in each and every case without giving notice to, or obtaining the consent of, the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien;
- (c) Nothing in this Section contained shall be construed as waiving any provision of Section 17 hereof which provides, among other things, that it shall constitute an Event of Default if the Premises be sold, conveyed or encumbered.

13. **Effect of Changes in Tax Laws.** ~~In the event of the enactment after the date hereof by any legislative authority having jurisdiction of the Premises of any law deducting from the value of land for the purposes of taxation, any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Premises, or the method of collecting taxes, so as to affect this Mortgage or the Indebtedness Hereby Secured, or the holder thereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments, or reimburse the Mortgagee therefor; provided that if in the opinion of counsel for the Mortgagee the payment by Mortgagor of any such taxes or assessments shall be unlawful, then the Mortgagee may, by notice to the Mortgagor, declare the entire principal balance of the Indebtedness Hereby Secured and all accrued interest to be due and payable on a date specified in such notice, not less than 180 days after the date of such notice, and the Indebtedness Hereby Secured and all accrued interest shall then be due and payable without premium or penalty on the date so specified in such notice.~~

that any law or court decree, now or hereafter existing, has the effect of

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including, without limitation, taxes described in Paragraph 3 hereof and all taxes described in Paragraph 10 hereof.

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(Section 9 continued)

- (d) Any shortfall in amount of the proceeds of insurance or the Award with respect to the cost of Restoring the Premises shall be provided by Mortgagor prior to the start of the Restoring.
- (e) All funds available for the Restoring are to be administered by Mortgagee or its designated agent, to be advanced as the Restoring proceeds, with any surplus funds to be remitted to Mortgagor.

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14. **Mortgagee's Performance of Mortgagor's Obligations.** In case of default therein, the Mortgagee, either before or after acceleration of the Indebtedness Hereby Secured or the foreclosure of the lien hereof, and during the period of redemption, if any, may, but shall not be required to, make any payment or perform any act herein or in any other Loan Documents, including but not limited to the Construction Loan Agreement hereinafter referred to, required of the Mortgagor (whether or not the Mortgagor is personally liable therefor) in any form and manner deemed expedient to the Mortgagee, and in connection therewith:

- (a) The Mortgagee may, but shall not be required to, make full or partial payments of principal or interest on ~~any~~ encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien, title, or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises, or contest any tax, assessment, lien or claim;
- (b) Mortgagee may, but shall not be required to, complete construction, furnishing and equipping of the Improvements upon the Premises and rent, operate and manage the Premises and such Improvements and pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Premises, Improvements and Personal Property shall be operational and usable for their intended purposes;
- (c) All monies paid for any of the purposes herein authorized or authorized by any other instrument evidencing or securing the Indebtedness Hereby Secured, and all expenses paid or incurred in connection therewith, including attorney's fees and any other monies advanced by the Mortgagee to protect the Premises and the lien hereof or to complete construction, furnishing and equipping, or to rent, operate and manage the Premises and such Improvements, or to pay any such operating costs and expenses thereof, or to keep the Premises, Improvements and Personal Property operational and usable for their intended purposes, shall be so much additional Indebtedness Hereby Secured, whether or not they exceed the amount of the Note, and shall become immediately due and payable without notice, and with interest thereon at the Default Rate specified in the Note (herein called the "Default Rate");
- (d) Inaction of the Mortgagee shall never be considered a waiver of any right accruing to it on account of any default on the part of the Mortgagor;
- (e) The Mortgagee, in making any payment hereby authorized (i) relating to taxes and assessments, may do so according to any bill, statement or estimate without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof, (ii) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted, or (iii) in connection with the completion of construction, furnishing or equipping of the Improvements or the Premises or the rental, operation or management of the Premises or the payment of operating costs and expenses thereof, Mortgagee may do so in such amounts and to such persons as Mortgagee may deem appropriate, and may enter into such contracts therefor as Mortgagee may deem appropriate or may perform the same itself.

15. **Inspection of Premises.** The Mortgagee shall have the right to inspect the Premises at all reasonable times, and to perform such work, repairs, alterations and tests as Mortgagee may require, and Mortgagee

16. **Financial Statements.** The Mortgagor will, within ninety (90) days after the end of each fiscal year of the Mortgagor and of each guarantor and each tenant specified by Mortgagee, furnish to the Mortgagee at the place where interest thereon is then payable, financial and operating statements of the Premises and of each guarantor and each such tenant for such fiscal year, all in reasonable detail and in any event including such itemized statement of receipts and disbursements as shall enable Mortgagee to determine whether any default exists hereunder or under the Note; and in connection therewith:

- (a) Such financial and operating statements shall be prepared at Mortgagor's expense and personally certified to by an officer of Mortgagor's beneficiary.

is hereby granted an express License for access to the Premises for those purposes.

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- (b) ~~If the statements furnished shall not be prepared in accordance with generally accepted accounting principles consistently applied, or if Mortgagor fails to furnish the same when due, Mortgagee may audit or cause to be audited the books of the Premises and/or the Mortgagor and of each Guarantor and each such tenant, at Mortgagor's expense, and the costs of such audit shall be so much additional Indebtedness Hereby Secured bearing interest at the Default Rate until paid, and payable upon demand~~

17. Restrictions on Transfer. Subject to the provisions of Section 18 hereof, it shall be an immediate Event of Default hereunder if, without the prior written consent of the Mortgagee, any of the following shall occur, and in any event Mortgagee may condition its consent upon such increase in rate of interest payable upon the Indebtedness Hereby Secured, change in monthly payments thereon, change in maturity thereof and/or the payment of a fee, all as Mortgagee may in its sole discretion require:

