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First American Title Order #

SW ASSOCIATES LIMITED PARTNERSHIP

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MORTGAGE AND SECURITY AGREEMENT

from

AMERICAN NATIONAL BANK AND TRUST COMPANY
OF CHICAGO, AS TRUSTEE UNDER
TRUST NO. 104[illegible]-04

to

STATE MUTUAL LIFE ASSURANCE COMPANY OF AMERICA

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Box 198

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MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT ("**Mortgage**"), made as of June 26, 1989, is made and executed by American National Bank and Trust Company of Chicago, a national banking association, not in its individual capacity but as Trustee under a Trust Agreement dated December 3, 1987 and known as Trust No. 104162-04, having its principal offices at 33 North LaSalle Street, Chicago, Illinois 60603 ("**Mortgagor**"), in favor of State Mutual Life Assurance Company of America, a Massachusetts corporation, having an office at 440 Lincoln Street, Worcester, Massachusetts 01605, ("**Lender**").

RECITALS

I. SW Associates Limited Partnership, an Illinois limited partnership ("**Beneficiary**"), owns 100% of the beneficial interest in Mortgagor. Beneficiary and Lender have entered into a Commitment dated March 27, 1989, as amended March 30, 1989 (the "**Loan Commitment**") pursuant to which Lender has agreed, subject to the terms and conditions thereof, to make a loan to Mortgagor in an amount not to exceed $10,500,000 (the "**Loan**").

II. The Loan is evidenced by that certain note of even date herewith executed by the Mortgagor in favor of Lender in the principal sum of $10,500,000 (the "**Note**"). A copy of the Note is attached hereto as **Exhibit A.** The terms and provisions of the Note are hereby incorporated, by reference, in this Mortgage.

III. In addition to other Loan Instruments (as hereinafter defined), Lender has required that Beneficiary execute, among other things, a certain Indemnity Agreement, of even date herewith. The said Indemnity Agreement is referred to herein as the "**Indemnity.**"

GRANTING CLAUSES

To secure the payment of the indebtedness evidenced by the Note and the payment of all amounts due under and the performance and observance of all covenants and conditions contained in this Mortgage, the Note, the Loan Commitment, any and all other mortgages, security agreements, assignments of leases and rents, guaranties, letters of credit and any other documents and instruments now or hereafter executed by Mortgagor, Beneficiary or any party related thereto or affiliated therewith to evidence, secure or guarantee the payment of all or any portion of the indebtedness under the Note and any and all renewals, extensions, amendments and replacements of this Mortgage, the Note, the Loan Commitment and any such other documents and instruments (the Note, the Loan Commitment, this Mortgage, such other mortgages, security agree-

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ments, assignments of leases and rents, guaranties, indemnities, letters of credit, and any other documents and instruments now or hereafter executed and delivered in connection with the Loan, and any and all amendments, renewals, extensions and replacements hereof and thereof, being sometimes referred to collectively as the "**Loan Instruments**" and individually as a "**Loan Instrument**") (all indebtedness and liabilities secured hereby being hereinafter sometimes referred to as "**Borrower's Liabilities**" which indebtedness and liabilities being secured hereby shall, in no event, exceed five times the aggregate face amount of the Note), Mortgagor does hereby convey, mortgage, assign, transfer, pledge and deliver to Lender the following described property subject to the terms and conditions herein:

(A) The land located in Cook County, Illinois, legally described in attached **Exhibit B** ("**Land**");

(B) All the buildings, structures, improvements and fixtures of every kind or nature now or hereafter situated on the Land; and, to the extent not owned by tenants of the Mortgaged Property, all machinery, appliances, equipment, furniture and all other personal property of every kind or nature located in or on, or attached to, or used or intended to be used in connection with, or with the operation of, the Land, buildings, structures, improvements or fixtures now or hereafter located or to be located on the Land, or in connection with any construction being conducted or which may be conducted thereon, and all extensions, additions, improvements, substitutions and replacements to any of the foregoing ("**Improvements**");

(C) All building materials and goods which are procured or to be procured for use on or in connection with the Improvements or the construction of additional Improvements, whether or not such materials and goods have been delivered to the Land ("**Materials**");

(D) All plans, specifications, architectural renderings, drawings, licenses, permits, soil test reports, other reports of examinations or analyses of the Land or the Improvements, contracts for services to be rendered to Mortgagor, Beneficiary or otherwise in connection with the Improvements and all other property, contracts, reports, proposals and other materials now or hereafter existing in any way relating to the Land or the Improvements or the construction of additional Improvements;

(E) All easements, tenements, rights-of-way, vaults, gores of land, streets, ways, alleys, passages, sewer rights, water courses, water rights and powers and appurtenances in any way belonging, relating or appertaining to any of the Land or Improvements, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired ("**Appurtenances**");

(F) (i) All judgments, insurance proceeds, awards of damages and settlements which may result from any damage to all or any portion of the Land, Improvements or Appurtenances or any part thereof or to any rights appurtenant thereto;

(ii) All compensation, awards, damages, claims, rights of action and proceeds of or on account of (a) any damage or taking, pursuant to the power of eminent domain, of the Land, Improvements, Appurtenances or Materials or any part thereof, (b) damage to all or any portion of the Land, Improvements or Appurtenances by reason of the taking, pursuant to the power of eminent domain, of all or any portion of the Land, Improvements, Appurtenances, Materials or of other property, or (c) the alteration of the grade of any street or highway on or about the Land, Improvements, Appurtenances, Materials or any part thereof; and, except as otherwise provided herein, Lender is hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittances therefor and, except as otherwise provided herein, to apply the same toward the payment of the indebtedness and other sums secured hereby;

(iii) All contract rights, general intangibles, actions and rights in action, including, without limitation, all rights to insurance proceeds and unearned premiums arising from or relating to damage to the Land, Improvements, Appurtenances or Materials; and

(iv) All proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Land, Improvements, Appurtenances or Materials;

(G) All rents, issues, profits, income and other benefits now or hereafter arising from or in respect of the Land, Improvements or Appurtenances (the "**Rents**"); it being intended that this Granting Clause shall constitute an absolute and present assignment of the Rents, subject, however, to the conditional permission given to Mortgagor to collect and use the Rents as provided in this Mortgage;

(H) Any and all leases, licenses (to the extent assignable) and other occupancy agreements now or hereafter affecting the Land, Improvements, Appurtenances or Materials, together with all security therefor and guaranties thereof and all monies payable thereunder, and all books and records owned by Mortgagor which contain evidence of payments made under the leases and all security given therefor (collectively, the "**Leases**"), subject, however, to the conditional permission given in this Mortgage to Mortgagor to collect the Rents arising under the Leases as provided in this Mortgage;

(I) Any and all after-acquired right, title or interest of Mortgagor in and to any of the property described in the preceding Granting Clauses; and

(J) The proceeds from the sale, transfer, pledge or other disposition of any or all of the property described in the preceding Granting Clauses;

All of the mortgaged property described in the Granting Clauses, together with all real and personal, tangible and intangible property pledged in, or to which a security interest attaches pursuant to, any of the Loan Instruments is sometimes referred to collectively as the "**Mortgaged Property.**" The Rents and Leases are pledged on a parity with the Land and Improvements and not secondarily.

ARTICLE ONE

COVENANTS OF MORTGAGOR

Mortgagor covenants and agrees with Lender as follows:

1.01 **Performance under Note, Mortgage and Other Instruments.** Mortgagor shall perform, observe and comply with or cause to be performed, observed and complied with in a complete and timely manner all provisions hereof and of the Note, every other Loan Instrument and every instrument evidencing or securing Borrower's Liabilities and will promptly pay or cause to be paid to Lender when due the principal with interest thereon and all other sums required to be paid by Mortgagor pursuant to the Note, this Mortgage, every other Loan Instrument and every other instrument evidencing or securing Borrower's Liabilities.

1.02 **General Covenants and Representations.** Mortgagor covenants and represents that as of the date hereof and at all times thereafter during the term hereof: (a) Mortgagor is seized of an indefeasible estate in fee simple in that portion of the Mortgaged Property which is real property, and has good and absolute title to it and the balance of the Mortgaged Property free and clear of all liens, security interests, charges and encumbrances whatsoever except those described in **Exhibit C**, if any (the "**Permitted Encumbrances**"); (b) Mortgagor has good right, full power and lawful authority to mortgage and pledge the Mortgaged Property as provided herein; (c) upon the occurrence of an Event of Default, Lender may at all times peaceably and quietly enter upon, hold, occupy and enjoy the Mortgaged Property in accordance with the terms hereof; and (d) Mortgagor will maintain and preserve the lien of this Mortgage as a first and paramount lien on the Mortgaged Property subject only to the Permitted Encumbrances until Borrower's Liabilities have been paid in full.

1.03 **Compliance with Laws and Other Restrictions.** Mortgagor covenants that, to the best of Beneficiary's knowledge, the Land and Improvements and the use thereof presently comply, and Mortgagor will take such action during the full term of this

Mortgage as is necessary to cause the Land and the Improvements and the use thereof to comply, with all applicable restrictive covenants, zoning and subdivision ordinances and building codes, licenses, health and environmental laws and regulations and all other applicable laws, ordinances, rules and regulations. If any federal, state or other governmental body or any court issues any notice or order to the effect that the Mortgaged Property or any part thereof is not in compliance with any such covenant, ordinance, code, law or regulation, Mortgagor will promptly provide Lender with a copy of such notice or order and will immediately commence and diligently perform all such actions as are necessary to comply therewith or otherwise correct such non-compliance. Mortgagor covenants and represents that, to the best of Beneficiary's knowledge, the improvements forming part of the Mortgaged Property and the current use of the Mortgaged Property comply with all applicable zoning laws and regulations, including without limitation set-back and parking requirements or they are permitted non-conforming structures and use; and it shall constitute an Event of Default hereunder, entitling Lender to declare the Note secured hereby immediately due and payable, if the improvements forming part of the Mortgaged Property or the use of the Mortgaged Property is at any time determined to be in violation of any applicable zoning laws or regulations. For the purposes of this paragraph, either of the following shall be considered a determination of non-compliance with zoning laws and regulations: (a) formal determination by any governmental authority of such non-compliance, if the effect of such determination is not stayed within thirty (30) days by the commencement of an appropriate administrative or judicial appeal; or (b) a judgment by a court of competent jurisdiction of such non-compliance, if the effect of such judgment is not stayed within thirty (30) days by the commencement of an appropriate judicial appeal. Mortgagor shall not, without the prior written consent of Lender, petition for or otherwise seek any change in the zoning ordinances or other public or private restrictions applicable to the Mortgaged Property on the date hereof.

1.04 **Taxes and Other Charges.**

1.04.1 **Taxes and Assessments.** Mortgagor shall pay promptly when due all taxes, assessments, rates, dues, charges, fees, levies, fines, impositions, liabilities, obligations, liens and encumbrances of every kind and nature whatsoever now or hereafter imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon or against this Mortgage or Borrower's Liabilities or upon or against the interest of Lender in the Mortgaged Property, as well as all taxes, assessments and other governmental charges levied and imposed by the United States of America or any state, county, municipality or other taxing authority upon or in respect of the Mortgaged Property or any part thereof; provided, however, that unless compliance with applicable laws requires that taxes, assessments or other charges must be paid as a condition to protesting or contesting the amount thereof, Mortgagor may in good faith, by appropriate proceedings commenced

within ninety (90) days of the due date of such amounts and thereafter diligently pursued, contest the validity, applicability or amount of any asserted tax, assessment or other charge and pending such contest Mortgagor shall not be deemed in default hereunder if on or before the due date of the asserted tax or assessment, Mortgagor shall deposit and maintain with Lender either, at Mortgagor's option, (i) a bond or other security satisfactory to Lender in the amount of one hundred fifty percent (150%) of the amount of such tax or assessment or (ii) an endorsement to Lender's loan title insurance policy insuring over such asserted tax or assessment. Mortgagor shall pay the disputed or contested tax, assessment or other charge and all interest and penalties due in respect thereof on or before the date any adjudication of the validity or amount thereof becomes final and in any event no less than thirty (30) days prior to any forfeiture or sale of the Mortgaged Property by reason of such non-payment. Upon Lender's request, Mortgagor will promptly file, if it has not theretofore filed, such petition, application or other instrument as is necessary to cause the Land and Improvements to be taxed as a separate parcel or parcels which include no property not a part of the Mortgaged Property.

