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FIRST SUPPLEMENT TO CONSTRUCTION MORTGAGE AND SECURITY AGREEMENT WITH ASSIGNMENT OF RENTS

\$24.00

This First Supplement to Construction Mortgage and Security Agreement with Assignment of Rents dated as of October 1, 1990 (the "Supplement") between AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association of 33 North LaSalle Street, Chicago, Illinois 60690, not personally but as Trustee under the provisions of a deed or deeds in trust duly recorded and delivered to said Trustee in pursuance of a Trust Agreement dated February 22, 1988, and known as Trust Number 104732-05 (hereinafter referred to as the "Mortgagor") and HARRIS TRUST AND SAVINGS BANK, an Illinois banking corporation with its principal place of business at 111 West Monroe Street, Chicago, Illinois 60690 (hereinafter referred to as "Mortgagee");

W I T N E S S E T H T H A T :

WHEREAS, the Mortgagor has executed and delivered to the Mortgagee that certain Construction Mortgage and Security Agreement with Assignment of Rents dated as of August 23, 1989 and recorded in the Recorder's Office of Cook County, Illinois on October 2, 1989 as Document No. 89465128 (said Construction Mortgage hereinafter referred to as the "Mortgage"), which Mortgage encumbers the property described on Schedule I hereto and secures indebtedness of Mortgagor to Mortgagee in the aggregate principal sum of \$19,000,000 as evidenced by that certain Promissory Note dated August 23, 1989 (the "Note") whereby Mortgagor promises to pay said principal sum together with interest thereon prior to maturity at the rates and payable in the manner and on the dates specified in that certain Construction Loan Agreement dated as of August 23, 1989 (the "Construction Loan Agreement") between the Mortgagor, Mortgagee and Brick & Mortar Limited Partnership, an Illinois limited partnership (the "Beneficiary"); and

WHEREAS, the outstanding aggregate principal amount of the indebtedness evidenced by the Note is currently \$19,000,000; and

WHEREAS, Mortgagor, Mortgagee and Beneficiary have negotiated to increase the maximum aggregate principal amount of loans which may be advanced from time to time under the Construction Loan Agreement from \$19,000,000 to \$20,500,000 and extend

This Instrument Prepared By: *9 mail to*  
Donna L. Radzik  
111 West Monroe Street  
Chicago, Illinois 60603

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Box 211

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the maturity date thereof to September 30, 1992 all pursuant to a First Amendment to Construction Loan Agreement, dated as of October 1, 1990 (the "Amendment"); and

WHEREAS, pursuant to the Amendment, the Mortgagor is delivering to Mortgagee a First Amendment to Promissory Note bearing even date herewith (the "First Amendment to Note") pursuant to which the Note has been amended so as to be payable to the order of Mortgagee in the face principal amount of \$20,500,000 and expressed to mature on September 30, 1992 and to bear interest at the rates and times specified in the Construction Loan Agreement as amended by the Amendment; and

WHEREAS, as a condition precedent to increasing the maximum aggregate principal amount, and extending the maturity date, of loans which may be advanced from time to time under the Construction Loan Agreement and making certain other financial accommodations to the Mortgagor, Mortgagee requires the Mortgagor, and to accommodate that requirement the Mortgagor desires by this Supplement, to confirm and assure that all the the real estate and other properties, rights, interests and privileges of the Mortgagor which are currently subject to the lien of the Mortgage be and constitute collateral security for the increased indebtedness which may from time to time be advanced against the Note as amended by the First Amendment to Note; and

WHEREAS, the Mortgage is to continue to secure all loans heretofore advanced under the Construction Loan Agreement as well as loans which may from time to time hereafter be advanced under the Construction Loan Agreement as amended by the Amendment, this Supplement being executed and delivered to confirm and assure the foregoing; and

NOW, THEREFORE, for and in consideration of the execution and delivery by Mortgagee of the Amendment and other good and valuable consideration, receipt whereof is hereby acknowledged, the Mortgage shall be and hereby is supplemented and amended as follows, to wit:

To secure (i) the payment when and as due and payable of all principal of and interest on the Note as amended by the First Amendment to Note or so much thereof as may be advanced from time to time under and pursuant to the Construction Loan Agreement as amended by the Amendment, (ii) the payment of all other indebtedness which this Mortgage as supplemented hereby, by its terms secures, and (iii) the performance and observance of the covenants and agreements contained in this Mortgage as supplemented hereby, the Construction Loan Agreement as amended by the Amendment, the Note as amended by the First Amendment to Note and any other instruments or documents securing the Note

