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Prepared By and  
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Heinrich & Kramer, P.C.

COOK COUNTY, ILLINOIS  
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When Recorded Mail To:

Heinrich & Kramer, P.C.  
205 W. Randolph, Suite 1520  
Chicago, Illinois 60606

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DOC. 020

**MORTGAGE AND SECURITY AGREEMENT**

EXECUTED THIS 7<sup>th</sup> day of April, 1989

BY LaSalle National Bank, not personally, but as Trustee under Trust Agreement dated January 1, 1987 and known as Trust No. 111981 135 S. LaSalle Street, Chicago, Illinois 60603

\$28.00

herein called "Borrower", to First National Bank, A Federal Savings Bank, 700 Market Street, San Francisco, California 94102 (the mortgagee), herein called "Lender".

WITNESSETH: That FOR THE PURPOSE OF SECURING (1) Payment of the principal interest and other sums, if any, due under a Promissory Note (the "Note") of even date herewith made by Borrower in the principal sum of \$ 850,000.00 bearing interest at the rate specified therein, due in installments and in any event on May 1, 1999 payable to Lender or order, 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 at length, and all modifications, extensions or renewals thereof; (2) Payment of such additional sums with interest thereon (a) as may be hereafter borrowed from Lender by the then record owner of the property hereinbelow described and evidenced by a promissory note or notes reciting it is or they are so secured, and all modifications, extensions, renewals and/or replacements, thereof, and (b) as may be incurred, paid out, or advanced by Lender or may otherwise be due to Lender under any provision of this Mortgage (hereinafter called "Security Instrument") and all modifications, extensions, renewals, and/or replacements thereof; (3) Performance of each agreement of Borrower contained herein or incorporated herein by reference or contained in any papers executed by Borrower pursuant to the loan of money by Lender to Borrower as evidenced by the Note and any future notes secured hereby (the "Loan"), including, without limitation, performance (if the Loan secured hereby or any part thereof is for the purpose of constructing improvements on the property hereinbelow described) of each provision or agreement of Borrower contained in any construction loan agreement or other such agreement between Borrower and Lender relating to the property hereinbelow described. All of such documents and agreements are herein called the "Loan Documents"; (4) Performance and keeping by Borrower of each of the covenants and agreements required to be kept and performed by Borrower pursuant to the terms of the Lease, if this Security Instrument secures a leasehold estate, and any and all other instruments creating Borrower's interest in or defining Borrower's rights in respect to the property hereinbelow described; (5) Payment by Borrower of such and every monetary provision to be performed by Borrower under any declaration of covenants, conditions, and restrictions pertaining to the property hereinbelow described and upon written request of Lender, the enforcement by Borrower of any covenant to pay maintenance or other charges, which enforcement shall include, if the same have not been paid within 30 days after such written request is made, valid legal steps to enforce such payment; (6) Payment of all fees and charges to the Lender as agreed whether or not herein set forth; (7) Payment of charges, as allowed by law when such charges are made, for any statement regarding the obligations secured hereby.

Borrower irrevocably GRANTS, RELEASES, REMISES, ALIENS, MORTGAGES AND CONVEYS UNTO LENDER, all of Borrower's right, title and interest in and to that property at 2076 North Elston Avenue

in the City of Chicago

County of Cook, State of Illinois, described as:

LOTS 1, 2, 3, 4, 5 AND 6 IN J. E. KILLICK'S SUBDIVISION OF LOTS 29, 30 AND 31 IN THE SUBDIVISION OF LOTS 2, 3, 4, 5, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17 AND 18 IN BLOCK 21 IN SHEFFIELD'S ADDITION TO CHICAGO IN SECTION 31, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.: 14-31-219-001  
14-31-219-002

(the "Land").

Closer ID:  
Major Loans  
Loans (ROS) 1000 IL  
NOT STOCKED BY SUPPLY

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**TOGETHER WITH** all interests which Borrower now has or may hereafter acquire in or to the Land and in and to: (a) all tenements, hereditaments, licenses, easements, gores of land, streets, ways, alleys, passages, sewer rights, and rights of way appurtenant thereto; (b) all buildings, structures, improvements, fixtures, appliances, machinery, equipment, and other articles of real or personal property of every kind and nature (other than consumable goods), whether or not physically attached or affixed to the Land and now or hereafter installed or placed thereon, and used in connection with any future operation thereof (including, but not limited to, all apparatus and equipment used to provide or supply air-cooling, air-conditioning, heat, gas, water, light, power, laundry, garbage disposal, fire prevention and extinguishing equipment, elevators, antennas, pool equipment, window coverings, floor coverings, ranges, ovens, dishwashers, and water heaters), it being intended and agreed that such items be conclusively deemed to be affixed to and to be part of the Land that is conveyed hereby (all of the hereinabove described property called the "Improvements"); (c) all water, water courses and water rights (whether or not appurtenant) and shares of stock pertaining to such water or water rights, ownership of which affects the Land; (d) all shrubs, trees, crops, and plants; (e) all adjacent lands included in enclosures or occupied by buildings located partly on the Land; and (f) all claims, demands and causes of action of every kind (including proceeds of settlements of any such claim, demand or cause of action of any kind) which Borrower now has or may hereafter acquire arising out of acquisition or ownership of the Land, including insurance proceeds and any award of damages or compensation for injury to or in connection with any condemnation for public use of the Land or any part thereof (whether or not eminent domain proceedings have been instituted), subject however to the right, power and authority given to and conferred upon Lender by paragraph 9 below, incorporated herein by reference; (g) all permits, licenses, management contracts, and other contracts and agreements in which Borrower now has or may hereafter have an interest arising out of acquisition or ownership of the Land, and all other general intangibles relating to the development or use of the Land, including all names by which the Improvements or other property may at any time be known or operated and all rights to carry on business under such names or any variant thereof and all trademarks and goodwill in any way relating to the Improvements or other property;

**ALSO TOGETHER WITH**, if this Security Instrument secures a leasehold estate, all of the estate, right, title and interest of Borrower, both at law and in equity, therein and thereto, and in and to any deposits of cash, securities or other property which may be held at any time and from time to time by the Landlord under the Lease, to secure the performance by Borrower of the covenants, conditions and agreements to be performed by Borrower thereunder, and any option to purchase the fee simple title to the Land, or any greater interest therein than Borrower now owns; and any and all other further or additional title, estate, interest or right which may at any time be acquired by Borrower in or to the Land, Borrower hereby agreeing that if Borrower shall at any time prior to payment in full of all indebtedness secured hereby, acquire the fee simple title or any other or greater estate than Borrower now owns in the Land, then, and in that event, the lien of this Security Instrument shall attach, extend to, cover and be a lien upon such fee simple title or other greater estate, and Borrower will execute, acknowledge and deliver such instruments as Lender may reasonably require to accomplish such result;

**ALSO TOGETHER WITH** all rights of Borrower and Borrower's bankruptcy trustee to deal with the Lease as provided in paragraph 10 hereof;

**ALSO TOGETHER WITH** all rents, issues, profits, royalties, tolls, earnings, incomes and other benefits, therefrom and installments of money payable pursuant to any agreement for sale of the Land or any part thereof, subject however to the right, power and authority given to and conferred upon Lender and Borrower by paragraph 18 below, incorporated herein by this reference.

The foregoing provisions shall constitute an absolute and present assignment of the rents, issues, profits, royalties, tolls, earnings, income and other benefits therefrom, subject, however, to the conditional permission given to Borrower to collect and use such rents, issues, profits, royalties, tolls, earnings, income, and other benefits therefrom and to hold the rent security deposits to the extent provided in paragraph 18 hereof.

**ALSO TOGETHER WITH** all right, title and interest of Borrower in and to any and all leases, rental agreements, tenancy agreements and occupancy agreement now or hereafter on or affecting the Land together with the security therefor and all monies payable thereunder, and all books and records pertaining thereto, subject, however, to the conditional permission hereinabove given to Borrower to collect the rents, income and other benefits arising under any such lease.

(For the purpose of this instrument, including all provisions incorporated by reference herein, all of the foregoing described real property, property rights, and interests shall be referred to as "the Property" or "such Property".)

## BORROWER COVENANTS AND AGREES WITH LENDER AS FOLLOWS:

1. **PERFORMANCE OF NOTE AND OTHER LOAN DOCUMENTS.** Borrower shall perform, observe and comply with all provisions hereof, of the Note, and of every other Loan Document and will promptly pay to Lender, the principal with interest thereon and all other sums required to be paid by Borrower under the Note and pursuant to the provisions of this Security Instrument and of every other Loan Document when payment shall become due.

2. **GENERAL REPRESENTATIONS, COVENANTS AND WARRANTIES.** Borrower represents, covenants and warrants that as of the date hereof and at all times hereafter during the term hereof: (a) Borrower is the lawful owner of good and marketable fee simple title to the Property and has good right and authority to grant, bargain, sell, convey, transfer, and assign the Property or, if this Security Instrument secures a leasehold estate, Borrower is the owner of the Tenant's interest under the Lease and the holder of the estate thereunder, and is the owner of the Improvements hereby secured, and has good right to grant, bargain, sell, convey, transfer, and assign the same as security under this Security Instrument. If this Security Instrument secures a leasehold estate the terms "Lease", "Landlord" and "Tenant" shall have the meanings ascribed thereto in Exhibit "A" attached hereto. If the Property is a leasehold, the Lease is in full force and effect and is unmodified and no event of default has occurred thereunder; (b) Borrower will warrant and forever defend the title to the Property against the claims of all persons whomsoever claiming the same or any part thereof, and this warranty of title shall survive the foreclosure of the Security Instrument and shall inure to the benefit of and be enforceable by any person who may acquire title to the Property pursuant to foreclosure; (c) Borrower is now able to meet its debts as they mature, the fair market value of its assets exceed its liabilities; no bankruptcy or insolvency proceedings are pending or contemplated by or against the Borrower, no assignment to creditors has been made by Borrower and no portion of Borrower's assets are presently subject to any attachment, execution or judicial seizure, and Borrower covenants to immediately provide notice to Lender in the event that any change in any of the circumstances described in this sentence should occur; (d) All reports, statements and other data furnished by or on behalf of the Borrower, or any partner, officer, employee or agent of Borrower or any guarantor in connection with the Loan are true, correct and complete in all material respects and do not omit to state any fact or circumstance necessary to make the statements contained therein not misleading; (e) Borrower is duly organized, validly existing and in good standing under the laws of the state of its organization and is qualified and authorized to do business in the state where the Property is located, and has full power and authority to own its property, to carry on its business as presently being conducted and as contemplated to be conducted hereunder and to execute, deliver and perform its obligations under this Security Instrument, the Note and the other Loan Documents; the person(s) executing this Security Instrument, the Note and the other Loan Documents on behalf of Borrower have been duly authorized to execute and deliver this Security Instrument, the Note and the other Loan Documents on behalf of Borrower; this Security Instrument, the Note and the other Loan Documents constitute legally valid and binding obligations of Borrower

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enforceable in accordance with their terms; and the execution, delivery and performance of this Security Instrument, the Note and the other Loan Documents by the Borrower will not conflict with, or constitute a breach of, or default under, the Borrower's governing instruments or any indenture, mortgage, deed of trust, note, lease, commitment, agreement or other instrument or obligation to which Borrower is a party or by which Borrower or its properties is bound; (f) There are no actions, suits or proceedings pending, or to the knowledge of Borrower threatened, against or affecting the Borrower or the Property; (g) Borrower is not in default under the terms of any instrument evidencing or securing any indebtedness of the Borrower and there has occurred no event which would, if uncured or uncorrected, constitute a default under any such instrument with the giving of notice, passage of time or both; (h) Electric, gas, sewer, water facilities, and any other necessary utilities, are available (or, if this is a construction loan, will be available at such time during or after construction as Lender deems necessary) and shall continue to be available in sufficient capacity to service the Property satisfactorily; and (i) the Property, including without limitation the Improvements thereon, comply with (or if this is a construction loan, the Improvements at such time during or after construction as Lender deems necessary, will comply with) and will continue throughout the term hereof to comply with all applicable health and environmental laws and regulations and all other applicable laws, ordinances, rules and regulations.