1.04.2 **Taxes Affecting Lender's Interest.** If any state, federal, municipal or other governmental law, order, rule or regulation, which becomes effective 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 impose on Lender a tax by reason of its ownership of any or all of the Loan Instruments or measured by the principal amount of the Note, require or have the practical effect of requiring Lender to pay any portion of the real estate taxes levied in respect of the Mortgaged Property to pay any tax levied in whole or in part in substitution for real estate taxes or otherwise affects materially and adversely the rights of Lender in respect of the Note, this Mortgage or the other Loan Instruments, Borrower's Liabilities and all interest accrued thereon shall, upon thirty (30) days' notice, become due and payable forthwith at the option of Lender, whether or not there shall have occurred an Event of Default, provided, however, that, if Mortgagor may, without violating or causing a violation of such law, order, rule or regulation, pay such taxes or other sums as are necessary to eliminate such adverse effect upon the rights of Lender and does pay such taxes or other sums when due, Lender may not elect to declare due Borrower's Liabilities by reason of the provisions of this Paragraph 1.04.2. In the event that, pursuant to this Paragraph 1.04.2, Lender elects to declare Borrower's Liabilities to be due and payable, no Premium shall be due under Paragraph 1.2(b) of the Note with respect to payment by Mortgagor of Borrower's Liabilities by reason thereof.

1.04.3 **Tax Escrow.** Mortgagor shall, in order to secure the performance and discharge of Mortgagor's obligations under this Paragraph 1.04, but not in lieu of such obligations, deposit with

Lender on the first day of each calendar month throughout the term of the Loan, deposits, in amounts set by Lender from time to time by written notice to Mortgagor, in order to accumulate funds sufficient to permit Lender to pay all annual ad valorem taxes, assessments and charges of the nature described in Paragraph 1.04.1 at least thirty (30) days prior to the date or dates on which they shall become delinquent. The taxes, assessments and charges for purposes of this Paragraph 1.04.3 shall, if Lender so elects, include, without limitation, water and sewer rents. Mortgagor shall procure and deliver to Lender when issued all statements or bills for such obligations. Upon demand by Lender, Mortgagor shall deliver to Lender such additional monies as are required to satisfy any deficiencies in the amounts necessary to enable Lender to pay such taxes, assessments and similar charges thirty (30) days prior to the date they become delinquent. Lender shall pay such taxes, assessments and other charges as they become due to the extent of the funds on deposit with Lender from time to time and provided Mortgagor has delivered to Lender the statements or bills therefor. In making any such payments, Lender shall be entitled to rely on any bill issued in respect of any such taxes, assessments or charges without inquiry into the validity or amount thereof and whether delivered to Lender by Mortgagor or otherwise obtained by Lender. Any deposits received pursuant to this Paragraph 1.04.3 shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Lender and Lender shall have no obligation to pay interest on amounts deposited with Lender pursuant to this Paragraph 1.04.3. If any Event of Default occurs any part or all of the amounts then on deposit or thereafter deposited with Lender under this Paragraph 1.04.3 may at Lender's option be applied to payment of Borrower's Liabilities in such order as Lender may determine.

1.04.4 **No Credit Against the Indebtedness Secured Hereby.** Mortgagor shall not claim, demand or be entitled to receive any credit against the principal or interest payable under the terms of the Note or on any of Borrower's Liabilities for any of the taxes, assessments or similar impositions assessed against the Mortgaged Property or any part thereof or that are applicable to Borrower's Liabilities or to Lender's interest in the Mortgaged Property.

1.05 **Mechanic's and Other Liens.** Mortgagor shall not permit or suffer any mechanic's, laborer's, materialman's, statutory or other lien or encumbrance (other than any lien for taxes and assessments not yet due and payable) to be created upon or against the Mortgaged Property, provided, however, that Mortgagor may in good faith, by appropriate proceeding, contest the validity, applicability or amount of any asserted lien and, pending such contest, Mortgagor shall not be deemed to be in default hereunder if Mortgagor shall first deposit and maintain with Lender either, at Mortgagor's option, (i) a bond or other security satisfactory to Lender in an amount equal to one hundred fifty percent (150%) of the amount of such lien plus all accrued interest

thereon or (ii) an endorsement to Lender's loan title insurance policy insuring over such asserted lien and interest thereon. Accordingly, Mortgagor shall increase the amount of such security from time to time as is necessary to maintain such security at one hundred fifty percent (150%) of the lien amount and all interest thereon. Mortgagor shall pay the disputed amount and all interest and penalties due in respect thereof on or before the date any adjudication of the validity or amount thereof becomes final and, in any event, no less than thirty (30) days prior to any foreclosure sale of the Mortgaged Property or the exercise of any other remedy by such claimant against the Mortgaged Property.

1.06 **Insurance and Condemnation.**

1.06.1 **Hazard Insurance.** Mortgagor shall, at its sole expense, obtain for, deliver to, assign to and maintain for the benefit of Lender, until Borrower's Liabilities are paid in full, policies of hazard insurance in an amount which shall be not less than 100% of the full insurable replacement cost of the Mortgaged Property (other than the Land) insuring on a replacement cost basis the Mortgaged Property and the Tangible Goods (as defined in the Security Agreement of even date herewith between Lender and Beneficiary) against loss or damage on an "All Risks" form, such insurable hazards, casualties and contingencies as Lender may require, including without limitation fire, windstorm, rainstorm, vandalism and, if all or any part of the Mortgaged Property shall at any time be located within an area identified by the government of the United States or any agency thereof as having special flood hazards and for which flood insurance is available, flood insurance. Mortgagor shall pay promptly when due any premiums on such insurance policies and on any renewals thereof. The form of such policies and the companies issuing them shall be acceptable to Lender. If any such policy shall contain a co-insurance clause it shall also contain an agreed amount or stipulated value endorsement. All such policies and renewals thereof shall be held by Lender and shall contain a standard mortgagee's endorsement making losses payable to Lender. No additional parties shall appear in the mortgage clause without Lender's prior written consent. In the event of loss, Mortgagor will give immediate written notice to Lender and Lender may make proof of loss if not made promptly by Mortgagor (for which purpose Mortgagor hereby irrevocably appoints Lender as its attorney-in-fact). In the event of the foreclosure of this Mortgage or any other transfer of title to the Mortgaged Property in full or partial satisfaction of Borrower's Liabilities, all right, title and interest of Mortgagor in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee to the extent such policies are assignable. All such policies shall provide that they shall not be modified, cancelled or terminated without at least thirty (30) days' prior written notice to Lender from the insurer.

1.06.2 **Other Insurance.** Mortgagor shall, at its sole expense, obtain for, deliver to, assign to and maintain for the

benefit of, Lender, until Borrower's Liabilities are paid in full, (i) a general liability insurance policy of not less than $1,000,000, (ii) a loss of rentals and/or business interruption insurance policy (in an amount equal to not less than one year's gross rent or gross income for a fully leased or fully operational building) and (iii) such other insurance policies relating to the Mortgaged Property and the Tangible Goods and the use and operation thereof, including dramshop and workmen's compensation insurance, in such amounts as may be reasonably required by Lender and with such companies and in such form as may be acceptable to Lender. Lender, by written demand upon Mortgagor, may require such policies to contain an endorsement, in form satisfactory to Lender, naming Lender as the loss payee thereunder.

1.06.3 **Adjustment of Loss.** Lender is hereby authorized and empowered, at its option, to adjust or compromise any loss of more than $150,000 under any insurance policies covering or relating to the Mortgaged Property or the Tangible Goods and to collect and receive the proceeds from any such policy or policies (and deposit such proceeds as provided in Paragraph 1.06.5). Mortgagor hereby irrevocably appoints Lender as its attorney-in-fact for the purposes set forth in the preceding sentence. Each insurance company is hereby authorized and directed to make payment (i) of 100% of all such losses of more than said amount directly to Lender alone and (ii) of 100% of all such losses of said amount or less directly to Mortgagor alone, and in no case to Mortgagor and Lender jointly. After deducting from such insurance proceeds any reasonable expenses incurred by Lender in the collection and settlement thereof, including without limitation attorneys' and adjusters' fees and charges, Lender shall apply the net proceeds as provided in Paragraph 1.06.5. Lender shall not be responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure, unless such failure is caused by Lender's negligence or willful misconduct.

1.06.4 **Eminent Domain Awards.** Lender shall be entitled to all compensation, awards, damages, claims, rights of action and proceeds of, or on account of, (i) any damage or taking, pursuant to the power of eminent domain, of the Mortgaged Property or any part thereof, (ii) damage to the Mortgaged Property by reason of the taking, pursuant to the power of eminent domain, of other property, or (iii) the alteration of the grade of any street or highway on or about the Mortgaged Property. Lender is hereby authorized, at its option, to commence, appear in and prosecute in its own or Mortgagor's name any action or proceeding relating to any such compensation, awards, damages, claims, rights of action and proceeds and to settle or compromise any claim in connection therewith. Mortgagor hereby irrevocably appoints Lender as its attorney-in-fact for the purposes set forth in the preceding sentence. Lender after deducting from such compensation, awards, damages, claims, rights of action and proceeds all its reasonable expenses, including attorneys' fees, shall apply such net proceeds

as provided in Paragraph 1.06.5 of this Mortgage. Mortgagor agrees to execute such further assignments of any compensation awards, damages, claims, rights of action and proceeds as Lender may require.

1.06.5 **Repair; Proceeds of Casualty Insurance and Eminent Domain.** Subject to the limitations set forth below, if all or any part of the Mortgaged Property shall be damaged or destroyed by fire or other casualty or shall be damaged or taken through the exercise of the power of eminent domain or other cause described in Paragraph 1.06.4, Mortgagor shall promptly and with all due diligence restore and repair the Mortgaged Property whether or not the proceeds, award or other compensation are sufficient to pay the cost of such restoration or repair. In the event that the proceeds of insurance (other than business interruption or rental insurance), award or other compensation is equal to or less than $100,000, such proceeds, award or other compensation shall be made available to Mortgagor on the terms and conditions set forth in this Paragraph 1.06.5 to finance the cost of restoration or repair with any excess to be applied to Borrower's Liabilities in such order and manner as Lender may elect. In the event such proceeds, awards or other compensation is greater than said amount, then at Lender's election, to be exercised by written notice to Mortgagor within thirty (30) days following Lender's unrestricted receipt in cash or the equivalent thereof of said proceeds, award or other compensation, the entire amount of said proceeds, award or compensation shall either (i) be applied to Borrower's Liabilities in such order and manner as Lender may elect or (ii) be made available to Mortgagor on the terms and conditions set forth in this Paragraph 1.06.5 to finance the cost of restoration or repair with any excess to be applied to Borrower's Liabilities, provided that Lender agrees to make such proceeds, award or other compensation available to Mortgagor under the preceding clause (ii) if the amount thereof is less than $1,000,000 and Lender reasonably estimates that the Mortgaged Property can be restored and repaired prior to three (3) months prior to the Maturity Date. In the event Lender elects to apply such proceeds, award or other compensation to Borrower's Liabilities pursuant to the preceding clause (i), no Premium shall be due under Paragraph 1.2(c) of the Note with respect to the amount so applied unless there is an Event of Default which remains uncured at the time of such application, in which case Mortgagor shall pay the premium so provided for in Paragraph 1.2(c) of the Note. If the amount of proceeds to be made available to Mortgagor pursuant to this Paragraph 1.06.5 is less than the cost of the restoration or repair as estimated by Lender at any time prior to completion thereof, Mortgagor shall cause to be deposited with Lender the amount of such deficiency within thirty (30) days of Lender's written request therefor (but in no event later than the commencement of the work) and Mortgagor's deposited funds shall be disbursed prior to any such insurance proceeds. If Mortgagor is required to deposit funds under this Paragraph 1.06.5, the deposit of such funds shall be a condition precedent to Lender's obligation to disburse any insurance proceeds

held by Lender hereunder. The amount of proceeds, award or compensation which is to be made available to Mortgagor, together with any deposits made by Mortgagor hereunder, shall be held by Lender to be disbursed from time to time to pay the cost of repair or restoration either, at Lender's option, to Mortgagor or directly to contractors, subcontractors, material suppliers and other persons entitled to payment in accordance with and subject to such conditions to disbursement as Lender may impose to assure that the work is fully completed in a good and workmanlike manner and paid for and that no liens or claims arise by reason thereof. Lender may commingle any such funds held by it with its other general funds. Lender shall not be obligated to pay interest in respect of any such funds held by it nor shall Mortgagor be entitled to a credit against any of Borrower's Liabilities except and to the extent the funds are applied thereto pursuant to this Paragraph 1.06.5. Notwithstanding any other provision of this Paragraph 1.06.5, if an Event of Default shall be existing at the time of such casualty, taking or other event or if an Event of Default occurs thereafter, Lender shall have the right to immediately apply all insurance proceeds, awards or compensation to the payment of Borrower's Liabilities in such order and manner as Lender may determine. Lender shall have the right at all times to apply such net proceeds to the cure of any Event of Default or the performance of any obligations of Mortgagor or Beneficiary under the Loan Instruments.