- (a) If the Mortgagor shall create, effect, contract for, commit to or consent to or shall suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of the Premises or any part thereof, or interest therein, excepting only sales or other dispositions of Collateral as defined in Section 19 (herein called "Obsolete Collateral") no longer useful in connection with the operation of the Premises, provided that prior to the sale or other disposition thereof, such Obsolete Collateral shall have been replaced by Collateral, subject to the first and prior lien hereof, of at least equal value and utility; and also excepting the execution of any Qualified Lease (as such term is defined in the Assignment of Rents and Leases);
- (b) If the Mortgagor is a trustee, then if any beneficiary of the Mortgagor shall create, effect, contract for, commit to or consent to, or shall suffer or permit, any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of such beneficiary's beneficial interest in the Mortgagor;
- (c) If the Mortgagor is a corporation, or if any corporation is a beneficiary of a trustee mortgagor, then if any shareholder of such corporation shall create, effect, contract for, commit to or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage security interest or other encumbrance or alienation of any such shareholder's shares in such corporation; provided that if such corporation is a corporation whose stock is publicly traded on a national securities exchange or on the "Over The Counter" market, then this Section 17(c) shall be inapplicable;
- (d) If the Mortgagor is a partnership or joint venture, or if any beneficiary of a trustee Mortgagor is a partnership or joint venture, then if any general partner or joint venturer in such partnership or joint venture shall create, effect or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of any part of the partnership interest or joint venture interest, as the case may be, of such partner or joint venturer; or
- (e) If there shall be any change in control (by way of transfers of stock ownership, partnership interests or otherwise) in any general partner which directly or indirectly controls or is a general partner of a partnership or joint venture beneficiary as described in Subsection 17(d) above;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise, provided that provisions of this Section 17 shall be operative with respect to, and shall be binding upon, any persons who, in accordance with the terms hereof or otherwise, shall acquire any part of or interest in or encumbrance upon the Premises, or such beneficial interest in, share of stock of or partnership or joint venture interest in the Mortgagor or any beneficiary of a Trustee Mortgagor; and provided further that no consent by Mortgagee to, or any waiver of, any event or condition which would otherwise constitute an Event of Default under this Section 17, shall constitute a consent to or a waiver of any other or subsequent such event or condition or a waiver of any right, remedy or power of Mortgagee consequent thereon.

Provided, however, that shares of Mortgagor's beneficiary held by Intercounty Title Insurance Company of Illinois, an Illinois corporation ("Intercounty") may be pledged by Intercounty from time to time for working capital and lines of credit.

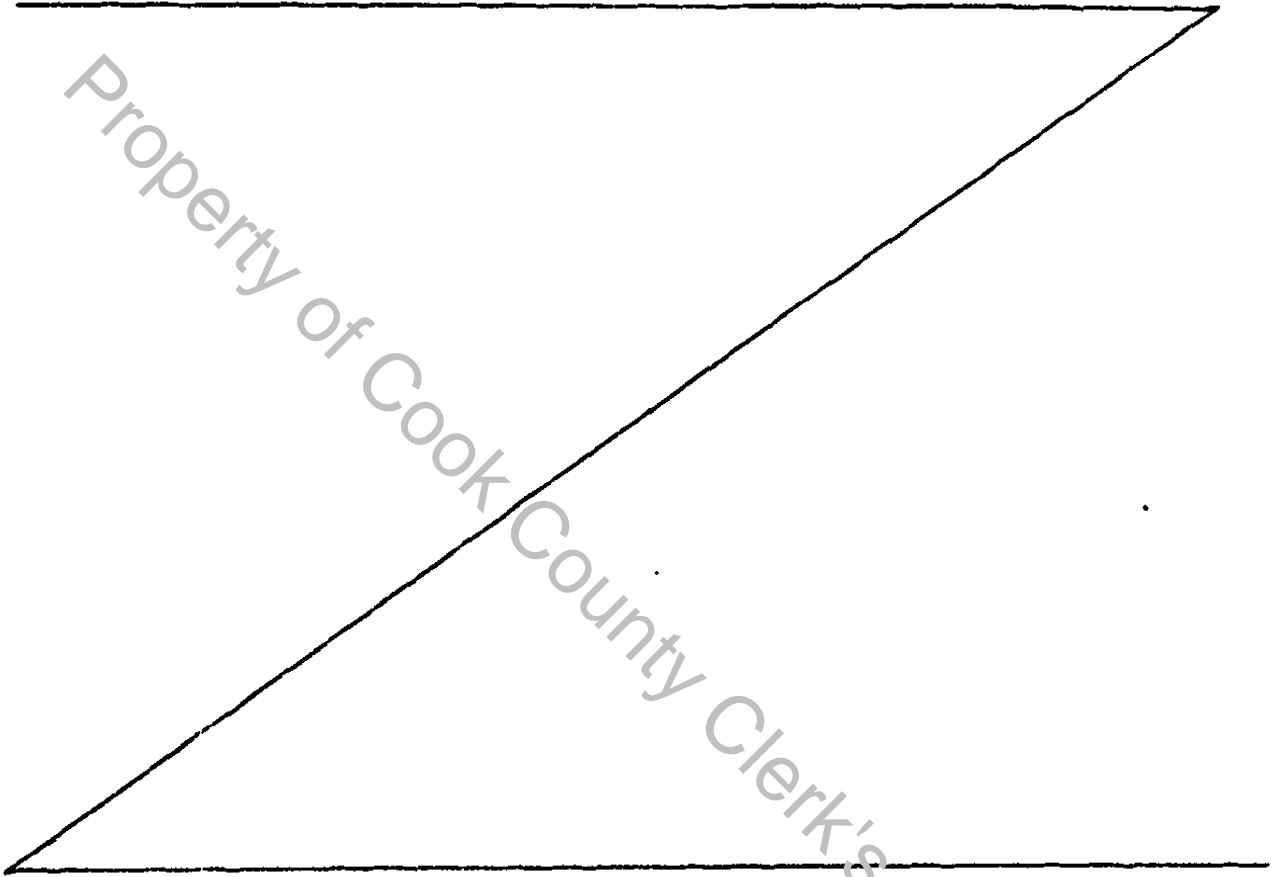
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18. Permitted Transfers. The provisions of Section 17 hereof shall not apply to any of the following:

- (a) Liens securing the Indebtedness Hereby Secured.
- (b) The lien of current real estate taxes and assessments not in default.
- (c) ~~Transfers of the Premises, or part thereof, or interest therein or any beneficial interests, shares of stock, or partnership or joint venture interests, as the case may be, in the Mortgagor, or any beneficiary of a Trustee Mortgagor by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate, personal representatives and/or committee.~~