**3. SECURITY AGREEMENT AND FINANCING STATEMENTS.** Borrower (as Debtor) hereby grants to Lender (as Creditor and Secured Party) a security interest in all personal property constituting the Property, including without limitation fixtures, machinery, appliances, equipment, furniture, claims, demands and causes of actions, licenses, permits, contracts and agreements and other general intangibles described hereinabove.

Borrower shall execute any and all such documents, including without limitation, financing statements pursuant to the Uniform Commercial Code of the state in which the Property is located, as the Lender may request, to preserve and maintain the priority of the lien created hereby on property which may be deemed personal property or fixtures, and shall pay to Lender on demand any expenses incurred by Lender in connection with the preparation, execution and filing of any such documents. Said financing statements shall be filed in the real estate records of the county in which the Property is located and such other offices as Lender deems advisable. Borrower hereby authorizes and empowers Lender to execute and file, on the Borrower's behalf, all financing statements and refinings and continuations thereof as Lender deems necessary or advisable to create, preserve and protect said lien. Pursuant to the Uniform Commercial Code of the state in which the Property is located, this Security Instrument shall be deemed a security agreement and financing statement as defined in the Uniform Commercial Code. The remedies available to Lender for violations of the covenants, terms and conditions set forth in this security agreement shall be (i) as set forth in this Security Instrument and (ii) as permitted under the laws of the state where the Property is located, including the Uniform Commercial Code as adopted in said state. Each of these remedies shall be distinct and cumulative as to all other rights or other remedies and may be exercised concurrently, independently or successively, as Lender may elect.

The Borrower and Lender agree that neither the filing of a financing statement in the public records normally having to do with personal property nor the taking of any other action described in the above paragraph shall be construed in anyway as derogating from or impairing the express declaration and intention of the parties hereto, hereinabove stated, that everything used in connection with the production of income from the Property and/or adapted for use therein and/or which is described or reflected in this Security Instrument is, and at all times and for all purposes and in all proceedings both legal or equitable, shall be regarded as part of the real estate encumbered by this Security Instrument irrespective of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment, items capable of being thus identified in a recital contained herein or in any list filed with Lender or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. Similarly, the mention in any such financing statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) Borrower's interest as lessor in any present or future lease, rental agreement, tenancy agreement or occupancy agreement or right to income growing out of the use and/or occupancy of the Property, whether pursuant to lease or otherwise, shall never be construed as in anyway altering any of the rights of Lender as determined by this Security Instrument or impugning the priority of Lender's lien granted hereby or by any other recorded document, but such mention in the financing statement is declared to be for the protection of the Lender in the event any court or judge shall at any time hold with respect to clauses (1), (2), or (3) of this paragraph 3 that notice of the Lender's priority of interest to be effective against a particular class of persons, including but not limited to the federal government and any subdivisions or entity of the federal government, must be filed in such public records.

**4. REPAIR AND MAINTENANCE OF PROPERTY.** To keep the Property in good condition and repair; not to substantially alter, remove or demolish any buildings or other Improvements except when incident to the replacement of fixtures, machinery or appliances with items of like kind; to restore promptly and in a good and workmanlike manner to no less than the equivalent of its condition on origination of the Loan any buildings or other Improvements which may be damaged or destroyed, including, without restricting the generality of the foregoing, damage from termites and earth movement, whether or not insurance proceeds are available to cover any part of the cost of such restoration and repair, to pay when due all claims for labor performed and materials furnished in connection with the Property and not to permit any mechanic's lien against the Property; to comply with all laws affecting the Property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereon; not to commit, suffer or permit any act upon the Property in violation of law; to cultivate, irrigate, fertilize, fumigate and prune all landscaping on the Property; and to do all other acts that from the character or use of the Property may be reasonably necessary to keep the Property in the same condition (reasonable wear and tear excepted) as at the date of this Security Instrument; to perform and keep each of the covenants and agreements required to be kept and performed by Borrower pursuant to the terms of the Lease and any and all other instruments creating Borrower's interest in or defining Borrower's rights in respect to the Property.

**5. CONSTRUCTION OF IMPROVEMENTS.** If all or any part of the Loan secured hereby is used for land development and improvement or construction purposes, Borrower shall comply in all respects with any agreement between Borrower and Lender relating thereto.

**6. INSURANCE.** At all times, Borrower is to provide, and maintain in force, and pay the cost of property, public liability, and other types and forms of insurance with respect to such Property or Loan as may be required by Lender.

**PROPERTY (FIRE/HAZARD) INSURANCE:** Each policy of insurance shall be in an amount, for a term and in a form and content, and provided through such insurance companies, as may be satisfactory to Lender, with loss payable to Lender and shall, if required by Lender, be delivered to and remain in the possession of Lender as further security for the performance by Borrower under this Security Instrument.

The amount of such insurance shall in no event be less than (i) the original amount of the Note and be in compliance with any co-insurance requirements of such insurance, or (ii) an amount equal to the highest insurable value of the Property, whichever is the lesser.

Borrower hereby assigns to Lender all unearned premiums on any such policy, and agrees that any and all unexpired insurance shall inure to the benefit of, and pass to, Lender upon acquisition by Lender of the Property through foreclosure proceedings or any purchaser of the Property pursuant to such foreclosure proceedings. Pursuant to its rights granted hereunder in all proceeds from any insurance policies, Lender is hereby authorized and empowered at its option to adjust or compromise any loss under any insurance policies on the Property and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for the losses directly to Lender alone and not to Borrower and Lender jointly. So long as Borrower is not in default under the Loan Documents, Borrower shall be entitled to participate in the adjustment or compromise of any insurance loss.

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**PUBLIC LIABILITY INSURANCE AND LOSS OF INCOME INSURANCE.** The Borrower shall, at its sole expense, purchase and maintain public liability insurance coverage for the ownership, maintenance and use of the Property. Lender may require such policies to: (a) be no less than a certain minimum amount; (b) be provided through such insurance companies as may be satisfactory to Lender; and (c) include the Lender and its successors and assigns, as additional insureds or additional loss payees.

Lender may further require that the Borrower provide, and maintain in force, loss of rental income insurance, loss of earnings insurance, business interruption insurance or other forms of coverage to protect the income or earnings of the Property.

**OTHER INSURANCE:** Borrower shall, at its sole expense, obtain and maintain such additional insurance coverages as Lender may from time to time require; provided that Lender may only require coverage for risks not required by Lender at origination of the Loan if such coverage is customarily obtained by owners of Property in the area of the Property which is similar to the Property.

Borrower shall promptly pay all premiums when due on any such policies and renewals thereof and shall furnish Lender with written evidence of such payment. At least 30 days prior to the expiration of any such policies required by the Lender, a policy form renewing or extending such expiring insurance shall be delivered to Lender if Lender requests delivery of such policies to it.

In the event Borrower fails to provide insurance complying with the provisions hereof, Lender may, but without obligation so to do, without notice to the Borrower, without demand upon Borrower and without releasing Borrower from any obligation hereof, obtain such insurance through or from any insurance agency or insurer or insurance underwriter acceptable to Lender, and pay the premium therefor, and Lender by doing so shall not be chargeable with obtaining or maintaining such insurance or for the collection of any insurance monies or for any insolvency of any insurer or insurance company.

Lender, from time to time, may furnish to any insurance agency or company, or any other person, any information contained in or extracted from any insurance policy theretofore delivered to Lender pursuant hereto and any information concerning the Loan.

**7. DISPOSITION OF THE PROCEEDS OF ANY INSURANCE POLICY, CONDEMNATION OR OTHER RECOVERY.** The amount received by Lender pursuant to this Security Instrument under any insurance policy, or in connection with any condemnation for public use of the Property, or damage to the Property, or in connection with the transaction financed by the Loan secured hereby, at the option of Lender may be (a) applied by Lender upon any indebtedness secured hereby and in such order as Lender may determine, or (b) without reducing the indebtedness secured hereby, may be used by Lender to replace, restore, or reconstruct the Property to a condition satisfactory to Lender, or (c) may be released by Lender to Borrower, or (d) Lender may divide any such amount in any manner among any such application, use or release. No such application, use or release shall cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice (or alter the amount of any payment provided under the Note, this Security Instrument, or any other Loan Document or postpone or extend the due date of any payment due under the Note, this Security Instrument or any other Loan Document).

**8. TAXES, LIENS, AND OTHER SUMS DUE.** To pay, satisfy and discharge: (a) at least 10 days before delinquency, all general and special city and county taxes, and all assessments on water utack, affecting the Property, (b) when due, all special assessments for public improvements on or benefiting the Property, (c) on demand of Lender but in no event later than the date such amounts and/or performance become due (1) all encumbrances, charges and liens (including, without limitation, income tax liens, or liens of a similar character, to be imposed or levied by the United States Government, the state in which the Property is located, any municipality or county, or an agency of any of them), with interest, on such Property, or any part thereof which are, or appear to Lender to be prior to or superior hereto, (2) all costs, fees and expenses under this Security Instrument whether or not described herein, (3) fees or charges for any statement regarding the obligation secured hereby in any amount demanded by Lender not to exceed the maximum amount allowed by law therefor at the time when such request is made, (4) Lender's \* fees, charges and expenses for any other statement, information or services furnished by Lender in connection with the obligations secured hereby (said services may include, but shall not be limited to, the processing by Lender of assumptions, substitutions, modifications, extensions, renewals, subordinations, rescissions, changes of owners, recordation of maps, plats or records of survey, grants of easements, and full and partial releases, and the obtaining by Lender of any policies of insurance pursuant to any of the provisions contained in this Security Instrument), (5) if such Property includes a leasehold estate, all payments and obligations (whether monetary or otherwise) required of the Borrower or its successor in interest under the terms of the instrument or instruments creating such leasehold, (6) all payments and monetary obligations required of the owner of the Property under any declaration of covenants, conditions and restrictions pertaining to the Property or any modification thereof, and (7) any sums advanced or paid by Lender under any clause or provision of this Security Instrument. Should Borrower fail to make any such payment, Lender, without contesting the validity or amount, may elect to make or advance such payment together with any costs, expenses, fees, or charges relating thereto, including employing counsel and paying attorney's fees. Any such sum, until so repaid, shall be secured hereby and bear interest from the date it was advanced or paid at the same rate as the Note and shall be secured by this Security Instrument. Borrower agrees to notify Lender immediately upon receipt by Borrower of notice of any increase in the assessed value of the Property and agrees that Lender, in the name of Borrower, may contest by appropriate proceedings such increase in assessment. Borrower will obtain the prior written consent of Lender prior to permitting any improvement bond for unpaid special assessments to issue. Borrower agrees to notify Lender and appropriate taxing authorities immediately upon the happening of any event which does or may affect the value of Property, the amount or basis of assessment of the Property, or the availability of any exemption to which Borrower is or may be entitled. If any state, federal, municipal or other governmental law, order, rule or regulation, passed subsequent to the date hereof, in any manner changes or modifies existing laws governing the taxation of mortgages or debts secured by mortgages, or the manner of collecting taxes so as to materially and adversely affect the rights of Lender, the entire balance of the indebtedness and other sums secured by this Security Instrument and all interest accrued thereon shall, without notice, become due and payable forthwith at the option of Lender.