1.06.6 **Proceeds of Business Interruption and Rental Insurance.** The net proceeds of business interruption and rental insurance shall be paid to Lender for application first to Borrower's Liabilities in such order and manner as Lender may elect and then to the creation of reserves for future payments of Borrower's Liabilities in such amounts as Lender deems necessary with the balance to be remitted to Mortgagor subject to such controls as Lender may deem necessary to assure that said balance is used to discharge accrued and to be accrued expenses of operation and maintenance of the Mortgaged Property.

1.06.7 **Renewal of Policies.** At least fifteen (15) days prior to the expiration date of any policy evidencing insurance required under this Paragraph 1.06.7, a renewal thereof satisfactory to Lender shall be delivered to Lender or in substitution therefor, receipts or other evidence of the payment of any premiums then due on such renewal policy or substitute policy.

1.06.8 **Insurance Escrow.** Mortgagor shall, in order to secure the performance and discharge of Mortgagor's obligations under this Paragraph 1.06, but not in lieu of such obligations, deposit with Lender on the first day of each calendar month throughout the term of the Loan, a sum in an amount determined by Lender from time to time by written notice to Mortgagor, in order to accumulate funds sufficient to permit Lender to pay all premiums payable in connection with the insurance required hereunder at least thirty (30) days prior to the date or dates on which they shall become due. Upon demand by Lender, Mortgagor shall deliver

to Lender such additional monies as are required to satisfy any deficiencies in the amounts necessary to enable Lender to pay such premiums thirty (30) days prior to the date they shall become due.

1.07 **Non-Impairment of Lender's Rights.** Nothing contained in this Mortgage shall be deemed to limit or otherwise affect any right or remedy of Lender under any provision of this Mortgage or of any statute or rule of law to pay and, upon Mortgagor's failure to pay the same, Lender may pay any amount required to be paid by Mortgagor under Paragraphs 1.04, 1.05 and 1.06. Mortgagor shall pay to Lender on demand the amount so paid by Lender together with interest at the Default Rate (as defined in the Note), and the amount so paid by Lender shall be added to Borrower's Liabilities. The provisions of Paragraph 1.04.3 are solely for the added protection of Lender and entail no responsibility on Lender's part beyond the allowing of due credit as specifically provided therein. Upon assignment of this Mortgage, any funds on hand shall be turned over to the assignee and, provided the assignee shall assume Lender's responsibilities with respect to such funds, any responsibility of Lender with respect to such funds shall terminate so long as Lender shall notify Mortgagor in writing of any such assignment of such funds.

1.08 **Care of the Mortgaged Property.**

(a) Mortgagor shall preserve and maintain the Mortgaged Property in good condition and repair. Mortgagor shall not, without the prior written consent of Lender, permit, commit or suffer any waste, impairment or deterioration of the Mortgaged Property or of any part thereof, and will not take any action which will increase the risk of fire or other hazard to the Mortgaged Property or to any part thereof.

(b) Except as otherwise provided in this Mortgage, no new improvements shall be constructed on the Mortgaged Property and no part of the Mortgaged Property shall be removed, demolished or altered in any material manner without the prior written consent of Lender.

1.09 **Transfer or Encumbrance of the Mortgaged Property.** Mortgagor shall not permit or suffer to occur any sale, assignment, conveyance, transfer, mortgage, lease (other than leases made in accordance with the provisions of this Mortgage) or encumbrance of or in, or any contract for any of the foregoing on an installment basis or otherwise (any such transaction and any transaction included in clauses (a) through (d) below and not excepted therefrom, being referred to as a "**Restricted Transaction**") pertaining to, the Mortgaged Property, any part thereof, any interest therein, any interest in the beneficial interest in Mortgagor or in any other trust holding title to the Mortgaged Property, whether by operation of law or otherwise, without the prior written consent of Lender having been obtained (i) to the specific Restricted Transaction and (ii) to the form and substance

of any instrument evidencing or contracting for any such Restricted Transaction. Without limitation of the foregoing, Mortgagor shall not permit any of the following to occur without the prior written consent of Lender having been obtained thereto:

(a) The sale, transfer or pledge of the interest of SW/RS&P Limited Partnership, an Illinois limited partnership (**"SW/RS&P"**), as general partner of Beneficiary, any of the stock of SW/RS&P, Inc., an Illinois corporation (**"SW, Inc."**), or more than 16 1/2% (of the total 67 1/2%) interest in SW/RS&P, owned by Robert Sheridan, unless the transfer:

(i) occurs after the death of an individual and is to the individual's spouse or lineal descendants;

(ii) is from an individual into a trust, which is and which remains controlled by the individual, for the sole benefit of the individual's spouse or lineal descendants;

(iii) is from an individual into a limited partnership in which the individual is and remains the sole general partner and the limited partners are and remain the individual's spouse or lineal descendants; or

(iv) is to an entity which is and which remains wholly owned and controlled by the transferor.

(b) The sale, transfer or pledge of the limited partnership interest of BOMAT Investments, a Nevada general partnership (**"BOMAT"**), in Beneficiary, or any interest of any general partner of BOMAT, unless such sale, transfer or pledge is:

(i) to any trust which has Robert D. Burch as its sole trustee and has and continues to have Peter S. Bing and/or lineal descendants of Peter S. Bing as its sole beneficiary, or to any partnership whose sole partners are and remain such a trust;

(ii) to any partnership whose sole partners are and remain Peter S. Bing and/or lineal descendants of Peter S. Bing; or

(iii) to Peter S. Bing and/or lineal descendants of Peter S. Bing;

(c) Any additional partnership or equity interests in Beneficiary, SW/RS&P, or BOMAT are created;

(d) Either of the partnership agreements of Beneficiary or SW/RS&P is materially modified in respect

of distributions, decision-making authority, control or any other material provision thereof.

The occurrence of any Restricted Transaction without Lender's prior written consent shall constitute an Event of Default as hereinafter defined. Mortgagor and Beneficiary hereby covenant to promptly provide such documents as Lender may reasonably require, demonstrating compliance with the aforementioned restrictions on transfer and organization.

To the extent Lender's consent is required, and Lender consents to any Restricted Transactions, Lender may condition its consent to any one or more of the following: (i) the payment of a fee to be set by Lender; (ii) the increase of the interest rate payable under the Note; (iii) the shortening of the maturity of the Note; and (iv) other modifications of the terms of the Note or the other Loan Instruments. Any consent by Lender to a mortgage, creation of a security interest or other encumbrance shall not, unless otherwise expressly agreed by Mortgagor in writing, constitute consent to a transfer by reason of the foreclosure or other realization upon such mortgage, security interest or other encumbrance. Mortgagor shall not, without the prior written consent of Lender, further assign or permit to be assigned the rents from the Mortgaged Property, and any such assignment without the prior express written consent of Lender shall be null and void. Mortgagor shall not permit any interest in any lease of the Mortgaged Property to be subordinated to any encumbrance on the Mortgaged Property other than the Loan Instruments and any such subordination shall be null and void. Mortgagor agrees that in the event the ownership of the Mortgaged Property, any interest therein or any part thereof is or becomes vested in a person other than Mortgagor, Lender may, without notice to Mortgagor, deal, with respect to such property, in any way with such successor or successors in interest with reference to this Mortgage, the Note, the Loan Instruments and Borrower's Liabilities without in any way vitiating or discharging Mortgagor's liability hereunder or Borrower's Liabilities. No sale of the Mortgaged Property, no forbearance to any person with respect to this Mortgage, and no extension to any person of the time for payment of the Note or any other Borrower's Liabilities given by Lender shall operate to release, discharge, modify, change or affect the original liability of Mortgagor, either in whole or in part, except to the extent specifically agreed in writing by Lender. Mortgagor shall not permit the Mortgaged Property or any portion thereof to be submitted to the Condominium Property Act of the State of Illinois by filing a Declaration of Condominium Ownership or otherwise.

1.10 **Further Assurances.** At any time and from time to time, upon Lender's request, Mortgagor shall make, execute and deliver, or cause to be made, executed and delivered, to Lender, and where appropriate shall cause to be recorded, registered or filed, and from time to time thereafter to be re-recorded, re-registered and refiled at such time and in such offices and

places as shall be deemed desirable by Lender, any and all such further mortgages, security agreements, financing statements, instruments of further assurance, certificates and other documents as Lender may consider necessary or desirable in order to effectuate or perfect, or to continue and preserve the obligations under, the Note, this Mortgage, any other Loan Instrument and any instrument evidencing or securing Borrower's Liabilities, and the lien of this Mortgage as a lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by Mortgagor, and unto all and every person or persons deriving any estate, right, title or interest under this Mortgage. Upon any failure by Mortgagor to do so within twenty-one (21) days after request therefor by Lender, Lender may make, execute, record, register, file, re-record, re-register or re-file any and all such mortgages, instruments, certificates and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Lender the agent and attorney-in-fact of Mortgagor to do so.

1.11 **Security Agreement and Financing Statements.**

(a) Mortgagor (as debtor) hereby grants to Lender (as creditor and secured party) a security interest under the Uniform Commercial Code in Mortgagor's right, title and interest in all fixtures, machinery, appliances, equipment, furniture and personal property of every nature whatsoever constituting part of the Mortgaged Property. Mortgagor shall execute any and all documents, including without limitation financing statements pursuant to the Uniform Commercial Code, as Lender may request to preserve, maintain and perfect the priority of the first lien and security interest 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. Mortgagor hereby authorizes and empowers Lender and irrevocably appoints Lender the agent and attorney-in-fact of Mortgagor to execute and file, on Mortgagor's behalf, all financing statements and refilings and continuations thereof as Lender deems necessary or advisable to create, preserve and protect such lien; provided, however, that Lender agrees that it shall not exercise the power of attorney granted in this Paragraph 1.11(a) until twenty-one (21) days after Lender has requested Mortgagor to so execute and file. When and if Mortgagor and Lender shall respectively become the debtor and secured party in any Uniform Commercial Code financing statement affecting the Mortgaged Property (or Lender takes possession of personal property delivered by Mortgagor where possession is the means of perfection of the security interest), then, at Lender's sole election, this Mortgage shall be deemed a security agreement as defined in such Uniform Commercial Code, and the remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall be as prescribed herein or by general law, or, as to such part of the security which is also reflected in such financing statement, by the specific statutory consequences

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now or hereafter enacted and specified in the Uniform Commercial Code.

(b) Without limitation of the foregoing, if an Event of Default occurs, Lender shall be entitled immediately to exercise all remedies available to it under the Uniform Commercial Code and this Paragraph 1.11. Mortgagor shall, in such event and if Lender so requests, assemble the tangible personal property at Mortgagor's expense, at a convenient place designated by Lender. Mortgagor shall pay all expenses incurred by Lender in the collection of such indebtedness, including reasonable attorneys' fees and legal expenses, and in the repair of any real estate or other property to which any of the tangible personal property may be affixed. If any notification of intended disposition of any of the personal property is required by law, such notification shall be deemed reasonable and proper if given at least ten (10) days before such disposition. Any proceeds of the disposition of any of the personal property may be applied by Lender to the payment of the reasonable expenses of retaking, holding, preparing for sale and selling the personal property, including reasonable attorneys' fees and legal expenses, and any balance of such proceeds may be applied by Lender toward the payment of such of Borrower's Liabilities, and in such order of application, as Lender may from time to time elect. If an Event of Default occurs, Lender shall have the right to exercise and shall automatically succeed to all rights of Mortgagor with respect to intangible personal property subject to the security interest granted herein. Any party to any contract subject to the security interest granted herein shall be entitled to rely on the rights of Lender without the necessity of any further notice or action by Beneficiary. Lender shall not by reason of this Mortgage or the exercise of any right granted hereby be obligated to perform any obligation of Mortgagor with respect to any portion of the personal property nor shall Lender be responsible for any act committed by the Mortgagor, or any breach or failure to perform by the Mortgagor with respect to any portion of the personal property.