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(all of such indebtedness, obligations, agreements and liabilities identified in (i), (ii) and (iii) above being hereinafter referred to as the "indebtedness hereby secured"), the Mortgagor does hereby grant, sell, convey, mortgage and assign unto the Mortgagee, its successors and assigns, and does hereby grant to Mortgagee, its successors and assigns a security interest in all and singular the properties, rights, interests and privileges described in Granting Clauses I, II, III, IV, V and VI below all of same being collectively referred to herein as the "Mortgaged Premises":

## GRANTING CLAUSE I

That certain real estate lying and being in the County of Cook and State of Illinois, more particularly described in Schedule I attached hereto and made a part hereof.

## GRANTING CLAUSE II

All buildings and improvements of every kind and description heretofore or hereafter erected or placed on the property described in Granting Clause I and all materials intended for construction, reconstruction, alteration and repairs of the buildings and improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the premises immediately upon the delivery thereof to the said real estate, and all fixtures, machinery, apparatus, equipment, fittings and articles of personal property of every kind and nature whatsoever now or hereafter attached to or contained in or used or useful in connection with said real estate and the buildings and improvements now or hereafter located thereon and the operation, maintenance and protection thereof, including but not limited to all machinery, motors, fittings, radiators, awnings, shades, screens, all gas, coal, steam, electric, oil and other heating, cooking, power and lighting apparatus and fixtures, all fire prevention and extinguishing equipment and apparatus, all cooling and ventilating apparatus and systems, all plumbing, incinerating, sprinkler equipment and fixtures, all elevators and escalators, all communication and electronic monitoring equipment, all window and structural cleaning rigs and all other machinery and other equipment of every nature and fixtures and appurtenances thereto and all items of furniture, appliances, draperies, carpets, other furnishings, equipment and personal property used or useful in the operation, maintenance and protection of the said real estate and the buildings and improvements now or hereafter located thereon and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to said buildings or improvements in any manner; all of the foregoing only including property owned by the Beneficiary, in existence on the

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IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the County of Cook, Illinois, this 1st day of January, 2011.

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aforesaid property and not owned by the tenants; it being mutually agreed, intended and declared that all the aforesaid property shall, so far as permitted by law, be deemed to form a part and parcel of the real estate and for the purpose of this Mortgage as supplemented hereby to be real estate and covered by this Mortgage as supplemented hereby; and as to the balance of the property aforesaid, this Mortgage as supplemented hereby is hereby deemed to be as well a Security Agreement under the provisions of the Uniform Commercial Code for the purpose of creating hereby a security interest in said property, which is hereby granted by Mortgagor as debtor to Mortgagee as secured party, securing the indebtedness hereby secured. The addresses of Mortgagor (debtor) and Mortgagee (secured party) appear at the beginning hereof.

## GRANTING CLAUSE III

All right, title and interest of Mortgagor now owned or hereafter acquired in and to all and singular the estates, tenements, hereditaments, privileges, easements, licenses, franchises, appurtenances and royalties, mineral, oil, and water rights belonging or in any wise appertaining to the property described in the preceding Granting Clause I and the buildings and improvements now or hereafter located thereon and the reversions, rents, issues, revenues and profits thereof, including all interest of Mortgagor in all rents, issues and profits of the aforementioned property and all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing (including all deposits of money as advanced rent or for security) under any and all leases or subleases and renewals thereof of, or under any contracts or options for the sale of all or any part of, said property (including during any period allowed by law for the redemption of said property after any foreclosure or other sale), together with the right, but not the obligation, to collect, receive and receipt for all such rents and other sums and apply them to the indebtedness hereby secured and to demand, sue for and recover the same when due or payable; provided that the assignments made hereby shall not impair or diminish the obligations of Mortgagor under the provisions of such leases or other agreements nor shall such obligations be imposed upon Mortgagee. By acceptance of this Mortgage as supplemented hereby, Mortgagee agrees, not as a limitation or condition hereof, but as a personal covenant available only to Mortgagor or the Beneficiary that until an event of default (as hereinafter defined) shall occur giving Mortgagee the right to foreclose this Mortgage as so supplemented, Mortgagor may collect, receive (but not more than 30 days in advance, except for approved security deposits) and enjoy such rents.