Borrower will pay when due and payable, all appraisal fees, recording fees, taxes, brokerage fees and commissions, abstract fees, title policy fees, escrow fees, attorneys' fees, fees of inspecting architect(s) and engineer(s) and all other costs and expenses of every character which have been incurred or which may hereafter be incurred by Lender in connection with the issuance of its commitment, the preparation and execution of Loan Documents, the funding of the Loan, and the administration and enforcement of this Security Instrument, the Note and other Loan Documents; Borrower will, upon demand by the Lender, reimburse Lender for all such expenses which have been incurred or which shall be incurred by it; and Borrower will indemnify and hold harmless Lender from and against, and reimburse it for, all claims, demands, liabilities, losses, damages, judgments, penalties, costs, and expenses (including, without limitation, attorneys' fees) which may be imposed upon, asserted against, or incurred or paid by Lender by reason of, on account of or in connection with any bodily injury or death or property damage occurring in or upon or in the vicinity of the Property through any cause whatsoever or asserted against Lender on account of any act performed or omitted to be performed hereunder or on account of any transaction arising out of or in any way connected with the Property, or with this Security Instrument or any of the indebtedness evidenced by the Note.

**9. CLAIMS, DEMANDS AND ACTIONS.** (a) To give Lender immediate notice of any action or proceeding purporting to affect the Property (including, without limitation, loan funds, whether or not disbursed) or purporting to affect the security hereof (whether or not it affects the security hereof), or the condition and integrity of the Improvements constructed thereon or purporting to affect the rights or powers of Lender, (b) to defend any such action or proceeding; and (c) to file and prosecute all necessary claims and actions to prevent or recover for any damage to or destruction of the Property, and enforce against others each and every obligation to be performed by them under any declaration of covenants, conditions, and restrictions pertaining to the Property. Lender is hereby authorized, without obligation so to do, to commence, appear in, and defend any action or proceeding, whether or not brought by or against Borrower, to exercise or enforce any other right, remedy, or power available or conferred hereunder, whether or not judgment be entered in any action or proceeding. Lender may appear or intervene in any action or

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proceeding, and retain counsel therein, and take such action therein as it may deem advisable, and may settle, compromise or pay the sum or any other claims and, for any of said purposes, may expend and advance such sums of money as it may deem necessary. Borrower covenants that, in addition to the present assignment of actions, claims, damages and awards set forth herein, Borrower will execute and deliver to Lender such assignments of actions, claims, damages, and awards as Lender may, from time to time, request. Whether or not Borrower so appears or defends, Borrower shall pay on demand all costs and expenses of Lender, including without limitation costs of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Lender may appear by virtue of being made a party defendant or otherwise and (irrespective of whether the interest of Lender in the Property is directly questioned by such action including, but not limited to, any action for the condemnation or partition of the Property and any suit brought by Lender to foreclose this Security Instrument. Lender may apply, use or release such monies so received by it in the same manner as in paragraph 7 provided for the proceeds of insurance.

**10. LEASEHOLD ESTATE.** If the Property is a leasehold estate: (a) Borrower will: (i) pay the rent reserved by the Lease as the same becomes due and payable; (ii) promptly perform and observe all of the covenants, agreements, obligations and conditions required to be performed and observed by the Tenant under the Lease, and do all things necessary to preserve and keep unimpaired its rights thereunder; (iii) promptly notify Lender in writing of the commencement of a proceeding under the federal bankruptcy laws by or against Borrower or Landlord under the Lease; (iv) if any of the indebtedness secured hereby remains unpaid at the time when notice may be given by the Tenant under the Lease of the exercise of any right to renew or extend the term of the Lease, promptly give notice to the Landlord of the exercise of such right of extension or renewal; (v) in case any proceeds of insurance upon the Property or any part thereof are deposited with any person other than Lender pursuant to the requirements of the Lease, promptly notify Lender in writing of the name and address of the person with whom such proceeds have been deposited and the amount so deposited; and (vi) promptly notify Lender in writing of any request made by either party to the Lease to the other party thereto for arbitration or appraisal proceedings pursuant to the Lease, and of the institution of any arbitration or appraisal proceedings and promptly deliver to Lender a copy of the determination of the arbitrators or appraisers in each such proceeding; and (b) Borrower will not surrender the Lease or Borrower's leasehold estate and interest therein, nor terminate or cancel the Lease; and will not, without the prior written consent of Lender, modify, change, supplement, alter or amend the Lease, either orally or in writing, and as further security for the repayment of the indebtedness secured hereby and for the performance of the covenants, agreements, obligations and conditions herein and in the Lease contained, Borrower hereby assigns to Lender all of its rights, privileges and prerogatives as Tenant under the Lease to terminate, cancel, modify, change, supplement, alter or amend the Lease and any such termination, cancellation, modification, change, supplement, alteration or amendment of the Lease, without the prior written consent thereto by Lender shall be void and of no force and effect. Without limiting the generality of the foregoing, Borrower will not reject the Lease pursuant to 11 U.S.C. Section 365(a) or any successor law, or allow the Lease to be deemed rejected by inaction and lapse of time, and will not elect to treat the Lease as terminated by the Landlord's rejection of the Lease pursuant to 11 U.S.C. Section 365(h) (1) or any successor law, and as further security for the repayment of the indebtedness secured hereby and for the performance of the covenants, agreements, obligations and conditions herein and in the Lease contained, Borrower hereby assigns to Lender all of the rights, privileges and prerogatives of Borrower and the Borrower's bankruptcy trustee to deal with the Lease, which right may arise as a result of the commencement of a proceeding under the federal bankruptcy laws by or against Borrower or Landlord under the Lease, including, without limitation, the right to assume or reject, or to compel the assumption or rejection of the Lease pursuant to 11 U.S.C. Section 365(a) or any successor law, the right to seek and obtain extensions of time to assume or reject the Lease, the right to elect whether to treat the Lease as terminated by the Landlord's rejection of the Lease or to remain in possession of the Property and offset damages pursuant to 11 U.S.C. Section 365(h) (1) or any successor law; and any exercise of such rights, privileges or prerogatives by Borrower or Borrower's bankruptcy trustee without the prior written consent thereto by Lender shall be void and of no force and effect. As further security for Lender, Borrower hereby agrees to deposit with Lender a duplicate original of the Lease and all supplements thereto and amendments thereof, to be retained by Lender until the indebtedness secured hereby is fully paid. So long as there is no breach or default under any of the covenants, agreements, obligations and conditions herein contained to be performed by Borrower, or in the performance by Borrower of any of the covenants, agreements, obligations and conditions in the Lease to be performed by the Tenant thereunder, Lender shall have no right to terminate, cancel, modify, change, supplement, alter or amend the Lease. No release or forbearance of any of Borrower's obligations as Tenant under the Lease, whether pursuant to the Lease or otherwise, shall release Borrower from any of its obligations under this Security Instrument, including, but not limited to, Borrower's obligations with respect to the payment of rent as provided for in the Lease and the observance and performance of all of the covenants, agreements, obligations and conditions contained in the Lease to be observed and performed by the Tenant thereunder. Unless Lender shall otherwise expressly consent in writing, the fee title to the Property devised by the Lease and the leasehold estate thereunder shall not merge, but shall always remain separate and distinct, notwithstanding the union of such estates either in the Borrower or in a third party by purchase or otherwise.

**11. ACCUMULATION ACCOUNT.** To pay to Lender, if Lender shall require at any time or from time to time, in addition to and concurrently with any other payments required in any note secured by this Security Instrument, monthly advance installments, as estimated by Lender from time to time for the purpose of establishing an account (the "Accumulation Account") for payment of any or all taxes, assessments, special assessments, fire, casualty, liability, loss of rental income, and other insurance premiums, encumbrances and household payments, security deposits, or other obligations secured by this Security Instrument or required to be paid with respect to the Property (hereafter in this paragraph referred to as "such obligations"). Borrower shall deliver promptly to Lender all bills and notices of such obligations. If the amounts paid to Lender under the provisions of this paragraph are not sufficient to pay such obligations as they become due, Borrower shall pay to Lender promptly upon demand the amount of the deficiency. All monies paid to Lender under this paragraph may be intermingled with other monies of Lender and such amounts held by Lender shall earn only such interest as prescribed by law, if any. Lender may pay such obligations before or after they become due and payable, but before delinquency. In the event of a default in the payment of any note secured by this Security Instrument, default of any obligation secured hereby, or default in the performance of any of the covenants and obligations of this Security Instrument, then any balance remaining from monies paid Lender under the provisions of this paragraph may, at the option of Lender, be applied to the payment of principal, interest or obligations secured hereby in lieu of being applied to any of the purposes for which the Accumulation Account is established. At all times, any negative balance in the Accumulation Account shall constitute a secured advance made by Lender to protect its security under this Security Instrument. Lender will make such reports of the Accumulation Account as are required by law.

**12. ACCELERATION CLAUSE.** Lender shall have the right, at its option, to declare all sums secured hereby immediately due and payable, if any of the following shall occur: (a) Restrictions on Transfer. (i) Subject to the provisions of subparagraph (ii), if, without the prior written consent of the Lender, any of the following shall occur, and in any event Lender may condition its consent upon such increase in rate of interest payable upon the indebtedness secured by this Security Instrument, change in the maturity thereof and/or the payment of a fee, all as Lender may in its sole discretion require: (A) If the Borrower 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 Property or any part thereof, or interest therein; (B) if the Borrower is a trustee Borrower, then if any beneficiary of the Borrower 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 Borrower; (C) if the Borrower is a corporation, or if any corporation is a beneficiary of a trustee Borrower, then if 25 percent or more of the shares of such corporation shall be sold, assigned, transferred,

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ligned, pledged, mortgaged, or otherwise encumbered or alienated; (D) If the Borrower is a partnership or joint venture, or if any beneficiary of a trustee Borrower 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; (E) If there shall be any change in control (by way of transfer 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 subparagraph (a) (i) (b) above; or (F) If the Property is used or occupied by the Borrower at the date of origination of the loan and Borrower subsequently leases the Property or any part thereof; (G) If the Property is rental property and Borrower enters into any lease, tenancy agreement, or occupancy agreement except in compliance with the terms and conditions of this Security Instrument and the other Loan Documents. (ii) The restrictions of subparagraph (i) above shall not apply to (A) liens securing the indebtedness secured by this Security Instrument; or (ii) the lien of current real estate taxes and assessments not in default; or (b) If any of the following shall occur: (i) If Borrower suffers (a) title or any interest therein to be divested, whether voluntarily or involuntarily; (ii) If Borrower changes or permits to be changed the character or use of the Property from the character or use contemplated by Borrower and Lender upon execution of this Security Instrument, as specified in Borrower's application to Lender and other documents executed by Borrower in connection with the Loan, including, without limitation, drilling or extracting oil, gas, or other hydrocarbon substances, or any mineral of any kind or character; or (iii) If suit be commenced to condemn the Property as being unfit for human use and occupancy or to abate as a nuisance activities or conditions found thereon (and Lender reasonably believes that its security under this Security Instrument is impaired by such suit or the activities or conditions which are the subject of such suit) or for the partition or sale of the Property; or (iv) If Borrower has made any oral or written material misrepresentation or failed to disclose any material fact, in order to induce Lender to enter into the transaction evidenced by the Note or agreements which this Security Instrument secures. If any of the events enumerated in the preceding subparagraph (a) (i) (A) through (G), inclusive, occur and if Lender consents to the same or fails to exercise its right to declare all sums secured hereby due and payable, such consent or failure shall not be deemed or construed as a waiver, and the consent of Lender shall be required on all successive occurrences.

**13. PREPAYMENT FEE.** Should the Note or any other obligation secured hereby provide any fee for prepayment of any of the indebtedness secured hereby, to pay promptly said fee notwithstanding Borrower shall have defaulted in any obligation secured hereby and Lender, by reason thereof, shall have demanded all sums secured hereby immediately due and payable.