(c) Mortgagor and Lender agree that the filing of a financing statement in the records normally having to do with personal property shall never be construed as in any way 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 Mortgaged Property and/or adapted for use therein and/or which is described or reflected in this Mortgage is, and at all times and for all purposes and in all proceedings, legal or equitable, shall be regarded as part of the real estate encumbered by this Mortgage irrespective of whether (i) any such item is physically attached to the Land or 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) Mortgagor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Mortgaged Property, whether pursuant to lease or otherwise, shall never be construed as in any way altering any of the rights of Lender as determined by this instrument or adversely affecting the priority of Lender's lien granted hereby or by any other recorded document. Any such mention in any such financing statement is declared to be for the protection of Lender in the event any court or judge shall at any time hold with respect to clauses (1), (2) or (3) above, that notice of 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 the Uniform Commercial Code records.

1.12 **Assignment of Rents.**

(a) The assignment of rents, income and other benefits contained in Paragraph (G) of this Mortgage shall be fully operative without any further action on the part of either party, and, specifically, Lender shall be entitled, at its option, upon the occurrence of an Event of Default hereunder, to all rents, income and other benefits from the Mortgaged Property, whether or not Lender takes possession of such property. Mortgagor hereby further grants to Lender the right effective upon the occurrence of an Event of Default to do any or all of the following, at Lender's option: (i) enter upon and take possession of the Mortgaged Property for the purpose of collecting the rents, income and other benefits, (ii) dispossess by the usual summary proceedings any tenant defaulting in the payment thereof to Lender, (iii) lease the Mortgaged Property or any part thereof, (iv) repair, restore and improve the Mortgaged Property, and (v) apply the rents, income and other benefits, after payment of all expenses and capital expenditures relating to the Mortgaged Property, on account of Borrower's Liabilities in such order and manner as Lender may elect. Such assignment and grant shall continue in effect until Borrower's Liabilities are paid in full, the execution of this Mortgage constituting and evidencing the irrevocable consent of Mortgagor to the entry upon and taking possession of the Mortgaged Property by Lender pursuant to such grant, whether or not foreclosure proceedings have been instituted. Neither the exercise of any rights under this paragraph by Lender nor the application of any such rents, income or other benefits to payment of Borrower's Liabilities shall cure or waive any Event of Default or notice provided for hereunder, or invalidate any act done pursuant hereto or pursuant to any such notice, but shall be cumulative of all other rights and remedies. Notwithstanding the foregoing, so long as no Event of Default has occurred or is continuing, Mortgagor shall have the right and authority to continue to collect the rents, income and other benefits from the Mortgaged Property as they become due and payable but not more than thirty (30) days

prior to the due date thereof. The existence or exercise of such right of Mortgagor to collect said rents, income and other benefits shall not operate to subordinate this assignment to any subsequent assignment of said rents, income or other benefits, in whole or in part, by Mortgagor, and any such subsequent assignment by Mortgagor shall be subject to the rights of Lender hereunder. Mortgagor and Beneficiary have executed and delivered to Lender an Assignment of Leases and Rents of even date herewith, and, to the extent that the provisions of this Paragraph 1.12 or Paragraph 1.14 are inconsistent with the provisions of said Assignment of Leases and Rents, the provisions of said Assignment of Leases and Rents shall control.

(b) Mortgagor shall not permit any rent under any lease of the Mortgaged Property to be collected more than thirty (30) days in advance of the due date thereof and, upon any receiver, Lender, anyone claiming by, through or under Lender or any purchaser at a foreclosure sale coming into possession of the Mortgaged Property, no tenant shall be given credit for any rent paid more than thirty (30) days in advance of the due date thereof. Mortgagor shall act promptly to enforce all available remedies against any delinquent lessee so as to protect the interest of the lessor under the leases and to preserve the value of the Mortgaged Property.

1.13 **After-Acquired Property.** To the extent permitted by, and subject to, applicable law, the lien of this Mortgage, including without limitation the security interest created under Paragraph 1.11, shall automatically attach, without further act, to all property hereafter acquired by Mortgagor located in or on, or attached to, or used or intended to be used in connection with, or with the operation of, the Mortgaged Property or any part thereof.

1.14 **Leases Affecting Mortgaged Property.**

(a) Mortgagor shall comply with and perform in a complete and timely manner all of its obligations as landlord under all leases affecting the Mortgaged Property or any part thereof. Mortgagor shall give notice to Lender of any material default by the landlord under any lease affecting the Mortgaged Property promptly upon the occurrence of such default, but, in any event, in such time to afford Lender an opportunity to cure any such default prior to the tenant having any right to terminate the lease. Each future lease entered into with respect to the Mortgaged Property shall contain a provision requiring the tenant to notify Lender of any default by landlord and granting an opportunity for a reasonable time after such notice to cure such default prior to any right accruing to the tenant to terminate such lease. Mortgagor, if requested by Lender, shall furnish promptly to Lender (i) original or certified copies of all such leases now existing or hereafter created, as amended, and (ii) a current rent roll in form reasonably satisfactory to Lender. Lender shall have

the right to notify at any time and from time to time any tenant of the Mortgaged Property of any provision of this Mortgage.

(b) The assignment contained in Paragraph (H) of the Granting Clauses shall not be deemed to impose upon Lender any of the obligations or duties of the landlord or Mortgagor provided in any 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 joined as a party defendant in any action to foreclose this Mortgage. Mortgagor hereby acknowledges and agrees that Mortgagor is and will remain liable under such leases to the same extent as though the assignment contained in Paragraph (H) of the Granting Clauses had not been made. Lender disclaims any assumption of the obligations imposed upon the landlord or Mortgagor under the leases, except as to such obligations which arise after such time as Lender shall have exercised the rights and privileges conferred upon it by the assignment contained in Paragraph (H) of the Granting Clauses and assumed full and indefeasible ownership of the collateral thereby assigned. With respect to the assignment contained in Paragraph (H) of the Granting Clauses, Mortgagor shall, from time to time upon request of Lender, specifically assign to Lender as additional security hereunder, by an instrument in writing in such form as may be approved by Lender, all right, title and interest of Mortgagor in and to any and all leases now or hereafter of or affecting the Mortgaged Property or any part thereof together with all security therefor and all monies payable thereunder, subject to the conditional permission hereinabove given to Mortgagor to collect the rentals under such lease. Mortgagor 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 lease. The provisions of this Paragraph 1.14 shall be subject to the provisions of Paragraph (H) of the Granting Clauses.

1.15 **Management of Mortgaged Property.** Mortgagor shall cause the Mortgaged Property to be managed at all times in accordance with sound business practices, by a competent and reputable management agent acceptable to Lender, pursuant to a management agreement approved by Lender in advance of execution thereof by Mortgagor, Beneficiary, or anyone acting on behalf of either of them. Following such approval, Mortgagor shall not permit the management agreement to be terminated (except for good cause after notice to Lender), modified, amended or extended, or permit a change in the identity of the management agent, without Lender's prior written consent. Each management agreement shall be subject in all respects to the lien of this Mortgage and the right of Lender hereunder and each management agreement shall so provide. No approval of any management company shall impose any liability upon Lender for any act or omission of any such management company.

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1.16 **Execution of Leases.** Mortgagor shall not permit any leases to be made of the Mortgaged Property or existing leases to be renewed without the prior written consent of Lender as to the form and substance of each lease and the identity of each lessee. Mortgagor shall not permit any lease affecting the Mortgaged Property to be modified, terminated, renewed or extended, except pursuant to the terms thereof or with the prior written consent of Lender.

1.17 **Expenses.** Mortgagor shall pay when due and payable, and otherwise on demand made by Lender, all loan fees, appraisal fees, recording fees, taxes, brokerage fees and commissions, abstract fees, title insurance fees, escrow fees, reasonable attorneys' fees, court costs, documentary and expert evidence, fees of inspecting architects and engineers, and all other costs and expenses of every character which have been incurred or which may hereafter be incurred by Lender in connection with any of the following:

(a) The preparation, execution, delivery and performance of the Loan Instruments;

(b) The funding of the Loan;

(c) Any court or administrative proceeding involving the Mortgaged Property or the Loan Instruments to which Lender is made a party by reason of its being a holder of any of the Loan Instruments, including without limitation bankruptcy, insolvency, reorganization, probate, eminent domain, condemnation, building code and zoning proceedings;

(d) Any court or administrative proceeding or other action successfully undertaken by Lender to enforce any remedy or to collect any indebtedness due under this Mortgage or any of the other Loan Instruments following a default thereunder, including without limitation a foreclosure of this mortgage or a public or private sale under the Uniform Commercial Code;

(e) Any remedy exercised by Lender following an Event of Default including foreclosure of this Mortgage and actions in connection with taking possession of the Mortgaged Property or collecting rents assigned hereby and by the Assignment of Leases and Rents;

(f) Any activity in connection with any request by Mortgagor, Beneficiary or anyone acting on behalf of Mortgagor or Beneficiary that the Lender consent to a proposed action which, pursuant to this Mortgage or any of the other Loan Instruments may be undertaken or consummated only with the prior consent of Lender, whether or not such consent is granted; or

(g) Any negotiation undertaken between Lender and Mortgagor, Beneficiary or anyone acting on behalf of Mortgagor or Beneficiary pertaining to the existence or cure of any default under or the modification or extension of any of the Loan Instruments.

If Mortgagor fails to pay said costs and expenses as above provided, Lender may elect, but shall not be obligated, to pay the costs and expenses described in this Paragraph 1.16, and if Lender does so elect, then Mortgagor will, upon demand by Lender, reimburse Lender for all such expenses which have been or shall be paid or incurred by it. The amounts paid by Lender in respect of such expenses, together with interest thereon at the Default Rate (as defined in the Note) from the date paid by Lender until paid by Mortgagor, shall be added to Borrower's Liabilities, shall be immediately due and payable and shall be secured by the lien of this Mortgage and the other Loan Instruments. In the event of foreclosure hereof, Lender shall be entitled to add to the indebtedness found to be due by the court a reasonable estimate of such expenses to be incurred after entry of the decree of foreclosure. To the extent permitted by law, Mortgagor agrees to hold harmless Lender against and from, and reimburse it for, all claims, demands, liabilities, losses, damages, judgments, penalties, costs and expenses, including without limitation attorneys' fees (except any such matter caused by the gross negligence or willful misconduct of Lender), which may be imposed upon, asserted against, or incurred or paid by it by reason of or in connection with any bodily injury or death or property damage occurring in or upon or in the vicinity of the Mortgaged Property through any cause whatsoever, or asserted against it 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 Mortgaged Property, this Mortgage, the other Loan Instruments, any of the indebtedness evidenced by the Note or any of Borrower's Liabilities.

1.18 **Lender's Performance of Mortgagor's Obligations.** If Mortgagor fails to pay any tax, assessment, encumbrance or other imposition, or to furnish insurance hereunder, or to perform any other covenant, condition or term in this Mortgage, the Note or any other Loan Instrument, Lender may, after the expiration of any applicable cure period, but shall not be obligated to, pay obtain or perform the same. All payments made, whether such payments are regular or accelerated payments, and costs and expenses incurred or paid by Lender in connection therewith shall be due and payable immediately. The amounts so incurred or paid by Lender, together with interest thereon at the Default Rate (as defined in the Note) from the date paid by Lender until reimbursed by Mortgagor, shall be added to Borrower's Liabilities and secured by the lien of this Mortgage and the other Loan Instruments. After the occurrence of an Event of Default, Lender is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any covenant,

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condition or term that Mortgagor has failed to perform or observe, without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor. Performance or payment by Lender of any obligation of Mortgagor shall not relieve Mortgagor of such obligation or of the consequences of having failed to perform or pay the same and shall not effect the cure of any Event of Default.