See Pages 13-A, 13-B and 13-C attached hereto and made a part hereof.



all Personal Property and any other

19. Uniform Commercial Code. This Mortgage constitutes a Security Agreement under the Uniform Commercial Code of the State in which the Premises is located (herein called the "Code") with respect to any part of the Premises which may or might now or hereafter be or be deemed to be personal property, fixtures or property other than real estate (all herein called "Collateral"); all of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this Section 19 shall not limit the generality or applicability of any other provision of this Mortgage, but shall be in addition thereto:

- (a) The Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof;
- (b) The Collateral is to be used by the Mortgagor solely for business purposes, being installed upon the Premises for Mortgagor's own use or as the equipment and furnishings furnished by Mortgagor, as landlord, to tenants of the Premises;

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(Section 18 continued)

- (c) One isolated transfer of the Premises by Mortgagor and an assumption of the loan by transferee, provided that:
- (1) no Event of Default or event which with the passage of time, the giving of notice or both would constitute an Event of Default exists and is then continuing;
 - (2) Mortgagor notifies Mortgagee in writing of the identity of the proposed transferee and other aspects of the transfer at least sixty (60) days prior to the consummation of such transfer;
 - (3) the transferee has an aggregate net worth of at least \$10,000,000;
 - (4) the transferee has office building management experience equal to or greater than that of Jack Hargrove and Laurence Capriotti;
 - (5) Mortgagor pays to Mortgagee on or before the proposed transfer, a transfer fee equal to \$145,000; and
 - (6) all of Mortgagee's costs and expenses (including attorneys' fees) in connection with the transfer and assumption shall be paid by Mortgagor, including, without limitation, reviewing information regarding the transferee and the transfer, preparing and negotiating documents, if necessary, and reviewing the status of the loan to determine if defaults exist.

If Mortgagee ever consents to a transfer of all or any part of the premises, the provisions of the preceding sentence shall automatically terminate, the intent hereof being that such provisions shall be available to Mortgagor on a one-time basis only and that such provisions shall not be available to any such transferee. If the Premises are transferred in accordance with the provisions of this subsection 18(c), Mortgagee shall not require any substantive changes in the terms and conditions of the loan in connection therewith.

- (d) Secondary liens upon the Premises and/or upon the beneficial interest in Mortgagor (herein called "Permitted Secondary Liens") securing indebtedness in an amount not to exceed \$1,000,000 (herein called "Permitted Secondary Debt") provided that:

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(i) Said Permitted Secondary Liens are by their terms expressly subject to and subordinate in all aspects to all liens securing the Indebtedness Hereby Secured, including, but not limited to, the lien hereof and the lien of the Assignment; all instruments and documents evidencing and securing such Permitted Secondary Debt and such Permitted Secondary Liens are in form and content reasonably satisfactory to Mortgagee in all respects;

(ii) At the time of creation of the Permitted Secondary Debt, the quotient obtained by dividing (A) the annual net operating income (without deducting charges for depreciation and principal and interest payments under this Note or any other Permitted Secondary Debt), derived from the operation of the Premises for the immediately preceding full calendar year (as determined by Mortgagor and approved by Mortgagee) by (B) the fixed aggregate annual payments of principal and interest payable under the Note and any other note and/or other documents evidencing and securing indebtedness secured by the Premises and/or the beneficial interest in Mortgagor, equals or exceeds 1.10;

(iii) Mortgagor or Mortgagor's beneficiary notifies Mortgagee in writing as to the principal amount, interest rate and maturity date of any such Permitted Secondary Debt and Permitted Secondary Liens at least thirty (30) days prior to the execution and delivery of the loan documents evidencing the same;

(iv) Mortgagor pays to Mortgagee, Mortgagee's servicing agent and Mortgagee's counsel all reasonable fees and disbursements incurred in the preparation, negotiation, review and approval of all documentation in connection with the processing of the Permitted Secondary Liens;

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(v) The Secondary Lender is a reputable financial institution reasonably acceptable to Mortgagee;

(vi) At the time of creation of the Permitted Secondary Liens, no Event of Default or event which with the giving of notice or passage of time, or both, would constitute such an Event of Default exists and is then continuing; and

Notwithstanding anything contained herein to the contrary, Mortgagee shall consent to a fixed rate second mortgage upon the Premises in favor of Exchange National Bank of Chicago, Security Pacific Bank of California or another comparable lending institution acceptable to Mortgagee for an amount not to exceed \$1,000,000 provided the terms and fixed rate of such second mortgage are acceptable to Mortgagee. No further financing or refinancing shall be permitted until such time as all requirements set forth in this subsection (d) have been fully achieved.