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GRANTING CLAUSE IV

All judgments, awards of damages, settlements and other compensation hereafter made resulting from condemnation proceedings or the taking of the property described in Granting Clause I or any part thereof or any building or other improvement now or at any time hereafter located thereon or any easement or other appurtenance thereto under the power of eminent domain, or any similar power or right (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for the payment thereof), whether permanent or temporary, or for any damage (whether caused by such taking or otherwise) to said property or any part thereof or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including severance and consequential damage, and any award for change of grade of streets (collectively "Condemnation Awards").

GRANTING CLAUSE V

All property and rights, if any, which are by the express provisions of this instrument required to be subjected to the lien hereof and any additional property and rights that may from time to time hereafter, by installation or writing of any kind, be subjected to the lien hereof by Mortgagor or by anyone in Mortgagor's behalf.

GRANTING CLAUSE VI

All rights in and to common areas and access roads on adjacent properties heretofore or hereafter granted to Mortgagor and any after-acquired title or reversion in and to the beds of any ways, roads, streets, avenues and alleys adjoining the property described in Granting Clause I or any part thereof.

TO HAVE AND TO HOLD the Mortgaged Premises and the properties, rights and privileges hereby granted, bargained, sold, conveyed, mortgaged, pledged and assigned, and in which a security interest is granted, or intended so to be, unto Mortgagee, its successors and assigns, forever; provided, however, that this instrument is upon the express condition that if the principal of and interest on the Note shall be paid in full and all other indebtedness hereby secured shall be fully paid and performed and any commitment to advance funds contained in the Construction Loan Agreement shall have been terminated, then this instrument and the estate and rights hereby granted shall cease, determine and be void and this instrument shall be released by Mortgagee upon the written request and at the expense of Mortgagor, otherwise to remain in full force and effect.

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The foregoing granting clauses are in addition to and supplemental of and not in substitution for the granting clauses contained in the Mortgage. Nothing herein contained shall in any manner affect or impair the priority of the lien of the Mortgage as to the indebtedness which would be secured thereby prior to giving effect to this Supplement.

The Mortgagor hereby further covenants and agrees with, and represents and warrants to, the Mortgagee as follows:

1. Mortgagor hereby repeats and reaffirms all covenants and warranties contained in the Mortgage, each and all of which shall be applicable to all of the indebtedness hereby secured by the Mortgage as supplemented hereby. Without limiting the foregoing, the Mortgagor hereby repeats and reaffirms its covenant that all the indebtedness hereby secured by the Mortgage as supplemented hereby will be promptly paid as and when the same becomes due and payable.

2. All of the provisions, stipulations, powers and covenants contained in the Mortgage as supplemented and amended hereby shall stand and remain unchanged and in full force and effect except to the extent specifically modified hereby and shall be applicable to all of the indebtedness, obligations and liabilities secured by the Mortgage as supplemented hereby and to all of the properties, rights, interests and privileges subject to the lien thereof as supplemented hereby.

3. All capitalized terms used herein without definition shall have the same meanings herein as they have in the Mortgage. The definitions provided herein of any capitalized terms shall apply to such capitalized terms as the same appear in the Mortgage as supplemented hereby, all to the end that any capitalized terms defined herein and used in the Mortgage as supplemented hereby shall have the same meanings in the Mortgage as supplemented hereby as are given to such capitalized terms herein. Without limiting the foregoing, all references in the Mortgage to the term "indebtedness hereby secured" shall be deemed references to all the indebtedness, obligations and liabilities secured by the Mortgage as supplemented hereby; all references in the Mortgage to "Mortgaged Premises" shall be deemed collective references to all of the properties, real, personal and mixed, conveyed, mortgaged and pledged or assigned by the Mortgage as supplemented hereby; all references in the Mortgage to the Note shall be deemed references, collectively to the Note as amended by the First Amendment to Note (as such term is defined herein) and any and all notes issued in extension or renewal thereof or in substitution or replacement therefor; and all references in the Mortgage to the Construction Loan Agreement shall be deemed references, collectively to the Construction Loan Agreement as amended by the Amendment (as such term is defined herein) and as the same may from time to time be further modified

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or amended. All of the provisions, stipulations, powers and covenants contained in the Mortgage shall stand and remain unchanged and in full force and effect except to the extent specifically modified hereby and shall be applicable to all of the indebtedness, obligations and liabilities secured by the Mortgage as supplemented hereby.