1.19 **Payment of Superior Liens.** To the extent that Lender, after the date hereof, pays any sum due under any provision of law or instrument or document creating any lien superior or equal in priority in whole or in part to the lien of this Mortgage, Lender shall have and be entitled to a lien on the premises equal in parity with that discharged, and Lender shall be subrogated to and receive and enjoy all rights and liens possessed, held or enjoyed by the holder of such lien, which shall remain in existence and benefit Lender to secure the Note and all obligations and liabilities secured hereby. Lender shall be subrogated, notwithstanding their release of record, to mortgages, trust deeds, superior titles, vendors' liens, mechanics' and materialmen's liens, charges, encumbrances, rights and equities on the Mortgaged Property to the extent that any obligation under any thereof is paid or discharged with proceeds of disbursements or advances under the Note or other indebtedness secured hereby.

1.20 **Books and Records.** Mortgagor shall cause Beneficiary to keep and maintain at all times complete, true and accurate books of account and records reflecting the results of the operation of the Mortgaged Property. Mortgagor shall cause Beneficiary to furnish to Lender within one hundred twenty (120) days after the end of Beneficiary's fiscal year, financial statements pertaining to the Mortgaged Property in form reasonably satisfactory to Lender, including a statement of income and expenses with respect to the Mortgaged Property for the fiscal year, all such statements to be prepared in accordance with tax basis accounting principles consistently applied and certified by an independent certified public accountant satisfactory to Lender. Mortgagor shall also cause Beneficiary to furnish such interim unaudited financial statements and other information pertaining to the Mortgaged Property and the operation thereof as Lender may, from time to time, require. In the event that Mortgagor fails to comply with the requirements set forth above, Lender shall have the right to have Mortgagor's and Beneficiary's books and records audited by an independent certified public accountant, and the cost of such audit shall be the obligation of Mortgagor. Lender and its designated agents shall have the right to inspect Mortgagor's and Beneficiary's books and records with respect to the Mortgaged Property at all reasonable times. In the event of a foreclosure of this Mortgage, all of Mortgagor's and Beneficiary's books and records maintained in connection with the Mortgaged Property shall be made available to the successful bidder at the foreclosure sale for inspection and copying for a period of not less than three (3) years following said sale.

1.21 **Estoppel.** Mortgagor, within ten (10) days after written request from Lender, shall furnish a written statement executed by Mortgagor and Beneficiary setting forth the unpaid principal of, and interest on, the Note, and any other unpaid sums secured hereby, and whether or not any offsets or defenses are claimed to exist against the payment of such principal and interest or other sums and, if any such offsets or defenses are claimed, the specific basis and amount of each such claim. If Mortgagor objects to the principal, interest or escrow amount or the application of any payment shown on any written statement, receipt, invoice or other written notice received by Mortgagor, Beneficiary or any partner or officer of Mortgagor or Beneficiary, Mortgagor shall raise such objection by written notice to Lender within ninety (90) days following receipt of such statement, receipt, invoice or other written notice or else such objection shall be deemed waived by Mortgagor and such other parties.

1.22 **Use of the Mortgaged Property.** Subject to the applicable provisions of the Leases, Mortgagor shall not suffer or permit the Mortgaged Property, or any portion thereof, to be used for any purpose other than for commercial warehouse and office rental. Notwithstanding the foregoing, and except for Permitted Encumbrances, Mortgagor shall not suffer or permit the Mortgaged Property to be used by the public, as such, without restriction or in such manner as might reasonably tend to impair Mortgagor's title to the Mortgaged Property or any portion thereof, or in such manner as might reasonably make possible a claim or claims of easement by prescription or adverse possession by the public, as such, or of implied dedication of the Mortgaged Property or any portion thereof. Mortgagor shall not use or permit the use of the Mortgaged Property or any portion thereof for any unlawful or hazardous purpose.

1.23 **Litigation Involving Mortgaged Property.** Mortgagor shall promptly notify Lender of any material litigation, administrative procedure or proposed legislative action initiated against Mortgagor, Beneficiary or the Mortgaged Property or in which the Mortgaged Property is directly or indirectly affected including any proceedings which seek to (i) enforce any lien against the Mortgaged Property, (ii) correct, change or prohibit any existing condition, feature or use of the Mortgaged Property, (iii) condemn or demolish the Mortgaged Property, (iv) take, by the power of eminent domain, any portion of the Mortgaged Property or any property which would damage the Mortgaged Property, (v) modify the zoning applicable to the Mortgaged Property, or (vi) otherwise adversely affect the Mortgaged Property. Mortgagor shall initiate or appear in any legal action or other appropriate proceedings when necessary to protect the Mortgaged Property from damage. Mortgagor shall, upon written request of Lender, represent and defend the interests of Lender in any proceedings described in this Paragraph 1.23 or, at Lender's election, pay the fees and expenses of any

counsel retained by Lender to represent the interest of Lender in any such proceedings.

1.24 **Environmental Safety.**

(a) Mortgagor covenants and represents that there are, to the best of Beneficiary's knowledge except as otherwise expressly set forth in the Environmental Reports (as defined in the Indemnity), no, nor will there be for so long as any of Borrower's Liabilities remain outstanding any, Hazardous Materials (as hereinafter defined) generated, released, incorporated, stored, buried or deposited over, beneath, in or upon the Mortgaged Property except as otherwise set forth in Paragraph 1.24(b). For purposes of this Agreement, "**Hazardous Materials**" shall mean and include any flammable explosives, petroleum (including crude oil) or any fraction thereof, radioactive materials, hazardous wastes, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition of toxic or hazardous substances, wastes, or materials under any federal or applicable state or local laws, ordinances or regulations dealing with or otherwise pertaining to toxic or hazardous substances, wastes or materials. Such laws, ordinances and regulations are hereinafter collectively referred to as the "**Hazardous Materials Laws.**"

(b) Mortgagor shall, and Mortgagor shall cause all employees, agents, contractors and subcontractors of Mortgagor and any other persons from time to time present on or occupying the Mortgaged Property to, keep and maintain the Mortgaged Property, including the soil and ground water thereof, in compliance with, and not cause or knowingly permit the Mortgaged Property, including the soil and ground water thereof, to be in violation of, any applicable Hazardous Materials Laws. Neither Mortgagor nor any employees, agents, contractors or subcontractors of Mortgagor or any other persons occupying or present on the Mortgaged Property shall release, incorporate, use, generate, manufacture, store or dispose of in, on, under or about the Mortgaged Property or transport to or from the Mortgaged Property any Hazardous Materials. Notwithstanding anything to the contrary in the foregoing subparagraph (a) and this subparagraph (b) of this Paragraph 1.24, nothing herein shall be deemed to prevent, and it shall not constitute an Event of Default hereunder in the event of the use and storage of Hazardous Materials on the Mortgaged Property by any tenant under the Leases, provided that such use and storage (i) is permitted under such Lease as written as of even date herewith or as otherwise approved by Lender, and (ii) is in accordance with all applicable laws, ordinances and regulations, including without limitation all Hazardous Materials Laws. Mortgagor covenants and agrees that it shall implement and maintain the procedures and recommendations set forth in that certain report dated June 12, 1989 by Warzyn Engineering Inc., and shall submit reports to Lender not less frequently than annually as to the status of the matters addressed in said report.

(c) Mortgagor shall immediately advise Lender in writing of: (i) any notices received by Mortgagor (whether such notices are from the Environmental Protection Agency, or any other federal, state or local governmental agency or regional office thereof) of the violation or potential violation occurring on or about the Mortgaged Property of any applicable Hazardous Materials Laws; (ii) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened pursuant to any Hazardous Materials Laws; (iii) all claims made or threatened by any third party against Mortgagor or the Mortgaged Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i), (ii) and (iii) above are hereinafter referred to as "**Hazardous Materials Claims**"); and (iv) Mortgagor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Mortgaged Property that could cause the Mortgaged Property or any part thereof to be subject to any Hazardous Materials Claims. Lender shall have the right but not the obligation to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and Mortgagor shall pay to Lender, upon demand, all reasonable attorneys' and consultants' fees incurred by Lender in connection therewith.

(d) Mortgagor shall be responsible for, and shall indemnify and hold harmless Lender, its directors, officers, employees, agents, successors and assigns from and against, any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence (whether prior to or during the term of the Loan or otherwise and regardless of by whom caused, whether by Mortgagor or any predecessor in title or any owner of land adjacent to the Mortgaged Property or any other third party, or any employee, agent, contractor or subcontractor of Mortgagor or any predecessor in title or any such adjacent land owner or any third person) of Hazardous Materials on, under or about the Mortgaged Property; including, without limitation: (i) claims of third parties (including governmental agencies) for damages, penalties, losses, costs, fees, expenses, damages, injunctive or other relief; (ii) response costs, clean-up costs, costs and expenses of removal and restoration, including fees of attorneys and experts, and costs of determining the existence of Hazardous Materials and reporting same to any governmental agency; and (iii) any and all expenses or obligations, including reasonable attorneys' fees, incurred at, before and after any trial or appeal therefrom whether or not taxable as costs, including, without limitation, reasonable attorneys' fees, witness fees, deposition costs, copying and telephone charges and other expenses. Any loss, damage, cost, expense or liability incurred by Lender for which Mortgagor is responsible or for which Mortgagor has indemnified Lender shall be paid to Lender on demand, and, failing prompt reimbursement, such

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amounts shall, together with interest thereon at the Default Rate under the Note from the date paid by Lender until paid by Mortgagor, be added to Borrower's Liabilities, be immediately due and payable and be secured by the lien of this Mortgage and the other Loan Instruments.

ARTICLE TWO

DEFAULTS

2.01 **Event of Default.** The term "**Event of Default,**" wherever used in this Mortgage, shall mean any one or more of the following events:

(a) If Mortgagor shall (i) fail to pay when due (A) any payment of principal when such payment shall become due and payable under the Note whether at maturity or otherwise; (B) any payment of interest under the Note when due and payable; or (C) any deposit for taxes and assessments due hereunder; (ii) fail to pay any other sums to be paid by Mortgagor hereunder within five (5) days after such payment is due hereunder; (iii) fail to keep, perform or observe any obligation of Mortgagor under Paragraph 1.06.1, 1.06.2 or 1.09 of this Mortgage; or (iv) fail to keep, perform or observe any other covenant, condition or agreement on the part of Mortgagor contained in this Mortgage and such failure (specified in this clause (iv)) shall continue for thirty (30) days after Mortgagor or Beneficiary receives actual notice thereof from any source, provided that such thirty (30) day period shall be extended for such additional time as is necessary to cure such default (but not more than an additional sixty (60) days), provided the default is capable of being cured within an additional sixty (60) day period and Mortgagor initiates the cure in a substantial respect within such thirty (30) day period and Mortgagor continues to diligently pursue such cure to completion.

(b) If a default shall occur under any of the Loan Instruments and the same is not cured within such cure, grace or other period, if any, provided in such Loan Instrument.

(c) If an "Event of Default" shall occur under and as defined in any of the Loan Instruments.

(d) The untruth of any warranty or representation made herein or in any affidavit or certificate executed by Beneficiary or any person acting on behalf of the Beneficiary or Mortgagor in connection with the Loan, the application therefor or the disbursement thereof and such

untruth is not corrected within thirty (30) days after Mortgagor or Beneficiary receives actual notice thereof from any source, provided there shall be no grace period with respect to any such warranty or representation known by Beneficiary to be untrue at the time it was made.

(e) An uninsured loss, damage, destruction or taking by eminent domain or other condemnation proceedings of any substantial portion of the Mortgaged Property or any part of the Mortgaged Property which materially impairs any of the intended uses of the Mortgaged Property.

(f) The appointment of a receiver, trustee or conservator of Mortgagor, Beneficiary, all or any part of the Mortgaged Property or Mortgagor's or Beneficiary's business pertaining to the operation of the Mortgaged Property.