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- (c) The Collateral will be kept at the Real Estate and will not be removed therefrom without the consent of the Mortgagee (being the Secured Party as that term is used in the Code) by Mortgagor or any other person; and the Collateral may be affixed to the Real Estate but will not be affixed to any other real estate.
- (d) The only persons having any interest in the Premises are the Mortgagor, Mortgagee and persons occupying the Premises as tenants only;
- (e) No Financing Statement covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor will at its own cost and expense, upon demand, furnish to the Mortgagee such further information and will execute and deliver to the Mortgagee such financing statement and other documents in form satisfactory to the Mortgagee, and will do all such acts and things as the Mortgagee may at any time or from time to time reasonably request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness Hereby Secured, subject to no adverse liens or encumbrances; and the Mortgagor will pay the cost of filing the same or filing or recording such financing statements or other documents, and this instrument, in all public offices whenever filing or recording is deemed by the Mortgagee to be necessary or desirable;
- (f) Upon the occurrence of any Event of Default hereunder (regardless of whether the Code has been enacted in the jurisdiction where rights or remedies are asserted) and at any time thereafter (such Event of Default not having previously been cured), the Mortgagee at its option may declare the Indebtedness Hereby Secured immediately due and payable, all as more fully set forth in Section 20 hereof, and thereupon Mortgagee shall have the remedies of a secured party under the Code, including without limitation the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as the Mortgagor can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code);
- (g) The Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral, subject to the Mortgagor's right of redemption, if any, in satisfaction of the Mortgagor's obligations as provided in the Code; provided that (i) the Mortgagee without removal may render the Collateral unusable and dispose of the Collateral on the Premises, and (ii) the Mortgagee may require the Mortgagor to assemble the Collateral and make it available to the Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties;
- (h) The Mortgagee will give Mortgagor at least five (5) days notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is made and the requirements of reasonable notice shall be met if such notice is mailed, by certified mail or equivalent, postage prepaid, to the address of the Mortgagor determined as provided in Section 42 hereof, at least five (5) days before the time of the sale or disposition;
- (i) The Mortgagee may buy at any public sale, and if the Collateral is a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, Mortgagee may buy at any private sale, and any such sale may be held as part of and in conjunction with any foreclosure sale of the Real Estate comprised within the Premises, the Collateral and Real Estate to be sold as one lot if Mortgagee so elects;
- (j) The net proceeds realized upon any such disposition, after deduction for the expenses of retaining, holding, preparing for sale, selling or the like, and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied in satisfaction of the Indebtedness Hereby Secured; and the Mortgagee will account to the Mortgagor for any surplus realized on such disposition;
- (k) The remedies of the Mortgagee hereunder are cumulative and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of any of the other remedies of the Mortgagee, including having the Collateral deemed part of the realty upon any foreclosure thereof, so long as any part of the Indebtedness Hereby Secured remains unsatisfied;
- (l) The terms and provisions contained in this Section 19 shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

20. Events of Default. If one or more of the following events (herein called "Events of Default") shall occur
- (a) If default is made in the due and punctual payment of the Note or any installment thereof, either principal or interest, as and when the same is due and payable, or if default is made in the making of any payment of any other monies required to be made hereunder or under the Note, ~~and any applicable period of grace specified in the Note shall have elapsed, or~~
 - (b) If an Event of Default pursuant to Section 17 hereof shall occur and be continuing without notice or grace of any kind; or
 - (c) If default is made in the maintenance and delivery to Mortgagee of insurance required to be maintained and delivered hereunder, without notice or grace of any kind; or
 - (d) If (and for the purpose of this Section 20(d) only, the term Mortgageor shall mean and include not only Mortgageor but any beneficiary of a Trustee Mortgageor and each person who, as guarantor, co-maker or otherwise shall be or become liable for or obligated upon all or any part of the Indebtedness Hereby Secured or any of the covenants or agreements contained herein ~~or in the Construction Loan Agreement~~),
 - (i) The Mortgageor shall file a petition in voluntary bankruptcy under the Bankruptcy Code of the United States or any similar law, state or federal, now or hereafter in effect, or
 - (ii) The Mortgageor shall file an answer admitting insolvency or inability to pay its debts, or
 - (iii) Within sixty (60) days after the filing against Mortgageor of any involuntary proceedings under such Bankruptcy Code or similar law, such proceedings shall not have been vacated or stayed, or
 - (iv) The Mortgageor shall be adjudicated a bankrupt, or a trustee or receiver shall be appointed for the Mortgageor or for all or the major part of the Mortgageor's property or the Premises, in any involuntary proceeding, or any court shall have taken jurisdiction of all or the major part of the Mortgageor's property or the Premises in any involuntary proceeding for the protection, reorganization, dissolution, liquidation or winding up of the Mortgageor, and such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within sixty (60) days, or
 - (v) The Mortgageor shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due or shall consent to the appointment of a receiver or trustee or liquidator of all or the major part of its property, or the Premises; or
 - (e) If any default shall exist under the provisions of Section 26 hereof, or under the Assignment referred to therein; or
 - (f) ~~If any default shall exist under the provisions of Section 31 hereof, or under the Construction Loan Agreement referred to therein; or~~
 - (g) If any representation made by or on behalf of Mortgageor in connection with the Indebtedness Hereby Secured shall prove untrue in any material respect; or
 - (h) If default shall occur _____ in the due and punctual performance or observance of any other agreement or condition herein or in the Note contained or any of the other Loan Documents See Page 15-A attached hereto and made a part hereof.
-
-
- (i) If the Premises shall be abandoned;
 - (j) Any default by Mortgageor or Mortgageor's beneficiary under any documents or instruments evidencing or securing any Permitted Secondary Debt

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(Section 20 (h) Continued)

provided, however, that unless and until the continued operation or safety of the Premises, or the priority, validity of enforceability of this Mortgage or the value of the Premises is materially impaired, threatened or jeopardized, Mortgagor shall have a period not to exceed thirty (30) days after written notice of such default to cure the same, except that if such default cannot by its nature be cured within thirty (30) days, and if Mortgagor commences to cure such default promptly after written notice thereof and thereafter diligently pursues the curing thereof (and in all events, cures such default within ninety (90) days after written notice thereof; provided, however, that Mortgagee will extend said ninety (90) day period if, prior to the expiration of said ninety (90) day period, Mortgagor delivers to Mortgagee additional security for the cure of such default in form and content satisfactory to Mortgagee in Mortgagee's sole discretion), Mortgagor shall not be in default hereunder during such period of diligent curing;

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then the Mortgagee is hereby authorized and empowered, at its option, and without affecting the lien hereby created or the priority of said lien or any right of the Mortgagee hereunder, to declare, without further notice all Indebtedness Hereby Secured to be immediately due and payable, whether or not such default is thereafter remedied by the Mortgagor, and the Mortgagee may immediately proceed to foreclose this Mortgage and/or exercise any right, power or remedy provided by this Mortgage, the Note, the Assignment or any of the other Loan Documents or by law or in equity conferred.

21. Foreclosure. When the Indebtedness Hereby Secured, or any part thereof, shall become due, whether by acceleration or otherwise, the Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof and

- (a) In any suit or proceeding 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 the Mortgagee for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title, as the Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Premises; and
- (b) All expenditures and expenses of the nature in this Section mentioned, and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by the Mortgagee in any litigation or proceedings affecting this Mortgage, the Note or the Premises or the rights of Mortgagee hereunder or as to which Mortgagee may be made a party by virtue of its interest in the Premises pursuant to this Mortgage or otherwise, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall constitute so much additional Indebtedness Hereby Secured, and shall be immediately due and payable by the Mortgagor, with interest thereon at the Default Rate.