**14. WAIVERS AND CONSENTS PERTAINING TO NOTE.** Borrower waives presentment, demand, protest and notice of nonpayment of the Note, and consents to delays, changes in time of payment, and the amount of installments due under the Note, and to the reduction or increase of the interest rate thereof.

**15. WAIVER OF STATUTE OF LIMITATIONS.** Time is of the essence in all Borrower's obligations hereunder, and to the fullest extent permitted by law, Borrower waives the right to assert any present or future statute of limitation with respect to any debt, demand or obligation secured hereunder in any action or proceeding for the purpose of enforcing this Security Instrument, the Note or any other Loan Document or any rights or remedies hereunder.

**16. INSPECTION AND BUSINESS RECORDS.** Lender or any authorized representative or agent of Lender or any person or entity interested in acquiring all or any part of the Loan may enter upon and inspect the Property at any reasonable time during the term of this Security Instrument. If the Property is now or hereafter used for commercial or residential income purposes, Borrower will promptly deliver to Lender such financial statements, gross income statements, and profit and loss statements of such types and at such intervals as may be required from time to time by Lender which will be certified and prepared according to generally accepted accounting principles or other principles and practices acceptable to Lender, which statements shall cover the financial operations relating to the Property, and Borrower further agrees when requested by Lender to promptly deliver in writing such further additional information as required by Lender relating to any such financial statements. Borrower shall furnish to Lender within 30 days after the end of each fiscal year and within 15 days of Lender's written request, a rent schedule as of the end of such fiscal year or as of 30 days prior to the date of a such request, certified by Borrower, showing the name of each tenant and the space occupied, the lease expiration date, the rent and additional rent due and payable, prepaid rent, if any, security deposit paid, the last date to which rent was paid and whether or not such tenant was then in default under any of the terms of the lease. In the event Borrower fails to comply with the provisions of this paragraph 16, Lender shall have the right to have Borrower's books and records audited by an independent certified public accountant, and the cost of such audit shall be the obligation of the Borrower secured by this Security Instrument.

**17. ESTOPPEL CERTIFICATES.** Borrower, within 10 days after written request from Lender, shall furnish a written statement, duly acknowledged to Lender and any third party designated by Lender, setting forth the unpaid principal and interest and any other sums and charges due under the Note, this Security Instrument and the other Loan Documents, and whether or not any offsets or defenses exist against such principal and interest or other sums or charges and stating that the Note, Security Instrument and other Loan Documents have not been modified or stating that the Note, Security Instrument or other Loan Documents have been modified and specifying such modifications, and that the Note, Security Instrument and other Loan Documents, as unmodified or modified, as applicable, remain in full force and effect. If Borrower fails to execute and deliver such estoppel certificates within such 10 day period, Borrower shall conclusively be deemed to have constituted and appointed Lender as Borrower's special attorney in fact to execute and deliver any such estoppel certificate to any third party and shall be deemed to have certified that the Note, Security Instrument and other Loan Documents remain in full force and effect, either unmodified or modified in the manner specified by Lender, whichever Lender reasonably may represent. Borrower and Lender expressly agree that any such certificate may be relied on by any prospective purchaser of the Loan or any portion thereof without independent investigation or examination.

**18. RIGHT TO COLLECT AND RECEIVE RENTS AND PROFITS.** The assignment of rents set forth hereinabove shall be fully operative without any further action on the part of either party. Notwithstanding any other provision hereof, Lender hereby grants permission to Borrower to collect and retain the rents, income, issues, royalties, tolls, earnings, profits, and other benefits of the Property as they become due and payable and to hold the rent security deposits, but reserves the right to revoke such permission at any time by notice in writing to Borrower, mailed to Borrower at the last known address; upon default by Borrower in payment of any indebtedness secured hereby or in the performance of any agreement hereunder or under any other Loan Document. Upon, or at any time after, the filing of a complaint to foreclose this Security Instrument, the court in which the complaint is filed may appoint a receiver of the Property. Such appointment may be made either before or after sale, without notice, without regard to solvency or insolvency of Borrower at the time of application for such receiver, and without regard to the then value of the Property or whether the same shall be then occupied as a homestead or not; and the Lender may be appointed as such receiver. Such receiver shall have the power to collect the rents, issues and profits of the Property 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 Borrower, except for the intervention of such receiver, would be entitled to collection of such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Property during the whole of said period. The court may, from time to time, authorize the receiver to apply the net income from the Property in its hands in payment in whole or in part of: (i) the indebtedness hereby secured or the indebtedness secured by any decree foreclosing this Security Instrument, 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. Nothing herein contained shall be construed as constituting the Lender a mortgagee in possession in the absence of the actual taking of possession of the Property by the Lender.

\* by the managing general partner of Borrower

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**19. LEASES AFFECTING THE PROPERTY.** The assignment of leases set forth hereinabove shall not be deemed to impose upon the Lender any of the obligations or duties of the Borrower provided in any such lease (including, without limitation, any liability under the covenant of quiet enjoyment contained in any lease in the event that any tenant shall have been barred and foreclosed under any sale under the power of sale contained herein of all right, title and interest in the Property or any part thereof), and the Borrower shall comply with and observe its obligations as landlord under all leases affecting the Property or any part thereof.

Borrower shall not amend, modify, cancel, terminate or extend the term of any lease on the Property entered into by Borrower as landlord prior to the date hereof nor shall Borrower enter into any new lease on the Property after the date hereof without the prior written consent of Lender. Notwithstanding the foregoing provision, Lender hereby grants permission to Borrower, revocable at any time without regard to the due and faithful performance of the Borrower under this Security Instrument, the Note and other Loan Documents, upon 10 days written notice from Lender to Borrower, to amend, modify, cancel, terminate or extend the term of any existing lease and to enter into new leases if in the judgment of Borrower, reasonably exercised, such actions do not adversely affect Lender's security interest in the Property. In addition, the Borrower, if requested by Lender, shall furnish promptly to Lender original or certified copies of all such leases now existing or hereafter created. Borrower shall not accept payment of rent more than 1 month in advance without the prior written consent of Lender. Lender is authorized to foreclose this Security Instrument subject to the rights of any tenants of the Property or may elect which tenants Lender desires to name as parties defendant to any such foreclosure proceedings and the failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted by the Borrower to be, a defense to any proceedings instituted by the Lender to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Property.

With respect to the assignment of leases hereinabove set forth, Borrower shall, from time to time upon request of Lender, specifically assign to Lender, by an instrument in writing in such form as may be approved by the Lender, all right, title and interest of the Borrower in and to any and all leases now or hereafter on or affecting the Property, together with all security therefor and all monies payable thereunder, subject to the conditional permission hereinabove given to the Borrower to collect the rents under any such leases. Borrower shall also execute and deliver to Lender any notification, financing statement or other document reasonably required by Lender to perfect the foregoing assignment as to any such leases. Lender shall have the right, at any time and from time to time, to notify any tenant of the rights of Lender as provided in the assignment by Borrower to Lender of all leases relating to the Property and to the rents, issues, profits, earnings, income and other benefits therefrom and from the Property.

**20. FAILURE OF BORROWER TO COMPLY WITH SECURITY INSTRUMENT.** \* Should Borrower fail to make any payment or to do any act as provided in this Security Instrument, the Note, or any other Loan Document or fail to perform any obligation secured by this Security Instrument or do any act Borrower agrees not to do, or should any of the representations and warranties made by Borrower be untrue in any material respect, or if (i) a petition is filed by Borrower, or any guarantor, co-maker or endorser of the Note seeking or acquiescing to any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any law relating to bankruptcy or insolvency or an involuntary petition under such laws is filed against Borrower and is still in effect 60 days from the date of such filing; or (ii) a receiver, trustee, master or liquidator is appointed with respect to the Property or the rents, issues, royalties, profits, income or other benefits therefrom; or (iii) the Borrower, or any guarantor, co-maker or endorser of the Note is "insolvent" (unable to pay its debts as they become due and/or if the fair market value of its assets does not exceed its aggregate liabilities); or (iv) Borrower makes an assignment for Borrower's creditors; or (v) any significant portion of Borrower's assets is attached, executed upon or judicially seized in any manner and such attachment, execution or seizure is not discharged within 10 days, Borrower shall be in default under this Security Instrument, and Lender (but without obligation so to do and without notice to or demand upon Borrower and without releasing Borrower from any obligation hereof, and without contesting the validity or amount of the sums) shall have the right, in its option, to declare all sums secured hereby immediately due and payable, and may make or do the same in such manner and to such extent as it may deem necessary to protect the security hereof, Lender being authorized to enter upon the Property for such purposes, and in exercising any such power, pay necessary expenses, employ counsel and pay attorney's fees. Upon default by Borrower, Lender shall be entitled thereupon or thereafter without notice or demand to institute suit at law or in equity to enforce the rights of Lender hereunder or under the Note. In the event of any such default or breach, the Lender shall have the continuing option to enforce payment of all sums secured hereby by action at law or by suit, in a suit to foreclose this Security Instrument, either or both, concurrently or otherwise, and one action or suit shall not abate or be a bar to or waiver of the Lender's right to institute or maintain the other, provided Lender shall have only one payment and satisfaction of said indebtedness. Borrower agrees to the full extent permitted by law, that in case of a default on its part hereunder, neither Borrower nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any so-called "Moratorium Law" now or at any time hereafter in force or any amendment, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Security Instrument, or the absolute sale of the Property, or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser thereat, including Lender. Borrower also waives to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprised in the security intended to be created hereby marshalled upon any foreclosure of the lien hereof and agrees that the Property may be sold as an entirety. Borrower and all persons dealing with the Property through or under the Borrower and their successors and assigns, including, without limitation all subsequent purchasers of all or any portion of the Property and all persons holding or obtaining a mortgage lien or other lien on the Property which is junior and subordinate to this Security Instrument, by taking and accepting the consecutive conveyances, encumbrances, mortgages or liens do hereby acknowledge, covenant and agree with Lender that (i) in the event of any default in the repayment of the indebtedness secured hereby, or in the event of any default under the terms of this Security Instrument, or under any other mortgage or security agreement securing the same indebtedness as is secured by this Security Instrument, whether directly or by virtue of a cross-collateralization agreement, or under any other Loan Document, the Lender may proceed to seek foreclosure or any other relief available at law or in equity in any order which Lender may determine, in Lender's sole discretion, and Lender may proceed against any property or collateral securing said indebtedness in any order which Lender elects without regard to any matters which could or might be raised by any subsequent purchaser or by any junior lienor or encumbrancer under those certain equitable doctrines known as the doctrine of "marshalling of assets" and the doctrine of "inverse order of alienation", (ii) they will not assert, and they do hereby waive any right to assert, the doctrine of marshalling of assets or any similar equitable doctrines, and (iii) they will not assert, and they do hereby waive any right to assert, the doctrine of inverse order of alienation or any similar equitable doctrines. Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument, on its own behalf and on behalf of each and every person, excepting only decree or judgment creditors of the Borrower acquiring any interest or title to the Property or beneficial interest in a trustee Borrower subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of the Borrower and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by provisions of Chapter 110, Para. 12-124 and Para. 12-125 of the Illinois Statutes or other applicable law or replacement statutes; and if the Borrower is a trustee Borrower, Borrower represents that the provisions of this Section (including the waiver of redemption rights) were made at the express direction of Borrower's beneficiaries and the persons having the power of direction over Borrower, and are made on behalf of the trust estate of Borrower and all beneficiaries of Borrower, as well as all other persons mentioned above. The proceeds of any foreclosure sale of the Property shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings; Second, all other items which, under the terms hereof, constitute indebtedness secured by this Security Instrument 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, the remainder, if any, to the Borrower, and its successors or assigns, as their rights may appear.