(g) The occurrence of any of the following events:

(i) An admission in writing by a Party in Interest of its inability to pay debts as they become due;

(ii) The institution by a Party in Interest of bankruptcy, reorganization, insolvency or arrangement proceedings of any kind under federal bankruptcy statutes or any similar law (state or federal) now or hereafter existing;

(iii) The institution against a Party in Interest of bankruptcy, reorganization, insolvency or arrangement proceedings of any kind under federal bankruptcy statutes or any similar law (state or federal) now or hereafter existing which proceedings are not dismissed within sixty (60) days of filing;

(iv) The making of a general assignment for the benefit of creditors by a Party in Interest;

(v) The declaration by any court, government or governmental agency of the bankruptcy or insolvency of a Party in Interest;

(vi) The entry of a final judgment against a Party in Interest for $25,000 or more which is not satisfied within thirty (30) days of the date on which such judgment shall have become final and all stays of execution pending appeal or otherwise shall have expired;

(vii) The issuance of a writ or warrant of attachment, levy, seizure or distraint or any similar

process against a Party in Interest or all or a material part of the Mortgaged Property which is not stayed within sixty (60) days of issuance or the lapse of any such stay;

(viii) Any amendment of the agreement creating or governing a Party in Interest, without Mortgagee's prior written consent; or

(ix) The dissolution of any Party in Interest.

For purposes of the foregoing clauses (i) through (ix), each of Mortgagor, Beneficiary, any general or limited partner of Beneficiary, SW/RS&P, Inc. and Robert Sheridan shall constitute a "Party in Interest."

(h) The filing of any lien or claim for lien against any portion of the Mortgaged Property and the failure of Mortgagor, within thirty (30) days following the date of recording, to discharge such lien or to induce the title insurance company to commit to insure Lender over such lien.

(i) The occurrence of a sale, assignment, conveyance, transfer, mortgage, lien or encumbrance of, or execution of a contract for any of the foregoing, in violation of Paragraph 1.09 hereof.

(j) A default by Beneficiary (or other party in the position of owner) which has not been cured after the expiration of any applicable cure period under the provisions of any management agreement.

(k) Any failure to fully and satisfactorily perform the obligations under that certain Indemnity Agreement of even date herewith executed by SW/RS&P Limited Partnership, TC/RS&P Limited Partnership and Robert Sheridan, in favor of Lender.

ARTICLE THREE

REMEDIES

3.01 **Acceleration of Maturity.** If an Event of Default shall have occurred, Lender may declare the outstanding principal amount of the Note and the interest accrued thereon and any other of Borrower's Liabilities to be immediately due and payable, and upon such declaration such principal and interest and other Borrower's Liabilities declared due shall immediately become and be due and payable without further demand or notice, provided that such acceleration shall not be effective unless Lender shall give Mortgagor written notice thereof within seven (7) days.

3.02 **Lender's Power of Enforcement.** If an Event of Default shall have occurred, Lender may, either with or without entry or taking possession as provided in this Mortgage or otherwise, and without regard to whether or not Borrower's Liabilities shall have been accelerated, and without prejudice to the right of Lender thereafter to bring an action of foreclosure or any other action for any default existing at the time such earlier action was commenced or arising thereafter, proceed by any appropriate action or proceeding: (a) to enforce payment of the Note and/or any other of Borrower's Liabilities or the performance of any term hereof or any of the other Loan Instruments; (b) to foreclose this Mortgage and to have sold, as an entirety or in separate lots or parcels, the Mortgaged Property; and (c) to pursue any other remedy available to it. Lender may take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as Lender may determine. Without limitation of the foregoing, if an Event of Default shall have occurred, as an alternative to the right of foreclosure for the full indebtedness evidenced by the Note and the interest accrued thereon and any other Borrower's Liabilities, after acceleration thereof, Lender shall have the right to institute partial foreclosure proceedings with respect to the portion of Borrower's Liabilities so in default, as if under a full foreclosure, and without declaring all of Borrower's Liabilities to be immediately due and payable (such proceedings being referred to herein as "**partial foreclosure**"), and provided that, if Lender has not elected to accelerate all of Borrower's Liabilities and a foreclosure sale is made because of default in payment of only a part of Borrower's Liabilities, such sale may be made subject to the continuing lien of this Mortgage for the unmatured part of Borrower's Liabilities. Any sale pursuant to a partial foreclosure, if so made, shall not in any manner affect the unmatured portion of Borrower's Liabilities, but as to such unmatured portion, this Mortgage and the lien thereof shall remain in full force and effect just as though no foreclosure sale had been made. Notwithstanding the filing of any partial foreclosure or entry of a decree of sale therein, Lender may elect, at any time prior to a foreclosure sale pursuant to such decree, to discontinue such partial foreclosure and to accelerate Borrower's Liabilities by reason of any Event of Default upon which such partial foreclosure was predicated or by reason of any other defaults, and proceed with full foreclosure proceedings. Lender may proceed with one or more partial foreclosures without exhausting its right to proceed with a full or partial foreclosure sale for any unmatured portion of Borrower's Liabilities, it being the purpose to permit, from time to time, a partial foreclosure sale for any matured portion of Borrower's Liabilities without exhausting the power to foreclose and to sell the Mortgaged Property pursuant to any partial foreclosure in respect of any other portion of Borrower's Liabilities, whether matured at the time or subsequently maturing, and without limiting at any time Lender's right of acceleration and the right to proceed with a full foreclosure.

3.03 **Lender's Right to Enter and Take Possession, Operate and Apply Income.**

(a) If an Event of Default shall have occurred, (i) Mortgagor, upon demand of Lender, shall forthwith surrender to Lender and cause Beneficiary to surrender to Lender the actual possession of the Mortgaged Property, and if and to the extent permitted by law, Lender itself, or by such officers or agents as it may appoint, is hereby expressly authorized to enter and take possession of all or any portion of the Mortgaged Property and may exclude Mortgagor, Beneficiary and the agents and employees of either or both of them wholly therefrom and shall have joint access with Mortgagor and Beneficiary to the books, papers and accounts of Mortgagor and Beneficiary; and (ii) notwithstanding the provisions of any lease or other agreement to the contrary, Mortgagor shall pay monthly in advance to Lender, on Lender's entry into possession, or to any receiver appointed to collect the rents, income and other benefits of the Mortgaged Property, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Property as may be in possession of Mortgagor or Beneficiary, or any entity affiliated with or controlled by Mortgagor or Beneficiary, and upon default in any such payment Mortgagor shall, and shall cause Beneficiary to, vacate and surrender possession of such part of the Mortgaged Property to Lender or to such receiver, and in default thereof Mortgagor may be evicted by summary proceedings or otherwise.

(b) If Mortgagor or Beneficiary shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after Lender's demand, Lender may obtain a judgment or decree conferring on Lender the right to immediate possession or requiring Mortgagor and Beneficiary to deliver immediate possession of all or part of the Mortgaged Property to Lender, to the entry of which judgment or decree Mortgagor hereby specifically consents. Mortgagor shall pay to Lender, upon demand, all costs and expenses of obtaining such judgment or decree and reasonable compensation to Lender, its attorneys and agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Mortgage.

(c) Upon every such entering upon or taking of possession, Lender, to the extent permitted by law, may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof, and, from time to time:

(i) perform such construction, make all necessary and proper maintenance, repairs, renewals, replacements, additions and improvements thereto and thereon, and purchase or otherwise acquire additional fixtures and personal property;

(ii) insure or keep the Mortgaged Property insured;

(iii) manage and operate the Mortgaged Property and exercise all the rights and powers of the Mortgagor, on its behalf or otherwise, with respect to the same;

(iv) enter into agreements with others to exercise the powers herein granted Lender, all as Lender from time to time may determine; and Lender may collect and receive all the rents, income and other benefits of the Mortgaged Property, including those past due as well as those accruing thereafter; and shall apply the monies so received by Lender, in such order and manner as Lender may determine, to (1) the payment of interest, principal and other payments due and payable on the Note or pursuant to this Mortgage or to any other Borrower's Liabilities, (2) deposits for taxes and assessments, (3) the payment or creation of reserves for payment of insurance, taxes, assessments and other proper charges or liens or encumbrances upon the Mortgaged Property or any part thereof, and (4) the compensation, expenses and disbursements of the agents, attorneys and other representatives of Lender; and

(v) exercise such remedies as are available to Lender under the Loan Instruments or at law or in equity.

Lender shall surrender possession of the Mortgaged Property to Mortgagor only when all Borrower's Liabilities shall have been paid in full and all other defaults have been cured. However, the same right to take possession shall exist if any subsequent Event of Default shall occur.

3.04 **Leases.** Lender is authorized to foreclose this Mortgage subject to the rights, if any, of any or all tenants of the Mortgaged Property, even if the rights of any such tenants are or would be subordinate to the lien of this Mortgage. Lender may elect to foreclose the rights of some subordinate tenants while foreclosing subject to the rights of other subordinate tenants. The failure to make any subordinate tenant a party defendant to any foreclosure proceedings and to foreclose its rights will not be, nor be asserted by Mortgagor, any junior lien holder, any tenant or any other party claiming by, through or under Mortgagor to be, a defense to any such foreclosure proceeding or any other proceedings instituted by Lender to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property. Each lease entered into by Mortgagor subsequent to the date hereof shall provide that, and any tenant under any such lease shall be subject to the following provisions whether or not such lease shall so provide, (i) Lender, at its election, may execute and record an instrument which shall be deemed to cause such lease to be either prior or subordinate (whichever Lender elects) to the lien of this Mortgage, (ii) upon any foreclosure hereof or the acceptance of a deed in lieu of

foreclosure, the tenant under any such lease (other than a lease which is subordinate to the lien hereof and which is foreclosed in such foreclosure proceedings) shall attorn to the grantee in the deed or other purchaser at the sale and (iii) the tenant thereunder shall execute and deliver any confirmatory instruments which Lender may request in connection therewith. A failure by any such tenant to comply with any of the foregoing provisions shall constitute a default under such lease. Lender shall be made, constituted and irrevocably appointed as such tenant's attorney-in-fact so to do in the event that tenant shall fail to comply within ten (10) days after written demand from Lender. The omission of any such provision from any such lease or the failure to record any such instrument shall not affect Lender's rights under this Paragraph 3.04.

3.05 **Purchase by Lender.** Upon any foreclosure sale, Lender may bid for and purchase all or any portion of the Mortgaged Property and, upon compliance with the terms of the sale, may hold, retain and possess and dispose of such property in its own absolute right without further accountability.

3.06 **Application of Foreclosure Sale Proceeds.** The proceeds of any foreclosure sale of the Mortgaged Property or any part thereof received by Lender shall be applied by Lender to the indebtedness secured hereby in such order and manner as Lender may elect in a written notice to Mortgagor given on or before sixty (60) days following confirmation of the sale and, in the absence of such election, first to the expenses of sale, then to expenses including attorneys' fees of the foreclosure proceeding, then to interest and then to principal.

3.07 **Application of Indebtedness Toward Purchase Price.** Upon any foreclosure sale, Lender may apply any or all of the indebtedness and other sums due to Lender under the Note, this Mortgage or any other Loan Instrument or any other Borrower's Liabilities, or any decree in lieu thereof, toward the purchase price.

3.08 **Waiver of Appraisement, Valuation, Stay, Extension and Redemption Laws.** Mortgagor agrees, to the full extent permitted by law, that in case of an Event of Default, neither Mortgagor nor anyone claiming through or under it will set up, claim or seek to take advantage of any appraisement, valuation, stay or extension laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage or the absolute sale of the Mortgaged Property or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser thereat. Mortgagor, for itself and all who may at any time claim through or under it, hereby 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 comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof and agrees that Lender or any court having jurisdiction to

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foreclose such lien may sell the Mortgaged Property in part or as an entirety. Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Illinois Mortgage Foreclosure Law Chapter 110, Sections 15-1101 et seq., Illinois Revised Statutes (herein called the "**Act**")) or residential real estate (as defined in Section 15-1219 of the Act), and to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption as allowed under Section 15-1601(b) of the Act.