See Page 16-A attached hereto and made a part hereof.

22. Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Section 21 hereof; Second, all other items which, under the terms hereof, constitute Indebtedness Hereby Secured (additional to that evidenced by the Note, with interest on such items as herein provided); Third, to interest remaining unpaid upon the Note; Fourth, to the principal remaining unpaid upon the Note; and lastly, any overplus to the Mortgagor, and its successors or assigns, as their rights may appear.

23. Receiver. Mortgagor consents and agrees that:

- (a) Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises;
- (b) Such appointment may be made either before or after sale, without notice, without regard to solvency or insolvency of the Mortgagor at the time of application for such receiver, and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not, and the Mortgagee hereunder, or any holder of the Note, may be appointed as such receiver;
- (c) Such receiver shall have the power to collect the Rents during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when the Mortgagor, except for the intervention of such receiver, would be entitled to collection of such Rents and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period;
- (d) The court may, from time to time, authorize the receiver to apply the net income from the Premises in his hands in payment in whole or in part of:
 - (i) The Indebtedness Hereby Secured or the indebtedness secured 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 the foreclosure sale; or
 - (ii) The deficiency in case of a sale and deficiency.

including the prepayment premium set forth in Section 12 of the Note;

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(Section 21 continued)

(c) At any foreclosure sale conducted by Mortgagee pursuant to this Paragraph 21, Mortgagee may sell both realty and personalty and any one bid at such a sale may be applicable to both realty and personalty.

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24. **Insurance Upon Foreclosure.** In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in Restoring the Improvements, as aforesaid, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct; and:

- (a) In the case of foreclosure of this Mortgage, the court, in its decree, may provide that the Mortgagee's clause attached to each of the casualty insurance policies may be canceled and that the purchaser at foreclosure sale may cause a new loss clause to be attached to each of said casualty insurance policies making the loss thereunder payable to said purchaser and any such foreclosure decree may further provide that in case of a redemption under said decree as provided by statute, such redelector may cause the preceding loss clause attached to each casualty insurance policy to be canceled and a new loss clause to be attached thereto, making the loss thereunder payable to such redelector; and
- (b) In the event of foreclosure sale, the Mortgagee is hereby authorized, without the consent of the Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as the Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies.

25. **Waiver.** The Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner whatever claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor claim, take or insist upon the benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or, after such sale or sales, claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof; and without limiting the foregoing:

- (a) The Mortgagor hereby expressly waives any and all rights of redemption from sale, if any, under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of redemption of the Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Chapter 110, ~~Para. 12-124, Para. 12-125 and Para. 15-1601~~ of the Illinois Statutes or other applicable law or replacement statutes;
- (b) The Mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power or remedy herein or otherwise granted or delegated to the Mortgagee but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted; and
- (c) If the Mortgagor is a trustee, Mortgagor represents that the provisions of this Section (including the waiver of redemption rights) were made at the express direction of Mortgagor's beneficiaries and the persons having the power of direction over Mortgagor, and are made on behalf of the Trust Estate of Mortgagor and all beneficiaries of Mortgagor, as well as all other persons mentioned above.

26. **Assignment.** As further security for the Indebtedness Hereby Secured, the Mortgagor has concurrently herewith, executed and delivered to the Mortgagee a separate instrument (herein called the "Assignment") dated as of the date hereof, wherein and whereby, among other things, the Mortgagor has assigned to the Mortgagee all of the rents, issues and profits, and/or any and all Leases and/or the rights of management of the Premises, all as therein more specifically set forth, which said Assignment is hereby incorporated herein by reference as fully and with the same effect as if set forth herein at length; and in connection with the foregoing:

- (a) The Mortgagor agrees that it will duly perform and observe all of the terms and provisions on its part to be performed and observed under the Assignment;
- (b) The Mortgagor agrees that it will duly perform and observe all of the terms and provisions on lessor's part to be performed and observed under any and all Leases to the end that no default on the part of lessor shall exist thereunder; and

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(excepting the right of reinstatement under Chapter 110, under Paragraph 15-1602 of the Illinois Statutes)

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(c) Nothing herein contained shall be deemed to obligate the Mortgagee to perform or discharge any obligation, duty or liability of lessor under any Lease, and the Mortgagor shall and does hereby indemnify and agree to defend and hold the Mortgagee harmless of and from any and all liability, loss or damage which the Mortgagee may or might incur under any Lease or by reason of the Assignment and any and all such liability, loss or damage incurred by the Mortgagee, together with the costs and expenses, including reasonable attorneys' fees, incurred by the Mortgagee in the defense (including preparation for defense) of any claims or demands therefor (whether successful or not), shall be so much additional Indebtedness Hereby Secured, and the Mortgagor shall reimburse the Mortgagee therefor on demand, together with interest thereon at the Default Rate from the date of demand to the date of payment.

27. **Priorities With Respect to Leases.** If the Mortgagee shall execute and record (or register) in the public office wherein this Mortgage was recorded (or registered) a unilateral declaration that this Mortgage shall be subject and subordinate, in whole or in part, to any Lease, then upon such recordation (or registration), this Mortgage shall become subject and subordinate to such Lease to the extent set forth in such instrument; provided that such subordination shall not extend to or affect the priority of entitlement to insurance proceeds or any Award unless such instrument shall specifically so provide.

28. **Mortgagee in Possession.** Nothing herein contained shall be construed as constituting the Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises by the Mortgagee.

29. **Business Loan.** Mortgagor represents and agrees that the loan evidenced by the Note and secured hereby is a business loan within the purview of Section 6404 of Chapter 17 of Illinois Revised Statutes (or any substitute, amended, or replacement statutes) and is transacted solely for the purpose of carrying on or acquiring the business of the Mortgagor or, if the Mortgagor is a trustee, for the purpose of carrying on or acquiring the business of the beneficiaries of the Mortgage as contemplated by said Section.