\* This Paragraph 20 is subject to Paragraph 41 hereof.





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**21. NO WAIVER OR MODIFICATION UNLESS IN WRITING.** No modification or waiver by Lender of any right under this Security Instrument shall be effective unless in writing. Waiver by Lender of any right granted to Lender under this Security Instrument or under any provision of this Security Instrument as to any transaction or occurrence shall not be deemed a waiver as to any future transaction or occurrence. By accepting payment of any sum secured hereby after its due date, or by making any payment or performing any act on behalf of Borrower that Borrower was obligated hereunder but failed to make or perform, or by adding any payment so made by Lender to the indebtedness secured hereby, or by exercising Lender's rights to receive and collect the income, rents, issues and profits therefrom, Lender does not waive its right to require prompt payment when due of all sums so secured or to require prompt performance of all acts required hereunder, or to declare a default for failure so to pay or perform.

**22. REMEDIES.** No remedy herein provided shall be exclusive of any other remedy herein, or now or hereafter existing by law or in equity, but shall be cumulative. Every power or remedy hereby given to Lender or to which Lender may be otherwise entitled, may be exercised from time to time and as often as may be deemed expedient by Lender. Lender may pursue separate remedies. If Lender holds any additional security for any obligation secured hereby, it may enforce the sale thereof at its option, either before, contemporaneously with, or after a foreclosure is made hereunder, and on any default of Borrower, Lender may, at its option, offset against any indebtedness owing by it to Borrower, the whole or any part of the indebtedness secured hereby, and the Lender is hereby authorized and empowered, at its option, without any obligation so to do, and without affecting the obligations hereof, to apply toward the payment of any indebtedness secured hereby and of the Borrower to the Lender, any and all sums of money which the Lender may have in its possession or under its control, including, without limiting the generality of the foregoing, the indebtedness evidenced by an investment certificate or any escrow or trust funds. In order to ensure the definiteness and certainty of the rights and obligations herein provided, Borrower waives any and all rights of offset of claims and no offset shall relieve Borrower from paying installments on the obligations secured hereby as they become due.

**23. GENERAL PROVISIONS.** (a) As and when used herein, the term "Borrower" shall mean and include the Borrower above-named and its successors and permitted assigns and the term "Lender" shall mean and include the Lender hereinabove named and its successors and assigns; (b) wherever the context requires, the masculine gender includes the feminine and neuter, the singular number includes the plural and vice-versa; (c) captions and paragraph headings used herein are for convenience only, are not a part of this Security Instrument, and shall not be used in construing it; (d) Lender shall have the right at any time and from time to time to provide any information it has in its possession relating to the Borrower or the Property to any party interested in acquiring all or any part of the Loan; (e) in exercising any right or remedy or taking any action provided herein, Lender may act through its employees, agents or independent contractors, as authorized by Lender; and (f) if more than one person is named as Borrower, the obligation of Borrower hereunder shall be the joint and several obligation of each such person.

**24. FURTHER ASSURANCES.** At any time and from time to time, upon Lender's request, Borrower shall make, execute and deliver, or cause to be made, executed and delivered, to the Lender and where appropriate shall cause to be recorded or filed, and from time to time thereafter to be re-recorded and refiled at such times and in such offices and places as shall be deemed desirable by Lender, any and all such further mortgages, instruments of further assurance, certificates and other documents as the Lender may consider necessary or desirable in order to effectuate, complete or perfect, or to continue and preserve the obligations of the Borrower under the Note, this Security Instrument or any other Loan Document and the lien of this Security Instrument or any other lien as a lien upon all of the Property or any other property securing the indebtedness evidenced by the Note, whether now owned or hereafter acquired by the Borrower, and unto all and every person or persons deriving any estate, right, title or interest under this Security Instrument. Upon any failure by the Borrower to do so, the Lender may make, execute, record, file, re-record or refile any and all such mortgages, instruments, certificates and documents for and in the name of the Borrower, and the Borrower hereby irrevocably appoints the Lender the agent and attorney-in-fact of the Borrower to do so.

**25. GOVERNING LAW; SEVERABILITY.** This Security Instrument shall be governed by the law of the jurisdiction in which the Property is located, except to the extent such law is contrary or inconsistent with the laws, rules or regulations of the United States now in effect or hereafter promulgated or to the extent such law restricts activities otherwise permitted to federally chartered savings banks, in which event the laws, rules and regulations of the United States and the rules and regulations relating to the activities of federally chartered savings banks shall apply. In the event that any provision or clause of this Security Instrument, the Note or other Loan Documents is construed by a court of competent jurisdiction to be void, invalid or unenforceable, such construction shall not affect other provisions of this Security Instrument or the Note or the other Loan Documents which can be given effect without the void, invalid or unenforceable provision, and to this end the provisions of this Security Instrument, the Note and the other Loan Documents are declared to be severable.

**26. NOTICES.** Except for any notice required by applicable law to be given in another manner: (a) all notices provided pursuant to the Note, this Security Instrument or any other Loan Document shall be in writing; (b) such such notices shall be deemed received upon the earlier of (i) receipt in person by the recipient party or (ii) 2 days after mailing such notice, certified mail, return receipt requested to the address set forth herein or such other address as the recipient party may have designated by notice given in the manner specified above.

**27. LOST INSTRUMENTS.** In the event that following execution, the Note, this Security Instrument or any other Loan Document should be lost, destroyed or mutilated, Borrower agrees to execute another original of such Note, Security Instrument or Loan Document.

**28. FUTURE ADVANCES.** Borrower acknowledges and agrees that this Security Instrument shall secure not only the original indebtedness referred to herein and evidenced by the Note, but also any and all future advances and loans made by Lender to Borrower, or successors in title; provided, however, that the aggregate of the indebtedness secured by this Security Instrument shall at no time exceed \$100,000,000.

**29. WAIVER OF CERTAIN RIGHTS.** Borrower hereby expressly releases and waives all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois together with all right to retain possession of the Property after any default in any payment secured hereby, or the breach of any covenant or agreement herein contained, or upon the occurrence of any default under the Note, this Security Instrument or any other Loan Document.

**30. RELEASE.** Upon payment of all sums secured by this Security Instrument and performance of all other obligations of Borrower under the Note, this Security Instrument and all of the other Loan Documents, Lender shall release this Security Instrument. Borrower shall pay Lender's reasonable costs incurred in releasing this Security Instrument.

**31. JUNIOR LIENS.** Borrower covenants and agrees that any person, firm or corporation taking a junior mortgage or other lien upon the Property or any interest therein, shall take the said lien subject to the rights of the Lender herein to amend, modify and supplement the Note, this Security Instrument and any other Loan Document, 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 secured by this Security Instrument, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Security Instrument losing its priority over the rights of any such junior lien. Nothing in this Section contained shall be construed as waiving any provision of Section R-10 hereof which provides, among other things, that it shall constitute an Event of Default if the Property be sold, conveyed or encumbered.

**32. BUSINESS LOAN.** It is understood and agreed 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) transacted solely for the purpose of carrying on or acquiring the business of the Borrower or, if the Borrower is a trustee, for the purpose of carrying on or acquiring the business of the beneficiaries of the Borrower as contemplated by said Section.

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**33. 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 Property, 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 Security Instrument, 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 decree creditor may cause a new loss clause to be attached to each of said casualty insurance policies making the loss thereunder payable to said decree creditor; and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statutes in each such case made and provided, then in every such case, each and every successive redeemer may cause the preceding loss clause attached to each casualty insurance policy to be canceled and a new loss clause to be attached hereto, making the loss thereunder payable to such redeemer; and
- (b) In the event of foreclosure sale, the Lender is hereby authorized, without the consent of the Borrower, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as the Lender may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies.

**34. ENVIRONMENTAL MATTERS.** Borrower represents that it, and the holders of easements, licenses, occupancy agreements and any other rights relating to the use of all or any portion of the Property (herein jointly called "Persons Responsible"), are currently in compliance with, and covenants and agrees that it will manage and operate the Property and will cause each Person Responsible to occupy and use its demised portion of the Property in compliance with, all federal, state and local laws, rules, regulations and ordinances regulating, without limitation, air pollution, soil and water pollution, and the use, generation, storage, treatment and removal, handling or disposal of hazardous or toxic substances or other materials (including, without limitation, raw materials, products, building components, supplies or wastes). Borrower further covenants and agrees that it shall not install or permit to be installed in the Property asbestos or any substance containing asbestos and deemed hazardous by or in violation of such federal, state or local laws, rules, regulations or orders respecting such material. Borrower shall send to Lender, within five days of receipt or completion thereof, any report, citation, notice or other writing including without limitation, hazardous waste disposal manifests, by, to or from any governmental or quasi-governmental authority empowered to regulate or oversee any of the activities discussed in this paragraph, whether demonstrating compliance with applicable law, noticing noncompliance, requesting or requiring notice or action, commencing investigation or requesting Borrower to show cause why action is not required. After reasonable inquiry and investigation, Borrower is not aware of any hazardous or toxic substances on or in the Property whether contained in tanks or other containers, in structures or equipment, or incorporated in buildings. In the event that, through whatever means, Borrower or a third party discovers hazardous substances on the Property, Borrower shall remedy, rectify, rehabilitate, correct and remove from the Property and dispose of any such hazardous or toxic substances or other materials in a manner consistent with and in compliance with applicable laws, rules, regulations and ordinances. Borrower shall take any and all action necessary, including but not limited to, bringing legal suit against, those Persons Responsible for the presence of the substance on site, or otherwise obligated by law to bear the cost of such remedy. Lender shall be subrogated to Borrower's rights against any and all Persons Responsible; provided, however, Lender shall in no event be obligated to remedy, rectify, rehabilitate, correct or remove and dispose of any such substances nor shall Lender be obligated to take any action against Persons Responsible for the foregoing activities. Borrower agrees to indemnify, defend with counsel acceptable to Lender (at Borrower's sole cost), and hold Lender harmless against any claim, response or other costs, damages, liability or demand (including without limitation reasonable attorney fees and costs incurred by Borrower or Lender, or both) arising out of any claimed violation by Borrower or any Person Responsible for any of the foregoing laws, regulations or ordinances or breach of any of the foregoing representations, covenants or agreements. Borrower specifically agrees that, notwithstanding any provision to the contrary in this Security Instrument this indemnification shall survive the reconveyance or release of this Security Instrument, whether pursuant to payment in full of the Note or foreclosure by Lender under this Security Instrument and that, if requested by Lender, Borrower at any time shall execute a separate writing setting forth such indemnification.

SEE ALSO PAGES 10 THROUGH 14 ATTACHED HERETO AND INCORPORATED  
HEREIN BY THIS REFERENCE.

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35. **LIMITED FORBEARANCE.** So long as: (i) there has been no default hereunder; (ii) the original Borrower and Co-Borrowers named herein remain the title holder of the Property and of the beneficial interest in the Borrower, respectively; and (iii) the Lender is furnished with evidence of timely payment of all renewal premiums on policies of insurance required to be provided by Borrower under Paragraph 6 of this Security Instrument; then the Lender and holders of the Note agree to forbear collection of the deposits described in Paragraph 11 of this Security Instrument.

36. **MISCELLANEOUS CORRECTIONS.** The reference in Paragraph 20 of this Security Instrument to "Chapter 110, Para. 12-124 and Para. 12-125" of the Illinois Statutes is hereby changed to "Chapter 110, Para. 15-1601" of the Illinois Statutes. Further the references in Paragraph 31 to "Section" is hereby changed to "Paragraph" and the specific reference in such Paragraph 31 to "Section R-10" is hereby changed to "Paragraph 12".