3.09 **Receiver - Lender in Possession.** If an Event of Default shall have occurred, Lender, to the extent permitted by law and without regard to the value of the Mortgaged Property or the adequacy of the security for the indebtedness and other sums secured hereby, shall be entitled as a matter of right and without any additional showing or proof, at Lender's election, to either the appointment by the court of a receiver (without the necessity of Lender posting a bond) to enter upon and take possession of the Mortgaged Property and to collect all rents, income and other benefits thereof and apply the same as the court may direct or to be placed by the court into possession of the Mortgaged Property as lender in possession with the same power herein granted to a receiver and with all other rights and privileges of a lender in possession under law. The right to enter and take possession of and to manage and operate the Mortgaged Property, and to collect all rents, income and other benefits thereof, whether by a receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law and may be exercised concurrently therewith or independently thereof. Lender shall be liable to account only for such rents, income and other benefits actually received by Lender, whether received pursuant to this Paragraph 3.09 or Paragraph 3.03. Notwithstanding the appointment of any receiver or other custodian, Lender shall be entitled as pledgee to the possession and control of any cash, deposits or instruments at the time held by, or payable or deliverable under the terms of this Mortgage to Lender.

3.10 **Suits to Protect the Mortgaged Property.** Lender shall have the power and authority (but not the duty) to institute and maintain any suits and proceedings as Lender may deem advisable (a) to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or which violate the terms of this Mortgage, (b) to preserve or protect its interest in the Mortgaged Property, or (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Lender's interest.

3.11 **Proofs of Claim.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting Mortgagor or

Beneficiary, Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have its claims allowed in such proceedings for the entire amounts due and payable under the Note, this Mortgage and any other Loan Instrument, at the date of the institution of such proceedings, and for any additional amounts which may become due and payable after such date.

3.12 **Mortgagor to Pay Borrower's Liabilities in Event of Default; Application of Monies by Lender.**

(a) Upon occurrence of an Event of Default, Lender shall be entitled to sue for and to recover judgment against Mortgagor for Borrower's Liabilities due and unpaid together with costs and expenses including, without limitation, the reasonable compensation, expenses and disbursements of Lender's agents, attorneys and other representatives, either before, after or during the pendency of any proceedings for the enforcement of this Mortgage; and the right of Lender to recover such judgment shall not be affected by any taking of possession or foreclosure sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the terms of this Mortgage, or the foreclosure of the lien hereof.

(b) In case of a foreclosure sale of all or any part of the Mortgaged Property and of the application of the proceeds of sale to the payment of Borrower's Liabilities, Lender shall be entitled to enforce all other rights and remedies under the Loan Instruments.

(c) Mortgagor hereby agrees, to the extent permitted by law, that no recovery of any judgment by Lender under any of the Loan Instruments, and no attachment or levy of execution upon any of the Mortgaged Property or any other property of Mortgagor, shall (except as otherwise provided by law) in any way affect the lien of this Mortgage upon the Mortgaged Property or any part thereof or any lien, rights, powers or remedies of Lender hereunder, but such lien, rights, powers and remedies shall continue unimpaired as before until Borrower's Liabilities are paid in full.

(d) Any monies collected or received by Lender under this Paragraph 3.12 shall be applied to the payment of compensation, expenses and disbursements of the agents, attorneys and other representatives of Lender, and the balance remaining shall be applied to the payment of Borrower's Liabilities, in such order and manner as Lender may elect, and any surplus, after payment of all Borrower's Liabilities, shall be paid to Mortgagor.

3.13 **Delay or Omission.** No delay or omission of Lender in the exercise of any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy, or be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy

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given to Lender may be exercised from time to time and as often as may be deemed expedient by Lender.

3.14 **Waiver of Default.** No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies in respect thereof. If Lender (a) grants forbearance or an extension of time for the payment of any sums secured hereby, (b) takes other or additional security for the payment thereof, (c) waives or does not exercise any right granted in the Note, this Mortgage or any other Loan Instrument, (d) releases any part of the Mortgaged Property from the lien of this Mortgage or any other Loan Instrument, (e) consents to the filing of any map, plat or replat of the Land, (f) consents to the granting of any easement on the Land, or (g) makes or consents to any agreement changing the terms of this Mortgage or subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the lien of this Mortgage or any other Loan Instrument or the liability under the Note or other Loan Instruments of Mortgagor, any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor, except as otherwise expressly provided in an instrument or instruments executed by Lender. Except as otherwise expressly provided in an instrument or instruments executed by Lender, no such act or omission shall preclude Lender from exercising any right, power or privilege herein granted or intended to be granted in case of any Event of Default then existing or of any subsequent Event of Default, nor shall the lien of this Mortgage be altered thereby, except to the extent of any releases as described in clause (d), above, of this Paragraph 3.14.

3.15 **Discontinuance of Proceedings; Position of Parties Restored.** If Lender shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or such proceedings shall have resulted in a final determination adverse to Lender, then and in every such case Mortgagor and Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Lender shall continue as if no such proceedings had occurred or had been taken.

3.16 **Remedies Cumulative.** No right, power or remedy conferred upon or reserved to Lender by the Note, this Mortgage or any other Loan Instrument or any instrument evidencing or securing Borrower's Liabilities is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or under the Note or any other Loan Instrument or any instrument evidencing or securing Borrower's Liabilities, or now or hereafter existing at law, in equity or by statute.

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3.17 **Interest After Event of Default.** If an Event of Default shall have occurred, all sums outstanding and unpaid under the Note and all other Borrower's Liabilities shall, to the extent permitted by law, bear interest thereafter at the Default Rate as defined in the Note until such Event of Default is cured.

ARTICLE FOUR

MISCELLANEOUS PROVISIONS

4.01 **Heirs, Successors and Assigns Included in Parties.** Whenever Mortgagor, Lender or Beneficiary is named or referred to herein, heirs and successors and assigns of such person or entity shall be included, and all covenants and agreements contained in this Mortgage shall bind the successors and assigns of Mortgagor and Beneficiary, including any subsequent owner of all or any part of the Mortgaged Property and inure to the benefit of the successors and assigns of Lender. This Section 4.01 shall not be construed to permit an assignment, transfer, conveyance, encumbrance or other disposition otherwise prohibited by this Mortgage.

4.02 **Notices.** All notices, requests, reports demands or other instruments required or contemplated to be given or furnished under this Mortgage to Mortgagor or Lender shall be directed to Mortgagor or Lender as the case may be at the following addresses:

If to Lender:
State Mutual Life Assurance
Company of America
440 Lincoln Street
Worcester, Massachusetts 01605
Attention: Investment Management
Department

with a copy to:
Goldberg, Kohn, Bell, Black,
Rosenbloom & Moritz, Ltd.
55 East Monroe Street
Suite 3900
Chicago, Illinois 60603
Attention: Stephen B. Bell

If to Mortgagor:
American National Bank and Trust
Company of Chicago, as Trustee
under Trust No. 104162-04
33 North LaSalle Street
Chicago, Illinois 60690

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with a copy to
Beneficiary:

SW Associates Limited Partnership
Robert Sheridan and Partners
641 West Lake Street
Suite 300
Chicago, Illinois 60606
Attention: Bruce Kinney

and with a copy to:

Rudnick & Wolfe
203 North LaSalle Street
Suite 1800
Chicago, Illinois 60601
Attention: William A. Zolla

Any such notices, requests, reports, demands or other instruments shall be (i) personally delivered to the offices set forth above, in which case they shall be deemed delivered on the date of delivery to said offices, (ii) sent by certified mail, return receipt requested, in which case they shall be deemed delivered three (3) business days after deposit in the U.S. mail, postage prepaid, or (iii) sent by air courier (Federal Express or like service), in which case they shall be deemed delivered on the date of actual delivery. Either party may change the address to which any such notice, report, demand or other instrument is to be delivered by furnishing written notice of such change to the other party in compliance with the foregoing provisions.

4.03 **Headings.** The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience only, are not to be considered a part hereof, and shall not limit, expand or otherwise affect any of the terms hereof.

4.04 **Invalid Provisions.** In the event that any of the covenants, agreements, terms or provisions contained in the Note, this Mortgage or in any other Loan Instrument shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein or in the Note or in any other Loan Instrument (or the application of the covenant, agreement, term held to be invalid, illegal or unenforceable, to persons or circumstances other than those in respect of which it is invalid, illegal or unenforceable) shall be in no way affected, prejudiced or disturbed thereby.

4.05 **Changes.** Neither this Mortgage nor any term hereof may be released, changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the release, change, waiver, discharge or termination is sought. To the extent permitted by law, any agreement hereafter made by Mortgagor and Lender relating to this Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance. Any holder of a lien or encumbrance junior to the lien of this Mortgage shall take its lien subject to the right of Lender to amend, modify or

supplement this Mortgage, the Note or any of the other Loan Instruments, to extend the maturity of Borrower's Liabilities or any portion thereof, to vary the rate of interest chargeable under the Note and to increase the amount of the indebtedness secured hereby, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien.

4.06 **Governing Law.** This Mortgage shall be construed, interpreted, enforced and governed by and in accordance with the laws of the State of Illinois.

4.07 **Required Notices.** Mortgagor shall notify Lender promptly of the occurrence of any of the following: (i) receipt of notice from any governmental authority relating to the violation of any rule, regulation, law or ordinance, the enforcement of which would materially and adversely affect the Mortgaged Property; (ii) material default by any tenant in the performance of its obligations under any lease of all or any portion of the Mortgaged Property or receipt of any notice from any such tenant claiming that a default by landlord in the performance of its obligations under any such lease has occurred; or (iii) commencement of any judicial or administrative proceedings by or against or otherwise adversely affecting Mortgagor, Beneficiary or the Mortgaged Property.

4.08 **Future Advances.** This Mortgage is given to secure not only existing indebtedness, but also future advances (whether such advances are obligatory or are to be made at the option of Lender, or otherwise) made by Lender under the Note, to the same extent as if such future advances were made on the date of the execution of this Mortgage. The total amount of indebtedness that may be so secured may decrease or increase from time to time, but all indebtedness secured hereby shall, in no event, exceed five times the aggregate face amount of the Note.

4.09 **Release.** Upon full payment of Borrower's Liabilities, Lender shall issue to Mortgagor an appropriate release deed in recordable form.

4.10 **Attorneys' Fees.** Whenever reference is made herein to the payment or reimbursement of attorneys' fees, such fees shall be deemed to include reasonable compensation of, and reasonable overhead expenses allocated in respect of, staff counsel, if any, of Lender in addition to the fees of any other attorneys engaged by Lender.

4.11 **Compliance with Illinois Mortgage Foreclosure Law.** In the event that any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

If any provision of this Mortgage shall grant to Lender any rights or remedies upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in Lender under the Act in the absence of said provision, Lender shall be vested with the rights granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

4.12 **Trustee Exculpation.** This Mortgage is executed by American National Bank and Trust Company of Chicago, not in its individual capacity, but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that nothing contained herein or in the Loan Instruments shall be construed as creating any liability on American National Bank and Trust Company of Chicago, in its individual capacity to pay the Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained, all such liability in its individual capacity, if any, being expressly waived by Lender and by every person now or hereafter claiming any right or security hereunder. So far as Mortgagor and its successors and said bank personally are concerned, the legal holder of the Note and the owner or owners of any indebtedness accruing hereunder shall look solely to the premises hereby conveyed and any rent or proceeds therefrom for the payment thereof, by the enforcement of the lien hereby created, in the manner herein and in said Note provided or by action to enforce the personal liability of any guarantors of said indebtedness, by action against the Beneficiary arising out of a breach of one or more of the other Loan Instruments to which the Beneficiary is a party or by the exercise of any remedy available under any of the other Loan Instruments.

4.13 **Beneficiary Exculpation.** Except as may be provided in any separate Indemnity Agreement or other agreement executed and delivered by Beneficiary or partners of Beneficiary, no general or limited partner of Beneficiary shall be held to have any personal liability, nor shall resort be had to the separate property of Beneficiary or such partners (other than their interest in the Mortgaged Property), for satisfaction of any obligation or claim arising out of this Mortgage, it being agreed that the liability of Beneficiary and the partners of Beneficiary shall be limited only to their respective interests in the Mortgaged Property and that only the Mortgaged Property shall be subject to levy or execution on account of any liability of Beneficiary arising hereunder.

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IN WITNESS WHEREOF, Mortgagor has caused this instrument to be executed by its duly authorized officers as of the day and year first above written.