4. The Mortgagor acknowledges and agrees that the Mortgage as supplemented hereby is and shall remain in full force and effect, and that the Mortgaged Premises are and shall remain subject to the lien and security interest granted and provided for by the Mortgage as supplemented hereby for the benefit and security of all the indebtedness hereby secured, including without limitation all loans which may be advanced from time to time to the Mortgagor under the Construction Loan Agreement as amended by the Amendment (as such term is defined herein). Without limiting the foregoing, the Mortgagor hereby agrees that, notwithstanding the execution and delivery hereof, (i) all rights and remedies of the Mortgagee under the Mortgage, (ii) all obligations of the Mortgagor thereunder and (iii) the lien and security interest granted and provided for thereby are and as amended hereby shall remain in full force and effect for the benefit and security of all the indebtedness hereby secured, it being specifically understood and agreed that this Supplement shall constitute and be, among other things, an acknowledgement and continuation of the rights, remedies, lien and security interest in favor of the Mortgagee, and the obligations of the Mortgagor to the Mortgagee, which exist under the Mortgage as supplemented hereby.

5. This Supplement shall secure all the loans which may be advanced from time to time against the Note as amended by the First Amendment to Note (as such term is defined herein) as well as all other indebtedness, obligations and liabilities defined herein as part of the indebtedness hereby secured, whether now existing or hereafter arising, provided that the total principal amount of the indebtedness secured by the Mortgage as supplemented hereby shall not exceed \$20,500,000 and the Mortgage is hereby amended to reflect such increased maximum principal amount (plus interest thereon and any disbursements made for payment of taxes, special assessments or insurance on the Mortgaged Premises and interest on such disbursements) at any one time outstanding unless a supplement changing such maximum amount is duly filed for record. Accordingly, the Mortgage as supplemented hereby is given to secure, among other things, revolving credit loans and shall secure not only presently existing indebtedness hereby secured but also future advances in respect of the same, whether such advances are obligatory or to be made at the option of the Mortgagee, or otherwise, as are made within twenty years from the date hereof, to the same extent as if such future advances were made on the date of the execution of the Mortgage, although there may be no advance made at the time

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of execution of this Supplement and although there may be no indebtedness hereby secured outstanding at the time any such advance is made. The lien of the Mortgage as supplemented shall be valid as to all indebtedness hereby secured, including future advances, from the time of filing of the Mortgage for record in the recorder's or registrar's office of each county in which the Mortgaged Premises are located. The total amount of indebtedness secured hereby may increase or decrease from time to time, but the total unpaid balance of indebtedness hereby secured (including disbursements which the Mortgagee may make under the Mortgage as supplemented, the Construction Loan Agreement as amended or any other documents with respect thereto) at any one time outstanding shall not exceed a maximum principal amount of \$20,500,000 plus interest thereon and any disbursements made for payment of taxes, special assessments or insurance on the Mortgaged Premises and interest on such disbursements (all such indebtedness being hereinafter referred to as the "maximum amount secured hereby"). The Mortgage as supplemented shall be valid and have priority over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Mortgaged Premises, to the extent of the maximum amount secured hereby.

6. In order to induce the Mortgagee to increase the maximum aggregate principal amount of loans which may be advanced from time to time to the Mortgagor pursuant to the Construction Loan Agreement, as amended by the Amendment (as such term is defined herein) and to accept this Supplement, the Mortgagor hereby represents and warrants to the Mortgagee that as of the date hereof and as of the time that this Supplement becomes effective, each of the representations and warranties set forth in the Mortgage as supplemented hereby are and shall be and remain true and correct and the Mortgagor shall be in full compliance with all of the terms and conditions of the Mortgage as supplemented hereby and no event of default as defined in the Mortgage as supplemented hereby, or any other event which with the lapse of time, the giving of notice or both would constitute such an event of default, shall have occurred and be continuing.

7. This Supplement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which when so executed shall be an original but all of which to constitute one and the same instrument.

8. No reference to this Supplement need be made in any note, instrument or other document making reference to the Mortgage, any reference to the Mortgage in any of such to be deemed to be a reference to the Mortgage as supplemented hereby. This instrument shall be construed and governed by and in accordance with the laws of the State of Illinois.

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Accepted and agreed to in Chicago, Illinois as of the  
day and date first above written.