30. ~~Construction Loan Agreement. The Mortgagor has executed and delivered to and with the Mortgagee a construction loan agreement (herein called "Construction Loan Agreement") dated as of the date hereof, in connection with the construction and erection of certain improvements upon the Premises and the disbursement of all or part of the Indebtedness Hereby Secured for the purpose of financing the costs thereof, and~~

- (a) ~~The Construction Loan Agreement is hereby incorporated herein by this reference as fully and with the same effect as if set forth herein at length.~~
- (b) ~~This Mortgage secures all funds advanced pursuant to the Construction Loan Agreement (which advances shall constitute part of the Indebtedness Hereby Secured, whether more or less than the principal amount stated in the Note) and the due and punctual performance, observance and payment of all of the terms, conditions, provisions and agreements provided in the Construction Loan Agreement to be performed, observed or paid by any party thereto other than Mortgagee; and~~
- (c) ~~Mortgagor hereby agrees to duly and punctually perform, observe and pay or cause to be duly performed, observed and paid all of the terms, conditions, provisions and payments provided for in the Construction Loan Agreement to be performed, observed or paid by any party thereto other than Mortgagee.~~

and provided that Mortgagee's security or the Loan is not impaired,

31. **Contests.** Notwithstanding anything to the contrary herein contained, Mortgagor shall have the right to contest by appropriate legal proceedings diligently prosecuted any Taxes imposed or assessed upon the Premises or which may be or become a lien thereon and any mechanics', materialmen's or other liens or claims for lien upon the Premises (all herein called "Contested Liens"), and no Contested Lien shall constitute an Event of Default hereunder, if, but only if:

- (a) Mortgagor shall forthwith give notice of any Contested Lien to Mortgagee at the time the same shall be asserted;
- (b) Mortgagor shall deposit with Mortgagee the full amount (herein called the "Lien Amount") of such Contested Lien or which may be secured thereby, together with such amount as Mortgagee may reasonably estimate as interest or penalties which might arise during the period of contest; provided that in lieu of such payment Mortgagor may furnish to Mortgagee a bond or title indemnity in such amount and form, and issued by a bond or title insuring company, as may be satisfactory to Mortgagee;

, in Mortgagee's sole discretion,

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- (c) Mortgagor shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Premises, and shall permit Mortgagee to be represented in any such contest and shall pay all expenses incurred by Mortgagee in so doing, including fees and expenses of Mortgagee's counsel (all of which shall constitute so much additional Indebtedness Hereby Secured bearing interest at the Default Rate until paid, and payable upon demand).
- (d) Mortgagor shall pay such Contested Lien and all Lien Amounts together with interest and penalties thereon (i) if and to the extent that any such Contested Lien shall be determined adverse to Mortgagor, or (ii) forthwith upon demand by Mortgagee if, in the opinion of Mortgagee, and notwithstanding any such contest, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed; provided that if Mortgagor shall fail so to do, Mortgagee may, but shall not be required to, pay all such Contested Liens and Lien Amounts and interest and penalties thereon and such other sums as may be necessary in the judgment of the Mortgagee to obtain the release and discharge of such liens; and any amount expended by Mortgagee in so doing shall be so much additional Indebtedness Hereby Secured bearing interest at the Default Rate until paid, and payable upon demand; and provided further that Mortgagee may in such case use and apply for the purpose monies deposited as provided in Subsection 31(b) above and may demand payment upon any bond or title indemnity furnished as aforesaid.

32. Indemnification. Mortgagor does hereby covenant and agree that:

- (a) Mortgagee shall have no responsibility for the control, care, management or repair of the Premises and shall not be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Premises resulting in loss, injury, or death to any tenant, licensee, immediate stranger or other person;
- (b) No liability shall be asserted or enforced against Mortgagee in the exercise of the rights and powers hereby granted to the Mortgagee, and Mortgagor hereby expressly waives and releases any such liability.
- (c) Mortgagor shall and does hereby indemnify and hold Mortgagee harmless from any liability, loss or damage which Mortgagee may or might incur by reason of (i) exercise by Mortgagee of any right hereunder, and (ii) any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of any violation of, or liability under any Environmental Regulation (other than due solely to an act or omission of Mortgagee after obtaining possession or control of the Premises) or of any alleged obligation or undertaking on Mortgagee's part to perform or discharge any of the terms, covenants or agreements contained herein or in any instrument evidencing, securing or relating to the Indebtedness Hereby Secured or in any contracts, agreements or other instruments relating to or affecting the Premises; any and all such liability, loss or damage incurred by the Mortgagee, together with the costs and expenses, including reasonable attorneys' fees incurred by Mortgagee in the defense (including preparation for defense) of any claims or demands therefor (whether successful or not) shall be so much additional Indebtedness Hereby Secured, and the Mortgagor shall reimburse the Mortgagee therefor on demand, together with interest thereon at the Default Rate from the date of demand to the date of payment.

33. Mortgagor Not a Joint Venturer or Partner. Mortgagor and Mortgagee acknowledge and agree that in no event shall Mortgagee be deemed to be a partner or joint venturer with Mortgagor or any beneficiary of Mortgagor; and without limiting the foregoing, Mortgagee shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document evidencing or securing any of the Indebtedness Hereby Secured, or otherwise.

34. Subrogation. To the extent that Mortgagee, on or after the date hereof, pays any sum due under or secured by any Senior Lien as hereinafter defined, or Mortgagor or any other person pays any such sum with the proceeds of the Indebtedness Hereby Secured:

- (a) Mortgagee shall have and be entitled to a lien on the Premises equal in priority to the Senior Lien discharged, and Mortgagee shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such Senior Lien, which shall remain in existence and benefit Mortgagee in securing the Indebtedness Hereby Secured; and

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(b) Notwithstanding the release of record of Senior Liens (as hereinafter defined) Mortgagee shall be subrogated to the rights and liens of all mortgages, trust deeds, superior titles, vendors' liens, mechanics' liens, or liens, charges, encumbrances, rights and equities on the Premises having priority to the lien of this Mortgage (herein generally called "Senior Liens"), to the extent that any obligation secured thereby is directly or indirectly paid or discharged with proceeds of disbursements or advances of the Indebtedness Hereby Secured, whether made pursuant to the provisions hereof or of the Note or any document or instrument executed in connection with the Indebtedness Hereby Secured.