37. **PERMITTED TRANSFER.** Notwithstanding anything to the contrary in Paragraph 12(i)(A) of this Security Instrument the Borrower executing this Security Instrument on the date hereof shall have a one (1) time right to sell, transfer or convey the Property (the "Permitted Transfer"); provided, however, that the following conditions are met prior to such sale, transfer or conveyance:

- (a) the creditworthiness of such potential transferee ("Transferee") has been approved by Lender;
- (b) Transferee has entered into and delivered to Lender a written assumption agreement, assuming this Loan, in form and substance acceptable to Lender;
- (c) Transferee or Borrower pays Lender an assumption fee in an amount equal to one (1%) percent of the then outstanding principal balance of the Loan, together with any and all expenses of Lender and Transferee in completing and effectuating such assumption; and
- (d) There is no default under the Loan Documents.

38. **EARNOUT FUNDS DISBURSEMENT AGREEMENT.** Reference is made to that certain Earnout Funds Disbursement Agreement of even date herewith executed by Borrower, Co-Borrowers and Lender, which by this reference is incorporated herein as if set forth in its entirety.

39. **CO-BORROWERS.** The undersigned ELSTON AVENUE VENTURE, an Illinois partnership, and its general partners, RODGER D. CHENORE and JAMES PARRILLI, have jointly and severally among themselves and jointly and severally with Borrower executed this Security Instrument as Co-Borrowers, and agree to be bound by all of the terms and conditions hereof, specifically including the environmental provisions set forth in Paragraph 34, subject, however to the limitations set forth in Paragraph 40 hereof.

40. **INSURANCE PROCEEDS.** Notwithstanding anything to the contrary set forth in Paragraph 7 of this Security Instrument, so long as: (a) the Industrial Space Lease with Minolta Business Systems, Inc., as Tenant, dated April 19, 1988 (the "Minolta Lease") is in full force and effect and the tenant thereunder is not in default and such loss or damage shall not result in the termination or cancellation of the Minolta Lease or give the tenant thereunder the right to terminate or cancel said lease; (b) leases with tenants in occupancy and paying rent at the time of the casualty (including the Minolta Lease) are in full force and effect, with an aggregate gross monthly rental income of not less than \$12,500.00, and such loss or damage shall not result in the termination or cancellation of such leases; (c) each of the tenants under said leases (with an aggregate gross monthly rental income of not less than \$12,500.00) shall have delivered to Lender its estoppel letter in form and substance acceptable to Lender certifying that its lease remains in full force and effect and shall not be terminated on account of such damage or destruction; (d) no insurer denies liability as to any insured or claims any right of participation in any of Lender's security; and (e) there is no default under any of the Loan Documents; then such insurance proceeds, after deducting therefrom any expenses incurred by Lender in the collection thereof, shall be made available by the Lender for the repair, rebuilding or restoration of the Improvements on the Land. If the insurance proceeds are made available for repair, rebuilding or restoration, such proceeds shall be deposited with Lender and used as hereinafter provided.

Borrower shall, within sixty (60) days of such loss, damage or destruction, submit to Lender plans and specifications for the repair, rebuilding and restoration of the Improvements which have been damaged or destroyed. Said plans and specifications shall be subject to approval by Lender, which approval shall not be unreasonably withheld provided that such plans and specifications contemplate restoration of the Premises and such other improvements to a condition and quality at least equal to that prior to such damage or destruction.

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Borrower shall, within thirty (30) days of approval by Lender of the plans and specifications, submit to Lender a fixed price contract for the work of construction contemplated by such plans and specifications. Said contract shall be subject to Lender's approval which shall not be unreasonable withheld. Borrower shall deposit with Lender, within ten (10) days of Lender's approval of said contract, an amount equal to the amount required to reimburse Lender for costs incurred in connection with such review, plus the excess of the total cost of construction as set forth in said contract and the insurance proceeds deposited with Lender. The insurance proceeds deposited with Lender and the Borrower's deposit pursuant to the terms hereof shall be placed in a non-interest bearing Loans-in-Process Account and disbursed in accordance with Lender's customary procedures for disbursement of construction loan proceeds.

In the event the plans and specifications have not been submitted to and approved by Lender in accordance with the foregoing provisions within 120 days of the event of damage or destruction of the Improvements, Lender may at its option use the insurance proceeds deposited with Lender to reimburse Lender for costs incurred in connection with such proceedings, to reduce the balance of the Loan or pay the Loan in full.

In the event the insurance proceeds exceed the amount needed to repair the damage to the Improvements or needed to pay the Loan in full, the balance remaining shall be paid over to Borrower.

41. **DEFAULT.** For purposes hereof, any one or more of the following events shall constitute a "default": (a) failure to make any required payment under the Note within five (5) days after the date when due; or (b) failure to perform or observe within thirty (30) days after written notice from Lender to Co-Borrowers, any other covenant, promise or agreement contained herein, or in the Note or any other Loan Document executed in connection herewith.

42. **LIMITATION ON RECOURSE.** It is agreed that notwithstanding anything to the contrary in the Security Instrument, (i) Borrower and Co-Borrowers shall only be liable upon the indebtedness evidenced by the Note, or sums or amounts to accrue or to become payable thereunder or under this Security Instrument or either of them, to the full extent (but only to the extent) of the Property; (b) if default occurs in the timely and prompt payment of all or any part of said indebtedness, sums or amounts, any judicial proceedings or enforcement of the remedies under the Note, this Security Instrument and the other loan documents brought by Lender against Borrower and/or Co-Borrowers shall be limited to the preservation, enforcement and foreclosure or any thereof, of the liens, estates, assignments, titles, rights and security interests now or at any time hereafter acquired by Lender in the Property as security for the payment of the Note and the obligations of Borrower and Co-Borrowers under this Security Instrument and no judgment, attachment, execution or other writ of process shall be sought, issued or levied upon the assets, property or funds of the Borrower and Co-Borrowers other than the properties, rights, estates and interest of Borrower and Co-Borrowers as are identified as a part of the Property in this Security Instrument and any other loan document; (c) in the event of a foreclosure or other disposition as provided for in this Security Instrument and other loan documents of such liens, titles, estates, assignments, rights and security interests securing the payment of the Note, whether by judicial proceedings or the exercise of the power of sale, no judgment for the deficiency of such indebtedness, sums and amounts shall be sought or obtained by Note Holder against the Borrower and/or Co-Borrowers.

The foregoing limitation shall become null and void and shall have no force or effect in the event of the occurrence of a "Recourse Event", as hereinafter defined, and any default by Borrower and/or Co-Borrowers under the Note, Security Instrument or any other loan document (whether the default(s) has/have occurred before or after the occurrence of a "Recourse Event").

Upon the occurrence of any "Recourse Event" as described in any of subparagraphs (b), (c), (d), (e) and (f) below and any default by Borrower and/or Co-Borrowers under the Note, Mortgage or any other loan document Lender shall have recourse against Borrower and Co-Borrowers, jointly and severally, and all of their respective assets, such recourse being limited to the amount of actual damages incurred by Lender as a result of such "Recourse Event(s)" including without limitation the costs and expenses of collection thereof, including attorneys' fees. Upon the occurrence of any "Recourse Event" as described in any of subparagraphs (a), (g) and (h) below and any default by Borrower and/or Co-Borrowers under the Note, Mortgage or any other loan document Lender shall have full recourse against the Borrower and Co-Borrowers, jointly and severally, and all of their respective assets.

"Recourse Event" as used herein shall mean the occurrence of any of the following circumstances or events:

- (a) any loss or damage which arises from fraud or any material misrepresentation made by Borrower, or any partner, officer, agent or employee of beneficiary of Borrower in any material writing or contained in any of the provisions of the Note, the Security Instrument or any other loan document;

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- (b) material breach of any covenant contained in the Security Instrument relating to the failure by Borrower to pay, satisfy and discharge all general and special city, county and state taxes or special assessments or encumbrances, charges and liens which are or may be prior or superior to the lien of the Security Instrument;
- (c) misapplication of (1) proceeds paid under any insurance policies by reason of damage, loss or destruction to any portion of the Property to the full extent that such proceeds are payable or should be payable to Lender under the terms of the Security Instrument; or (2) proceeds or awards resulting from the condemnation, relating to any portion of the Property to the full extent of any such proceeds or awards which are payable or should be paid to Lender under the terms of the Security Instrument;
- (d) failure by Borrower to cause to be maintained upon the Property such insurance coverages as is required under the Security Instrument;
- (e) failure by Borrower to (1) keep the Property in substantially good condition and repair, ordinary wear and tear excepted, or (2) comply with all laws and ordinances affecting the Property;
- (f) failure by Borrower to remit to Lender promptly upon demand therefor pursuant to the terms and conditions of that certain Absolute Assignment of Rents and Landlord's Interest in Leases of even date herewith from Borrower and Co-Borrowers to Lender, all rents, income, issues and profits from the Property and deposits for security purposes received in connection with leases or tenant improvements, or otherwise delivered by occupants of the Property to Borrower;
- (g) any conduct or action or attempted conduct or action by Borrower, including without limitation the filing of any bankruptcy proceedings, to prevent Lender from exercising, or to impede Lender in exercising, its security interest in the Property; provided, however, if the bankruptcy petition or proceeding is dismissed or otherwise resolved to allow Lender to exercise its security interest in the Property within ninety (90) days after the initial filing thereof, the personal liability shall be limited to an amount equal to all sums due under the Note, this Security Instrument and the Loan Documents during the pendency of such proceeding (including attorney fees and expenses incurred from such proceeding); and
- (h) any expenses, damages, or liabilities, including, without limitation, all reasonable attorneys' fees, whether incurred by Note Holder prior to or following foreclosure of the Mortgage and whether Note Holder shall in the status of a lienholder or an owner of the Property following foreclosure, directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence on, under, or about the Property of any materials, wastes, or substances defined or classified as hazardous or toxic under any federal state or local laws or regulations.

43. **ACCUMULATION ACCOUNTS.** Notwithstanding anything to the contrary contained in Paragraph 11 of this Security Instrument, so long as: (i) there is no default hereunder or under any of the Loan Documents; and (ii) Lender is promptly furnished with evidence of timely payment of all taxes, premiums on policies of insurance and other obligations as described in Paragraph 11 hereof; and (iii) the original Borrower (having as beneficiary the original Beneficiary) remains the owner of title to the Land and the Improvements thereon; then Lender agrees to forbear collection of the deposits described in Paragraph 11 hereof.

44. **AUTHORITY AND EXCULPATION OF TRUSTEE BORROWER.** This Security Instrument is executed by LaSalle National Bank not personally but as Trustee as hereinafter stated, 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 LaSalle National Bank as Trustee as aforesaid, or on LaSalle National Bank personally, to pay the indebtedness under the Note or any interest that may accrue thereon, or any other indebtedness accruing thereunder, or to perform any covenant either express or implied therein or herein contained, all such liability, if any, being expressly waived by the Lender and by every person now or hereafter claiming any right hereunder, and that so far as LaSalle National Bank as Trustee as aforesaid, and its successors, and LaSalle National Bank, personally, are concerned, the Lender and the owner or owners of the indebtedness accruing under the Note shall look solely to any one or more of (a) the Property for the payment thereof, by the enforcement of the lien created by the Mortgage, in the manner herein and in the Mortgage provided, or (b) action to enforce the personal liability of any obligor, guarantor or co-borrowers hereof, or (c) enforcement of any other security or collateral securing the indebtedness evidenced by the Note.

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Property Address: 2076 North Elston Avenue  
Chicago, Illinois

Property Identification Number: 14-31-219-001  
14-31-219-002

This Instrument Prepared By: Heinrich & Kramer, P.C.  
205 W. Randolph, Suite 1520  
Chicago, Illinois 60606

The undersigned Borrower requests that a copy of any notice hereunder be mailed to it at its address set forth below.