**HARRIS TRUST AND SAVINGS BANK**

By



Its Vice President

RONALD E. DELL'ARTINO  
VICE PRESIDENT

(Type or Print Name)

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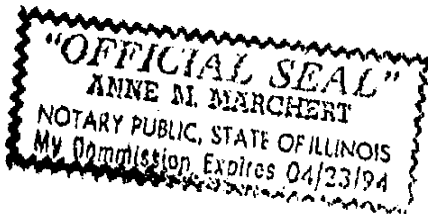
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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, ANNE M. MARCHERT, Notary Public in and for said County, in the State aforesaid, do hereby certify that T. MICHAEL BOFFIAN, Vice President of American National Bank and Trust Company of Chicago, and Anita K. Lutkus, Assistant Secretary of said Bank, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and Assistant Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act and deed of said Bank, as Trustee of Trust 104732-05, as aforesaid, for the uses and purposes therein set forth; and the said Assistant Secretary then and there acknowledged that he, as custodian of the corporate seal of said Bank, did affix the corporate seal of said Bank to said instrument as his own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

OCT 20 1990

Given under my hand and notarial seal, as of this \_\_\_\_\_ day of \_\_\_\_\_, 1990.



Anne M. Marchert  
Notary Public

\_\_\_\_\_  
(Type or Print Name)

(Notarial Seal)

Commission Expires:

\_\_\_\_\_

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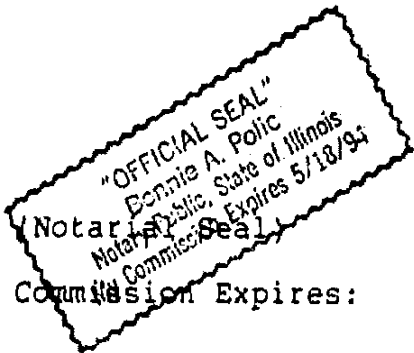
STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF C O O K )

I, Bonnie A. Polic, Notary Public in and for said County, in the State aforesaid, do hereby certify that RONALD L. DELL'ARTINO (VICE PRESIDENT), Vice President of Harris Trust and Savings Bank, an Illinois banking corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Vice President, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

Given under my hand and notarial seal, as of this 25<sup>th</sup> day of October, 1990.

Bonnie A. Polic  
Notary Public

(Type or Print Name)



Commission Expires:

Clerk of Cook County Clerk's Office

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## SCHEDULE I

### LEGAL DESCRIPTION

That certain property, located in the City of Chicago, Cook County, Illinois, more particularly described as follows:

THE NORTHEAST QUARTER (EXCEPT THE EAST 75 FEET THEREOF TAKEN FOR WIDENING NORTH MICHIGAN AVENUE) OF BLOCK 34 IN KINZIE'S ADDITION TO CHICAGO, SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Street Address: 646 North Michigan Avenue, Chicago, Illinois

P.I.N.: 17-10-113-003-0000

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9. Wherever herein any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements by or on behalf of the Mortgagor, or by or on behalf of Mortgagee, or by or on behalf of the holder or holders of the indebtedness hereby secured contained in the Mortgage as supplemented hereby shall bind and inure to the benefit of the respective successors and assigns of such parties, whether so expressed or not.

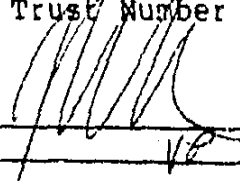
IN WITNESS WHEREOF, the Mortgagor has caused these presents to be duly executed the day and year first above written.

This instrument is executed by the undersigned Trustee, not personally but as Trustee under the terms of that certain Trust Agreement dated the 22nd day of February, 1988, and known as Trust Number 104732-05 and it is expressly understood and agreed between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the covenants, undertakings, agreements, representations and warranties herein contained are made and intended not as personal covenants, undertakings, agreements, representations and warranties of the Trustee individually or for the purpose of binding it personally but only of the Trustee as such Trustee and this instrument is executed and delivered by American National Bank and Trust Company of Chicago as Trustee solely in the exercise of the power conferred upon it as such Trustee and no personal liability or personal responsibility is assumed by nor at any time shall be asserted or enforced against American National Bank and Trust Company of Chicago on account hereof or on account of any covenant, undertaking, agreement, representation or warranty herein contained either express or implied, all such personal liability, if any, being hereby expressly waived and released by the parties hereto and by all persons claiming by, through or under said parties and so far as said American National Bank and Trust Company of Chicago is concerned, the Bank shall look solely to the Mortgaged Premises, to other collateral security herefor and to any guarantor hereof for payment and performance of the obligations of the Trustee hereunder. Nothing herein contained shall, however, operate or be deemed to impair, invalidate, avoid or negate the covenants, undertakings, agreements and representations of the Trustee as such Trustee.

AMERICAN NATIONAL BANK AND  
TRUST COMPANY OF CHICAGO, Not  
Individually But as Trustee  
Under Trust Number 104732-05

ATTEST:

  
Assistant Secretary

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

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