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not in its individual capacity but as Trustee under Trust Agreement dated December 3, 1987 and known as Trust No. 104162-04

ATTEST:

Its Asst Sec'y

By

Its VP

THIS INSTRUMENT PREPARED BY,
AND AFTER RECORDING RETURN TO: — Box 198 - J. Lance
Stephen B. Bell
Goldberg, Kohn, Bell, Black,
Rosenbloom & Moritz, Ltd.
55 East Monroe Street, Suite 3900
Chicago, Illinois 60603

89292399

ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS.
COUNTY OF C O O K)

KAREN E. BURNS

I, _____, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT J. MICHAEL WHELAN and Anita M. Lutkus, VICE PRESIDENT and ASSISTANT SECRETARY of American National Bank and Trust Company of Chicago, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such VICE PRESIDENT and ASSISTANT SECRETARY appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary acts and as the free and voluntary act of said bank; and the said ASSISTANT SECRETARY acknowledged that ____, as custodian of the corporate seal of said bank, did affix said corporate seal to said instrument as _____ own free and voluntary act and as the free and voluntary act of said bank for said uses and purposes.

GIVEN under my hand and notarial seal this JUN 26 1989 day of June, 1988.

"OFFICIAL SEAL"
Karen E. Burns
Notary Public, State of Illinois
My Commission Expires 8/27/90

_____
Notary Public

My Commission Expires:

_____

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EXHIBIT A

NOTE

THIS NOTE dated as of June 26, 1989 is made and executed in Chicago, Illinois, by American National Bank and Trust Company of Chicago, not in its individual capacity but as Trustee under a Trust Agreement dated December 3, 1987 and known as Trust No. 104162-04 ("**Mortgagor**"), is in the original principal amount of $10,500,000, with interest as provided herein, and is payable to the order of State Mutual Life Assurance Company of America, a Massachusetts corporation ("**Lender**").

RECITALS

I. SW Associates Limited Partnership, an Illinois limited partnership ("**Beneficiary**"), owns 100% of the beneficial interest in Mortgagor. Beneficiary and Lender have entered into a Commitment dated March 27, 1989 as amended March 30, 1989 (the "**Loan Commitment**") pursuant to which Lender has agreed, subject to the terms and conditions thereof, to make a loan to Mortgagor in an amount not to exceed the principal amount hereof (the "**Loan**"). This Note evidences Mortgagor's unconditional obligation to repay the Loan.

II. The payment of this Note is secured by (a) a Mortgage and Security Agreement executed by Mortgagor on certain real estate in Cook County, Illinois (the "**Mortgaged Property**"); (b) an Assignment of Leases and Rents pertaining to the Mortgaged Property; and (c) a Security Agreement relating to personal property on the Mortgaged Property and other property. This Note, together with the Loan Commitment, any and all mortgages, security agreements, assignments of leases and rents, guaranties, indemnities, letters of credit and any other documents and instruments now or hereafter executed and delivered in connection with the Loan, and any and all amendments, renewals, extensions and replacements hereof and thereof, are hereafter collectively referred to herein as the "**Loan Instruments.**" The terms of the other Loan Instruments are hereby incorporated, by reference, in this Note.

I

PAYMENT TERMS

1.1 **The Promise to Pay.** Mortgagor hereby promises to pay to the order of Lender out of the Mortgaged Property and the income therefrom the principal amount of $10,500,000, together with interest thereon at a rate per annum equal to 11.05% ("**Initial Rate**") prior to the Adjustment Date (as hereinafter defined) and at the Adjusted Rate (as hereinafter defined) thereafter, in the following manner:

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(a) On the first day of the first calendar month following the date of disbursement of the Loan (the "**Disbursement Date**"), Beneficiary shall make a payment of the interest accrued during that portion of the calendar month in which the Disbursement Date occurred from and after the Disbursement Date;

(b) On the first day of the second calendar month following the Disbursement Date and on the first day of each calendar month thereafter until and including the calendar month in which the second anniversary of the Disbursement Date (the "**Adjustment Date**") occurs, Beneficiary shall make a payment of accrued interest in the amount of $96,687.50;

(c) On the first day of the first calendar month following the Adjustment Date, Beneficiary shall make a payment of the accrued interest calculated at the Initial Rate for the period beginning on the first day of such calendar month and ending on the day preceding the Adjustment Date and at the Adjusted Rate during that portion of the calendar month of the Adjustment Date, from and after the Adjustment Date;

(d) On the first day of the second calendar month following the Adjustment Date and on the first day of each calendar month thereafter, an amount of accrued interest for the preceding calendar month, calculated at the Adjusted Rate; and

(e) On the first day of the first calendar month following the fifth anniversary of the Disbursement Date (the "**Maturity Date**"), the entire outstanding principal balance and all interest thereon, unless earlier due and payable by reason of the acceleration of the maturity of this Note. THIS IS A BALLOON NOTE AND, ON THE MATURITY DATE, OR ANY ACCELERATED MATURITY DATE, THE ENTIRE PRINCIPAL AMOUNT OF THIS NOTE WILL OR MAY REMAIN UNPAID.

For purposes of this Agreement, the term "**Adjusted Rate**" shall mean the rate of interest equal to the Corporate AAA Bond Rate per annum, expressed as a percent, as published by the Federal Reserve Bank of St. Louis, or if such rate is no longer published, or otherwise not available, such other comparable rate as Lender shall in its sole discretion select, plus 1.65%. The Adjusted Rate shall be computed as of the date three months prior to the Adjustment Date, and upon written request of Mortgagor, Lender shall, as soon as reasonably practicable thereafter, but in no event fewer than sixty (60) days prior to the Adjustment Date, provide Mortgagor with notice of such Adjusted Rate. All payments made in accordance with this paragraph 1.1 shall be applied first to accrued interest and then to principal in such order and manner as Lender may elect.

Interest shall be computed on the basis of a three hundred sixty-five (365) day year and charged for the actual number of days elapsed.

1.2 **Prepayment.** Mortgagor shall not be entitled to prepay the Loan in whole or in part except as expressly provided in this Note. Prepayment of the indebtedness evidenced hereby may be made only in accordance with the following provisions:

(a) Mortgagor may prepay the entire outstanding principal balance and all accrued and unpaid interest thereon without payment of a prepayment premium provided (i) such outstanding balance of principal and interest is paid during the thirty (30) day period immediately subsequent to the second anniversary of the Disbursement Date, and (ii) Lender has received written notice of Beneficiary's election to prepay along with the proposed date of prepayment at least thirty (30) days prior to the said second anniversary of the Disbursement Date.

(b) Mortgagor may prepay any outstanding principal balance of the Loan, in whole but not in part, plus all accrued and unpaid interest thereon, on any regularly scheduled payment date, provided that Mortgagor shall have given written notice to Lender of the date on which Mortgagor proposes to make such prepayment (the "**Prepayment Date**") no later than thirty (30) days prior to the Prepayment Date and Mortgagor shall have paid to Lender on the Prepayment Date the entire unpaid principal amount hereof, all accrued and unpaid interest thereon and all other sums payable pursuant to the Loan Instruments or secured by the Mortgage, plus a premium (the "**Premium**") equal to the greater of (x) 1% of the entire unpaid principal amount hereof (the "**Base Premium**") or (y) an amount calculated as follows:

(i) There shall be determined, as of the seventh business day preceding the Prepayment Date, the amount, if any, by which the interest rate then in effect with respect to the Loan (the "**Applicable Rate**") (expressed as a decimal) exceeds the annual yield (expressed as a decimal) for general issue United States Government Treasury bills, bonds or notes maturing nearest the Adjustment Date, or, if the Adjustment Date has passed, the Maturity Date, as reported by The Wall Street Journal having reference to the Treasury Issue Quotations as they appear therein, or, if The Wall Street Journal is no longer published or no longer publishes annual yields for United States Government Treasury bills, bonds or notes, some other daily financial or governmental publications of national circulation determined by Lender, in its sole discretion, such annual yield

being hereinafter referred to as the "**Current Yield**" (provided, if more than one issue of such bills, bonds or notes matures nearest the Maturity Date, the average of the yields for such issues shall be used in making the foregoing calculations);

(ii) The difference calculated pursuant to clause (i) above shall be multiplied by the outstanding principal balance hereof as of the Prepayment Date;

(iii) The product calculated pursuant to clause (ii) above shall be divided by 12;

(iv) The quotient calculated pursuant to clause (iii) above shall be multiplied by the number of months from the Prepayment Date to and including the Maturity Date.

If the Current Yield exceeds the Applicable Rate, then the Premium shall be the Base Premium. Notwithstanding the foregoing, the Base Premium shall be the minimum Premium due upon prepayment pursuant to this subsection (b) and Mortgagor shall not be entitled to any reduction in the Base Premium or any other amount due under this Note or the other Loan Instruments in the event that the Current Yield is more than the rate of interest chargeable hereunder. For the purpose of this subparagraph 1.2(a) any portion of a calendar month shall be deemed to constitute one full month. To the extent provided in Section 1.06.5 of the Mortgage, no Premium shall be due in conjunction with the application to Borrower's Liabilities of insurance proceeds or the award or other compensation resulting from an eminent domain proceeding unless there is an Event of Default which remains uncured at the time of such application in which case the provisions of Subsection 1.2(c) below shall apply.

(c) Except as otherwise provided in subsection 1.2(a) or (b) above, a Premium shall be due and payable in connection with any prepayment, including without limitation any application on the indebtedness evidenced hereby of the proceeds of a foreclosure sale of, or other realization upon, property or other security for the Loan or the collection of amounts due under this Note and the other Loan Instruments following an Event of Default (as defined herein). Without limitation of the foregoing, if, following the acceleration of the maturity hereof following an Event of Default or otherwise as provided herein, a tender of payment of the amount necessary to satisfy the indebtedness evidenced hereby is made by Mortgagor, or by anyone on its behalf or otherwise, a Premium shall be due in connection with any such tender.

(d) No partial prepayment made hereon and accepted by Lender as a matter of grace (Lender having no obligation to accept the same) shall operate to defer or reduce the scheduled monthly installment payments provided for in this Note, and each and every such scheduled required monthly installment payment shall be paid in full when due until this Note shall have been paid in full.

1.3 **Prepayment Following Default.** If an Event of Default shall have occurred and the maturity hereof shall have been accelerated, and a tender of payment of the amount necessary to satisfy the indebtedness evidenced hereby is made by Mortgagor, Beneficiary, the successors or assigns of either one of them or by anyone on its or their behalf, such tender shall constitute an attempted evasion of the prepayment terms hereof and shall be deemed to be a voluntary prepayment hereunder, and any such prepayment, to the extent permitted by law, will therefore be subject to and include the prepayment premium specified in Section 1.2 above and such premium shall constitute liquidated damages payable to Lender on account of Mortgagor's breach of its agreements hereunder and Mortgagor's evasion of the prepayment provisions hereof and Lender's loss of bargain.

1.4 **Lender Option to Accelerate Maturity.** Notwithstanding anything to the contrary contained in this Note, Lender reserves the right, in its sole discretion, to declare, by no less than three (3) months' prior written notice ("**Acceleration Notice**"), the full outstanding principal balance of the Loan, plus all accrued and unpaid interest thereon, to be due and payable in full on such business day within the three (3) months immediately subsequent to the second anniversary of the Disbursement Date as is specified in the Acceleration Notice (the "**Accelerated Maturity Date**"). In the event Lender so elects to accelerate the maturity of the Loan, Mortgagor shall, on the Accelerated Maturity Date, pay to Lender the full outstanding principal balance of the Loan, plus any accrued and unpaid interest, but Mortgagor shall not be obligated to pay a Premium in connection therewith.

1.5 **Place and Manner of Payment.** The payment of all amounts due under this Note and under the Mortgage shall be made in "Federal Funds" or other immediately available funds and shall be deemed received only when actually received by Lender in Worcester, Massachusetts or such address in Chicago, Illinois as Lender may direct in writing. Payments received after 1:00 o'clock p.m. in said location shall be deemed received on the next day Lender is open for business. At Lender's option, Lender may accept payments by check or in form other than immediately available funds, but such payments shall be accepted subject to collection and, at Lender's option, shall be deemed received only when collected. Acceptance by Lender of payments in other than immediately available funds shall not constitute a waiver by Lender