35. Title In Mortgagor's Successors. In the event that the ownership of the Premises or any part thereof becomes vested in a person or persons other than the Mortgagor (a) the Mortgagee may, without notice to the Mortgagor, deal with such successor or successors in interest of the Mortgagor with reference to this Mortgage and the Indebtedness Hereby Secured in the same manner as with the Mortgagor, and (b) the Mortgagor will give immediate written notice to the Mortgagee of any conveyance, transfer or change of ownership of the Premises; but nothing in this Section 35 contained shall vary or negate the provisions of Section 17 hereof.

36. Right Cumulative. Each right, power and remedy herein conferred upon the Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of the Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

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

38. Provisions Severable. The unenforceability or invalidity of any provision or provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid.

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

40. Captions and Pronouns. The captions and headings of the various sections of this Mortgage are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof, and whenever the context requires or permits, the singular number shall include the plural, and plural shall include the singular and the masculine, feminine and neuter genders shall be freely interchangeable.

~~**41. 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~~

~~_____~~
~~_____~~
~~(herein, together with any Application for Loan referred to therein, being called the "Commitment"); 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 and the Application referred to herein as its own act and agreement.~~

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

*** If to Mortgagor:**

Brown & Domanskis, Ltd.
120 West Madison Street, Suite 200
Chicago, Illinois 60602
Attention: Allen I. Brown, Esq.

If to Mortgagee:

Greenberger, Krauss & Jacobs, Chtd.
180 North LaSalle Street, Suite 2700
Chicago, Illinois 60601
(312) 346-1300
Attention: David Glickstein, Esq.

42. Addresses and Notices. Any notice which any party hereto may desire or may be required to give to any other party shall be in writing, and the personal delivery thereof or electronic, facsimile transmission thereof, or the passage of three days after the mailing thereof by registered or certified mail, return receipt requested, or upon the next business day after timely and proper deposit, charges paid, with any overnight carrier with respect to next day service, to the addresses initially specified in the introductory paragraph hereof, or to such other place or places as any party hereto may by notice in writing designate, shall constitute service of notice hereunder, with copies to:

43. Mortgagor Will Not Discriminate. Mortgagor covenants and agrees at all times to be in full compliance with provisions of law prohibiting discrimination on the basis of race, color, creed or national origin including, but not limited to, the requirements of Title VIII of the 1968 Civil Rights Act, or any substitute, amended or replacement Acts

44. Interest at the Default Rate. Without limiting the generality of any provision herein or in the Note contained, from and after the occurrence of any Event of Default hereunder, all of the Indebtedness Hereby Secured shall bear interest at the Default Rate.

45. Time. Time is of the essence hereof and of the Note, Assignment, ~~Construction Loan Agreement~~ and all other instruments or Loan Documents delivered in connection with the Indebtedness Hereby Secured

46. Applicable Law. This Document shall be construed in accordance with the laws of the State in which the Premises are located

47. Compliance with Illinois Mortgage Foreclosure Law.

(a) In the event that any provision of this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (Chapter 110, Section 15-1101 et seq., Illinois Revised Statutes) (herein called the "Act") the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

(b) If any provision of this Mortgage shall grant to Mortgagee any right or remedies upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Section 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

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Section 48

Mortgagor will pay all expenses, charges, costs and fees incurred by Mortgagee in connection with the Loan secured hereby, including without limitation, Mortgagee's reasonable attorneys' fees in connection with the negotiation, documentation, administration, servicing and enforcement of the Note, this Mortgage and the other Loan Documents, all filing, registration and recording fees, all other expenses incident to the execution and acknowledgment of this Mortgage, Mortgagee's in-house attorneys' fees at its then prevailing rates in connection with the review and/or preparation of documents in maintaining and servicing the Loan secured hereby after the date of initial disbursement if requested by or on behalf of Mortgagor or Mortgagor's beneficiary, all fees, costs, and expenses in connection with the testing and inspection of the Premises and preparation of reports and other activities undertaken by or at the direction of Mortgagee to determine whether any hazardous wastes or substances are located at the Premises at any time, and all federal, state, county and municipal taxes, and other taxes (provided Mortgagor shall not be required to pay any income or franchise taxes of Mortgagee), duties, impositions, assessments and charges arising out of or in connection with the execution and delivery of the Loan Documents.

All expenses, charges, costs and fees described in this Paragraph 48 shall be due and payable immediately upon demand and thereafter shall bear interest at the Default Rate, and such charges, together with said interest, shall be so much additional indebtedness secured hereby.

Section 49

Subordination of Property Manager's Lien.

Any property management agreement for the Premises entered into hereafter by Mortgagor with a property manager, shall contain a "no lien" provision whereby the property manager waives and releases any and all mechanics' lien rights that the property manager or anyone claiming by, through or under the property manager may have pursuant to Chapter 82, Section 1 of the Illinois Revised Statutes. Such property management agreement or a short form thereof shall, at Mortgagee's request, be recorded with the Recorder of Deeds of the County where the Premises are located. In addition, Mortgagor shall cause the property manager to enter into a Subordination of Management Agreement with Mortgagee, in recordable form, whereby the property manager subordinates present and future lien rights and those of any party claiming by, through or under the property manager, to the lien of this Mortgage.

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This Mortgage is executed by Independent Trust Corporation, an Illinois corporation, not personally but as Trustee aforesaid, in the exercise of the power and authority conferred upon and fixed in it as such Trustee, and it is expressly understood and agreed that nothing herein contained shall be constituted as creating any liability on said Corporation

Corporation as Trustee as aforesaid, or on said Corporation personally, to pay said Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained, all such liability, if any, being expressly waived by the Mortgagee and by every person now or hereafter claiming any right or security hereunder, and that so far as Corporation as Trustee as aforesaid, and its successors, and Corporation

Corporation personally, are concerned, the Mortgagee and the holder or holders of the Note and the owner or owners of the indebtedness accruing hereunder shall look solely to any one or more of (a) the Premises hereby conveyed for the payment thereof, by the enforcement of the lien hereby created, in the manner herein and in the Note provided, or (b) action to enforce the personal liability of any obligor, guarantor or co-maker or (c) enforcement of any other security or collateral securing the Indebtedness Hereby Secured.