Mailing Address for Notices: Elston Avenue Venture  
550 W. Jackson Boulevard  
Suite 350  
Chicago, Illinois 60606

and Co-Borrowers have  
IN WITNESS WHEREOF, Borrower has executed this Mortgage and Security Agreement on the day in the year first above written.

## BORROWER:

LaSalle National Bank, not personally, but as Trustee  
under Trust Agreement dated January 1, 1987 and  
known as Trust No. 111981

By: [Signature]  
Its: VICE PRESIDENT

Attest: [Signature]  
Its: ASSISTANT SECRETARY

## CO-BORROWERS:

Elston Avenue Venture, an Illinois partnership, by the  
general partners thereof:

[Signature]  
Rodger D. Chenore

[Signature]  
James Parrilli

PLACE NOTARY ACKNOWLEDGMENT HERE

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STATE OF ILLINOIS )  
COUNTY OF COOK ) SS

Kathy Pacana

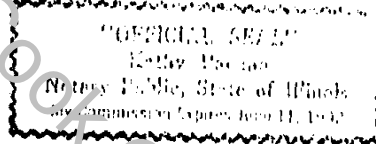
I, Joseph W. Lakin, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY, that William H. Dillon personally known to me and known by me to be the VICE President and Assistant Secretary, respectively, of LaSALLE NATIONAL BANK, in whose name, as Trustee, the above and foregoing instrument is executed, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their free and voluntary act and as the free and voluntary act of said corporation 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 corporation did affix the said corporate seal to said instrument as his free and voluntary act on behalf of said corporation as Trustee as aforesaid for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 7<sup>th</sup> day of April A.D. 1989.

*Kathy Pacana*

My Commission Expires:

Notary Public



STATE OF ILLINOIS )  
COUNTY OF COOK ) SS

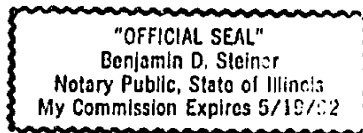
I, Benjamin D. Steiner, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY, that RODGER D. CIENORE and JAMES PARRILLI, personally known to me and known to me to be the general partners of Elston Avenue Venture, an Illinois partnership, whose names are subscribed to the within instrument, appeared before me this day in person and severally acknowledged that they signed and delivered the said Instrument in writing personally and as such general partners of said partnership, as their free and voluntary act and as the free and voluntary act and deed of said partnership, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 7<sup>th</sup> day of April A.D. 1989.

*Benjamin D. Steiner*

My Commission Expires:

Notary Public



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PROPERTY OF  
COOK COUNTY CLERK'S OFFICE  
100 N. LAUREL ST. CHICAGO, IL 60602  
TEL: (773) 399-3000 FAX: (773) 399-3001  
WWW.COOKCOUNTYCLERK.COM

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EXHIBIT "A"  
**UNOFFICIAL COPY**  
**PROMISSORY NOTE**

DOC. 010

NOTICE TO BORROWER: THIS DOCUMENT CONTAINS PROVISIONS FOR AN ADJUSTABLE INTEREST RATE.

\$ 850,000.00

Date: April \_\_, 1989

1. **PROMISE TO PAY.** For value received, the undersigned ("Borrower") promises to pay First Nationwide Bank, A Federal Savings Bank, or order ("Lender") in lawful money of the United States, the principal sum of \$ 850,000.00, together with interest thereon at the initial interest rate of 9.75 % per annum. The interest rate may be adjusted in accordance with Section 3 of this Note. Interest rate adjustments may occur following every sixth regularly scheduled monthly payment. Principal and interest shall be payable at 700 Market Street, San Francisco, California, or at such other place as Lender notifies Borrower, in initial monthly installments of \$ 7,302.82\*, each due and payable on the first day of each month beginning June 1, 1989. The monthly installments of principal and interest shall be adjusted in accordance with Section 4 hereof. Such monthly installments shall continue until the entire indebtedness evidenced by this Note is fully paid, except that any remaining indebtedness, if not sooner paid, shall be due and payable on May 1, 1999 (the "Final Payment Date"). The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note will be called the "Note Holder."
2. **DEFINITIONS**

"INDEX" means the Monthly Weighted Average Cost of Funds for Savings Institutions in the Federal Home Loan Bank ("FHLB") Eleventh District, as published by the FHLB of San Francisco. In the event that such Index ceases to be available, "INDEX" shall mean a substitute index selected by Note Holder in compliance with applicable Federal law.

"THEN CURRENT INDEX" means the rate of the Index as of 45 days prior to an Interest Adjustment Date.

"MARGIN" means 2.75 % per annum.

"INTEREST RATE" means the annual rate of interest charged on the principal balance of the loan from time to time.

"INITIAL INTEREST RATE" means the Interest Rate charged as of the date this Note is executed as shown in Section 1.

"THEN CURRENT INTEREST RATE" means, for the period prior to the first Interest Adjustment Date, the Initial Interest Rate. Thereafter, it means the Interest Rate after the most recent Interest Adjustment.

"INTEREST ADJUSTMENT" means an increase or decrease in the Then Current Interest Rate as specified in Section 3.

"INTEREST ADJUSTMENT DATE" means the day on which every sixth regularly scheduled monthly payment is due.

"SEMI-ANNUAL PERIOD" means each successive period of 6 calendar months beginning with the first day of the calendar month in which the first payment is due on this Note as specified in Section 1.
3. **INTEREST RATE ADJUSTMENTS**

On each Interest Adjustment Date, the Note Holder shall decrease or may, at its option, increase the Interest Rate so that the Interest Rate shall equal the sum (rounded to the nearest .125%) of the Then Current Index and the Margin, subject to the following limitations: there shall be no more than one Interest Adjustment in any Semi-Annual Period; each Interest Adjustment shall not exceed 1.0 % below or above the Interest Rate for the preceding Semi-Annual Period, and the Then Current Interest Rate shall never exceed a maximum rate of 13.625 % per annum nor be less than a minimum rate of 5.0 % per annum. The fact that the Note Holder may not have invoked a permissible increase in whole or in part shall not be deemed a waiver of the Note Holder's right to invoke such an increase at a later time.
4. **ADJUSTMENTS TO MONTHLY PAYMENT.** Upon any change in the rate of interest, the monthly installment shall be adjusted to an amount which will result in full payment of the outstanding principal and interest within 360 months of the date of this Note. Each payment adjustment shall be effective on the first day of the month following each Interest Adjustment Date.
5. **PREPAYMENT.** Borrower shall have the right to prepay the whole or any part of the unpaid principal balance of this Note at any time, ~~provided however, that Borrower shall pay, as consideration for the occurrence of such payments, without penalty, upon thirty (30) days prior written notice.~~
6. **BORROWER'S FAILURE TO PAY AS REQUIRED.**
  - A. **Late Payment Charge:** Borrower shall pay to the Note Holder a late charge of 5 % of any monthly payment not received by the Note Holder within fifteen days after the payment is due to defray the expenses incidental to handling any such delayed payment or payments.
  - B. **Default:** If Borrower is in default in the making of any payment under this Note or in default under the terms of the Mortgage and Security Agreement securing this Note or any other Loan Document (as hereinafter defined), the Note Holder shall have the right to declare the whole sum of principal and interest remaining unpaid immediately due and payable and to increase the Interest Rate hereunder to a fluctuating rate per annum equal to 5 % higher than the Interest Rate that would otherwise be in effect from time to time under this Note. Failure to exercise this option upon any one default shall not constitute a waiver of the right to exercise it in the future. \*Subject to the terms and conditions of Paragraph 22 hereof.
  - C. **Reasonableness of Default Charges:** The Borrower acknowledges that nonpayment of any payment when due either monthly or at maturity (whether or not resulting from acceleration due to an event of default under the Mortgage and Security Agreement or any other document executed in connection with the loan) will result in damages to the Note Holder by reason of the additional expenses incurred in servicing the indebtedness evidenced by this Note and by reason of the loss to the Note Holder of the use of the money due and frustration to the Note Holder in meeting its other commitments. The Borrower also acknowledges and agrees that the occurrence of any other event of default under the Mortgage and Security Agreement or other Loan Documents will result in damages to the Note Holder by reason of the detriment caused thereby. The Borrower further acknowledges that it is and will be extremely difficult and impracticable to ascertain the extent of such damages caused by nonpayment of any sums when due or resulting from any other event of default under the Mortgage and Security Agreement or other Loan Documents. The Borrower by its execution and delivery hereof and the Note Holder by the acceptance of this Note agree that a reasonable estimate of such damages must be based in part upon the duration of the default and that the late charge specified above with respect to delinquent payments and the rate of interest prescribed above with respect to the amount due and payable after maturity or acceleration would not unreasonably compensate the Note Holder for such damages.