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

Not personally but solely as Trustee as aforesaid

By

Cheryl Jaworsky
Vice President
CHERYL JAWORSKY, TRUST OFFICER

ATTEST:

Robert J. McCormick
Secretary
Trust Officer

THIS INSTRUMENT WAS PREPARED BY:
AND AFTER RECORDING RETURN TO:
MICHAEL G. ROGERS, Esq,
Greenberger, Krauss & Jacobs, Chtd.
180 North La Salle Street, Suite 2700
Chicago, Illinois 60601

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STATE OF ILLINOIS
COUNTY OF COOK

I, the undersigned

a Notary Public in and for said County in the State

aforesaid, do hereby certify that Cheryl Jaworsky, Trust Officer/ Vice President of
Independent Trust Corporation

an Illinois corporation, and Robert J. McCormick, Trust Officer

~~XXXXXXXXXXXX~~ of said Corporation, personally known to me to be the
same persons whose names are subscribed to the foregoing instrument as such Corporation
Vice President and ~~XXXXXXXXXXXX~~ ^{Trust Officer} respectively, appeared before me this day in person and acknowledged
that they signed and delivered the said instrument as their own free and voluntary acts, and as the free and
voluntary act of said Corporation

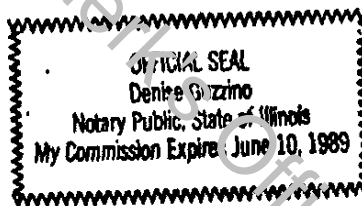
Trust Officer, as Trustee, for the uses and purposes therein set forth
and the said ~~XXXXXXXXXXXX~~ also then and there acknowledge that he, as custodian for the corporate
seal of said Corporation, did affix the said instrument as his own free and voluntary act,
and as the free and voluntary act of said Corporation

Trust Officer, as Trustee, for the
uses and purposes therein set forth

Given under my hand and notarial seal this 10th day of January, 1989

Denise Guzzino
Notary Public

My Commission Expires



Trustee Signature Page

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JOINDER

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the undersigned corporation, being the owner of 100% of the beneficial interest in Mortgagor, hereby join in the foregoing Mortgage solely for purposes of: (i) granting, transferring, setting over and assigning to Mortgagee a security interest in any and all of its right, title and interest in and to the Collateral described in Section 19 of said Mortgage; (ii) agreeing to be bound by and promptly perform the covenants contained in Section 19 of said Mortgage and (iii) agreeing to be bound by and promptly perform the covenants contained in Section 49 of the Mortgage. Nothing herein contained shall be deemed to render the undersigned corporation personally liable upon any obligation for payments provided in the foregoing Mortgage, the Note, or any of the other Loan Documents; provided, however, that the foregoing limitation of liability shall not apply to the extent Mortgagee suffers any loss, damage or expense as a result of any intentional misrepresentation or fraudulent conduct on the part of Mortgagor or Mortgagor's beneficiary or with respect to any personal liability of the undersigned corporation or its shareholders as expressly set forth in that certain Indemnity Agreement, that certain Certificate, and those FIRPTA Certifications all of even date herewith and executed by the undersigned corporation and/or its shareholders to and for the benefit of Mortgagee.

ITC REALTY ACQUISITION LTD., an Illinois corporation

By: Alan Hunt

Title: Treasurer

Attest: Joseph A. Peluso

Title: Secretary

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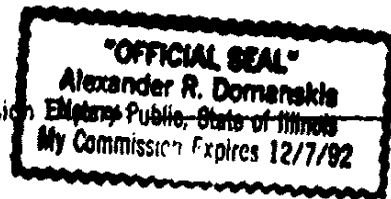
I, Alexander R. Domarski, a Notary Public in and for said County in the State aforesaid,
DO HEREBY CERTIFY that Alan H. Hurd, President
Assistant Vice President of ITC Realty Acquisition Ltd.,
(herein called the "Assignor") and Susan A. Valera, Secretary

Assistant Secretary of said Assignor, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Assistant Vice President and Assistant Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Assignor, as Trustee as aforesaid, for the uses and purposes therein set forth, and the said Assistant Secretary then and there acknowledged that he, as custodian of the corporate seal of said Assignor, did affix the corporate seal of said Assignor to said instrument as his own free and voluntary act and as the free and voluntary act of said Assignor, as Trustee as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 10th day of January, A.D., 1989

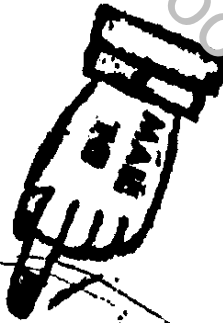
Alex R D

Notary Public



My Commission Expires

Property of Cook County Clerk's Office

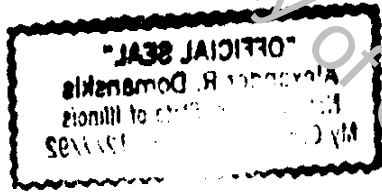


THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING RETURN TO

Michael G. Rogers, Esq.
Greenberger, Krauss & Jacobs, Chtd.
180 North La Salle Street, Suite 2700
Chicago, Illinois 60601

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EXHIBIT B

PERMITTED EXCEPTIONS

1. General Real Estate Taxes for the year 1988 and subsequent years.
2. Leasehold interest of the Lessees under the Leases described in Exhibit B attached to the Assignment of Rents and Leases of even date herewith made by Independent Trust Corporation, as Trustee, under Trust Agreement dated October 22, 1987 and known as Trust No. 20019, to Phoenix Mutual Life Insurance Company to secure an indebtedness of \$14,500,000.

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