\*See, however, Paragraph 21 hereof

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7. **MORTGAGE AND SECURITY AGREEMENT.** This Note is secured by a Mortgage and Security Agreement (the "Mortgage") of even date herewith and other Loan Documents (as defined in said Mortgage), reference to which is hereby made for rights of the Note Holder to accelerate the maturity of the indebtedness evidenced by this Note.
8. **APPLICATION OF PAYMENTS.** Each monthly payment shall be applied first to interest due on the unpaid principal balance, then to payments into the Accumulation Account as provided in the Mortgage, then to late charges, if any, and then to the reduction of the unpaid principal, provided, however, that each monthly payment may be applied by the Note Holder to the repayment of any sums advanced by the Note Holder. During the existence of any delinquency in the payment of this Note or any default under the Mortgage, the Note Holder is authorized to apply all sums received to repayment of advances or to payment of the delinquency, as the Note Holder shall so elect.
9. **RESPONSIBILITY OF PERSONS UNDER THIS NOTE.** Presentment, Notice of Dishonor, Protest and Demand and Valuation and Appraisal are hereby waived by Borrower, any endorsers, sureties, guarantors and any other party that may be or become responsible for payment of this Note. Each such party hereby consents to any extensions or renewals of this Note without notice, consent or consideration.
10. **ATTORNEY'S FEES.** If the Note Holder refers this Note to an attorney for collection or seeks legal advice following default, or if any other judicial or non-judicial action is instituted, or any attorney is employed to reclaim, sequester, protect, preserve or enforce the Note Holder's interest in any real property or other security for this Note, including but not limited to proceedings under bankruptcy or eminent domain laws, the Borrower shall pay all of the Note Holder's reasonable attorney's fees and costs, (including those incurred at the appellate level) to the extent permitted by applicable law.
11. **GOVERNING LAW.** The provisions of this Note shall be governed by the laws of the jurisdiction in which the property which is subject to the Mortgage securing this Note is located, except to the extent such law is contrary to or inconsistent with the laws, rules or regulations of the United States or to the extent such law restricts activities otherwise permitted to federally chartered savings banks in which event the laws, rules and regulations of the United States shall govern.
12. **LAWFUL RATE OF INTEREST.** It is the intent of Borrower and Lender to comply with the laws, rules and regulations governing this Note with regard to the rate of interest charged hereunder, and accordingly, notwithstanding any provision to the contrary in this Note, the Mortgage, or any of the other Loan Documents, no such provision in any such instrument, including without limitation any provision of this Note providing for the payment of interest or other charges and any provision of the Loan Documents providing for the payment of interest, fees, costs or other charges, shall require the payment or permit the collection of any amount (herein called "Excess Interest") in excess of the maximum amount of interest permitted by law to be charged for the use, detention, or forbearance in the collection, of all or any portion of the indebtedness evidenced by this Note; provided that if any Excess Interest is provided for, or is adjudicated as being provided for, in this Note, the Mortgage or any of the other Loan Documents, then in such event: (a) The provisions of this Section shall govern and control; (b) Borrower shall not be obligated to pay any Excess Interest; (c) Any Excess Interest that Note Holder may have received hereunder shall, at the option of Note Holder be (i) applied as a credit against the then outstanding principal balance due under this Note, or accrued and unpaid interest thereon, not to exceed the maximum amount permitted by law, or both, (ii) refunded to the payor thereof, or (iii) any combination of the foregoing; (d) The applicable interest rate or rates shall be automatically subject to reduction to the maximum lawful rate allowed to be contracted for in writing under the applicable usury laws as of the date of disbursement of the indebtedness evidenced hereby; and this Note and all other Loan Documents shall be deemed to have been, and shall be, reformed and modified to reflect such reduction in such interest rate or rates; and (e) Neither Borrower nor any other person shall have any action or remedy against Lender or Note Holder for any damages whatsoever or any defense to enforcement of any of the Loan Documents arising out of the payment or collection of any Excess Interest.
13. **NO ORAL WAIVER, MODIFICATION OR CANCELLATION.** No provision of this Note may be waived, modified, discharged or canceled orally, but only in writing and signed by the party against whom enforcement of any waiver, modification, discharge or cancellation is sought.
14. **BUSINESS LOAN.** It is understood and agreed that the loan evidenced by this Note is a business loan within the purview of Section 6404 of Chapter 17 of Illinois Revised Statutes (or any substitute, amended, or replacement statutes) transacted solely for the purpose of carrying on or acquiring the business of the Borrower or, if the Borrower is a trustee, for the purpose of carrying on or acquiring the business of the beneficiaries of the Borrower as contemplated by said Section.
15. **AUTHORITY AND EXCULPATION OF TRUSTEE BORROWER.** This Note is executed by Borrower not personally but as Trustee, 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 Borrower as Trustee, or on said Borrower personally, to pay this Note or any interest that may accrue hereon, or any other indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained, all such liability, if any, being expressly waived by the Lender and by every person now or hereafter claiming any right hereunder, and that so far as Borrower as Trustee, and its successors, and Borrower, personally, are concerned, the Lender and the Note Holder and the owner or owners of the indebtedness accruing hereunder shall look solely to any one or more of (a) the property subject to the Mortgage for the payment thereof, by the enforcement of the lien created by the Mortgage, in the manner herein and in the Mortgage provided, or (b) action to enforce the personal liability of any obligor, guarantor or co-maker hereof, or (c) enforcement of any other security or collateral securing the indebtedness evidenced by this Note.
16. **HEADINGS**  
The headings of this Note are inserted for convenience of reference only and shall not be applied in construing the provisions of this Note.
17. **INVALIDITY**  
In case any one or more of the provisions contained in this Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provisions hereof, and this Note shall be construed as if such invalid, illegal or unenforceable provision(s) had never been included.
18. **TIME OF ESSENCE**  
Time is of the essence under this Note.
19. **MULTIPLE SIGNERS**  
If more than one person signs this Note, their liability is joint and several.
20. **WAIVER OF HOMESTEAD**  
Borrower hereby waives any and all exemption and homestead rights now provided or which may hereafter be provided by the Constitution and laws of the United States of America and of the State of Illinois or any other state, both as to the Borrower and in and to all of Borrower's property, real and personal, against the enforcement and collection of the obligations evidenced by this Note. Borrower hereby transfers, conveys and assigns to Note Holder a sufficient amount of such homestead or exemption as may be set apart in bankruptcy to pay this Note in full, with all costs of collection, and does hereby direct any trustee in bankruptcy having possession of such homestead or exemption to deliver to Note Holder a sufficient amount of property or money set apart as exempt to pay the indebtedness evidenced hereby or any renewal thereof and does hereby appoint Note Holder the attorney-in-fact for Borrower to claim any and all homestead exemptions allowed by law.

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21. **EARNOUT RESERVE.** The initial disbursement of principal hereunder shall be in the amount of \$720,000.00 (the "Initial Disbursement"). The remaining principal evidenced hereby, in the amount of \$130,000.00 (the "Earnout Reserve"), shall be held back from the initial disbursement hereunder. The amount of the initial monthly installments of principal and interest set forth in Paragraph 1 on page 1 of this Note has been calculated on the basis of the face amount of this Note and not on the basis of the amount of the Initial Disbursement. Notwithstanding the amount set forth in Paragraph 1 on page 1 of this Note, the initial monthly installments of principal and interest, based on the amount of the Initial Disbursement, shall actually be \$6,185.91.

Disbursement of the Earnout Reserve shall be governed by the terms and provisions of that certain Earnout Funds Disbursement Agreement (the "Disbursement Agreement") of even date herewith between Borrower, "Co-Makers" (as hereinafter defined), and Lender. Commencing on the first day of the month following the date of disbursement of the Earnout Reserve, the monthly installment payable hereunder shall be adjusted to an amount which will result in full payment of the outstanding principal and interest at the Then Current Interest Rate within 360 months of the date of this Note.

22. **DEFAULT.** For purposes of this Note, any one or more of the following events shall constitute a "default": (a) failure to make payment within five (5) days after the date when such payment is due hereunder; or (b) failure to perform or observe, within thirty (30) days after written notice from Note Holder to Co-Makers at 550 W. Jackson Boulevard, Suite 350, Chicago, Illinois 60606, any covenant, promise or agreement contained herein, or in the Mortgage, Security Agreement, or any Loan Document.

23. **DUE ON SALE OR ENCUMBRANCE.** The Mortgage includes the right, except in the event of a Permitted Transfer, to accelerate upon sale, transfer, or on further encumbrance of the Property, (as defined and described in the Mortgage) located in Cook County, Illinois and such provision is specifically incorporated herein by this reference thereto.

24. **CO-MAKERS.** The undersigned ELSTON AVENUE VENTURE, an Illinois partnership, and its general partners, RODGER D. CHENORE and JAMES PARRILLI, have jointly and severally among themselves and jointly and severally with Borrower executed this Note as Co-Makers, and agree to be bound by all of the terms and conditions hereof, subject however to the limitations set forth in Paragraph 24 hereof.

25. **LIMITATION ON RECOURSE.** It is agreed that notwithstanding anything to the contrary in this Note, (a) Borrower and Co-Makers shall only be liable upon the indebtedness evidenced by this Note, or sums or amounts to accrue or to become payable thereunder or under the Mortgage or either of them, to the full extent (but only to the extent) of the Property; (b) if default occurs in the timely and prompt payment of all or any part of said indebtedness, sums or amounts, any judicial proceedings or enforcement of the remedies under this Note, the Mortgage and the other loan documents brought by Lender against Borrower and/or Co-Makers shall be limited to the preservation, enforcement and foreclosure or any thereof, of the liens, estates, assignments, titles, rights and security interests now or at any time hereafter acquired by Lender in the Property as security for the payment of this Note and the obligations of Borrower and Co-Makers under the Mortgage and no judgment, attachment, execution or other writ of process shall be sought, issued or levied upon the assets, property or funds of the Borrower and Co-Makers other than the properties, rights, estates and interest of Borrower and Co-Makers as so identified as a part of the Property in the Mortgage and any other loan document; (c) in the event of a foreclosure or other disposition as provided for in the Mortgage and other loan documents of such liens, titles, estates, assignments, rights and security interests securing the payment of the Note, whether by judicial proceedings or the exercise of the power of sale, no judgment for the deficiency of such indebtedness, sums and amounts shall be sought or obtained by Note Holder against the Borrower and/or Co-Makers.

The foregoing limitation shall become null and void and shall have no force or effect in the event of the occurrence of a "Recourse Event", as hereinafter defined, and any default by Borrower and/or Co-Makers under the Note, Mortgage or any other loan document (whether the default(s) has/have occurred before or after the occurrence of a "Recourse Event").

Upon the occurrence of any "Recourse Event" as described in any of subparagraphs (b), (c), (d), (e) and (f) below and any default by Borrower and/or Co-Makers under the Note, Mortgage or any other loan document Lender shall have recourse against Borrower and Co-Makers, jointly and severally, and all of their respective assets, such recourse being limited to the amount of actual damages incurred by Lender as a result of such "Recourse Event(s)" including without limitation the costs and expenses of collection thereof, including attorneys' fees. Upon occurrence of any "Recourse Event" as described in any of subparagraphs (a), (g) and (h) below and any default by Borrower and/or Co-Makers under the Note, Mortgage or any other loan document Lender shall have full recourse against the Borrower and Co-Maker, jointly and severally, and all of their respective assets.

"Recourse Event" as used herein shall mean the occurrence of any of the following circumstances or events:

- (a) any loss or damage which arises from fraud or any material misrepresentation made by Borrower, or any partner, officer, agent or employee of beneficiary of Borrower in any material writing or contained in any of the provisions of the Note, the Mortgage or any other loan document;
- (b) material breach of any covenant contained in the Mortgage relating to the failure by Borrower to pay, satisfy and discharge all general and special city, county and state taxes or special assessments or encumbrances, charges and liens which are or may be prior or superior to the lien of the Mortgage;

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- (c) misapplication of (1) proceeds paid under any insurance policies by reason of damage, loss or destruction to any portion of the Property to the full extent that such proceeds are payable or should be payable to Lender under the terms of the Mortgage; or (2) proceeds or awards resulting from the condemnation, relating to any portion of the Property to the full extent of any such proceeds or awards which are payable or should be paid to Lender under the terms of the Mortgage;
- (d) failure by Borrower to cause to be maintained upon the Property such insurance coverages as is required under the Mortgage;
- (e) failure by Borrower to (1) keep the Property in substantially good condition and repair, ordinary wear and tear excepted, or (2) comply with all laws and ordinances affecting the Property;
- (f) failure by Borrower to remit to Lender promptly upon demand therefor pursuant to the terms and conditions of that certain Absolute Assignment of Rents and Landlord's Interest in Leases of even date herewith from Borrower and Co-Makers to Lender, all rents, income, issues and profits from the Property and deposits for security purposes, received in connection with leases or tenant improvements, or otherwise delivered by occupants of the Property to Borrower;
- (g) any conduct or action or attempted conduct or action by Borrower, including without limitation the filing of any bankruptcy proceedings, to prevent Lender from exercising, or to impede Lender in exercising, its security interest in the Property; provided, however, if the bankruptcy petition or proceeding is dismissed or otherwise resolved to allow Lender to exercise its security interest in the Property within ninety (90) days after the initial filing thereof, the personal liability shall be limited to an amount equal to all sums due under this Note, the Mortgage and the Loan Documents during the pendency of such proceeding (including attorney fees and expenses incurred from such proceeding); and
- (h) any expenses, damages or liabilities, including, without limitation, all reasonable attorneys' fees, whether incurred by Note Holder prior to or following foreclosure of the Mortgage and whether Note Holder shall in the status of a lienholder or an owner of the Property following foreclosure, directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence on, under, or about the Property of any materials, wastes, or substances defined or classified as hazardous or toxic under any federal state or local laws or regulations.

IN WITNESS WHEREOF, this Promisor, Note has been duly executed by Borrower and Co-Makers and delivered to Lender as of the date first shown hereinabove.

**BORROWER:**

LaSalle National Bank, not personally, but as Trustee under Trust Agreement dated January 1, 1987 and known as Trust No. 111981

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Attest: \_\_\_\_\_  
Its: \_\_\_\_\_

**CO-MAKERS:**

Elston Avenue Venture, an Illinois partnership, by the general partners thereof

By: \_\_\_\_\_  
Rodger D. Chenore

By: \_\_\_\_\_  
James Parrilli

\_\_\_\_\_  
Rodger D. Chenore, personally

\_\_\_\_\_  
James Parrilli, personally

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