

UNOFFICIAL COPY

This instrument was prepared by  
and returned after recording to:  
Suzanne M. Gross  
Continental Bank N.A.  
Law Department 105/9th floor  
231 South LaSalle Street  
Chicago, Illinois 60697

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MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT ("Mortgage") is made as of this 15th day of November, 1990 between Independent Trust Corporation, not personally, but solely as trustee under Trust Agreement dated July 11, 1989, and known as Trust Number 20122 ("Mortgagor"), with an office at the address shown opposite its signature below and CONTINENTAL BANK N.A., a national banking association, whose address is 231 South LaSalle Street, Chicago, Illinois 60697 ("Lender").

RECITALS

WHEREAS, Precision National Corporation, an Illinois corporation ("PNC"), is indebted to Lender in the principal sum of TWO MILLION AND NO/100 DOLLARS (\$2,000,000), which indebtedness is evidenced by a Term Note of Maker (as defined below) dated May 31, 1990, as amended by an Amendment to Term Note dated as of September 28, 1990 between PNC and Lender, as amended by an Amendment to Term Note dated as of November 15, 1990 between PNC and Lender, together with all modifications, substitutions, extensions and renewals thereof ("Note"), providing for repayment of principal and interest and for a final payment of all sums due thereunder on February 28, 1991. The Note was issued pursuant to a Revolving Credit Agreement dated as of August 31, 1989 between PNC and Lender, as amended by a First Amendment dated May 31, 1990 between PNC and Lender, as amended by a Second Amendment dated June 25, 1990 between PNC and Lender, as amended by an Extension and Third Amendment dated September 28, 1990 between PNC and Lender, as amended by an Extension and Fourth Amendment dated as of November 15, 1990 between PNC and Lender and as further amended from time to time ("Loan Agreement"). All obligors on the Note are collectively referred to herein as "Maker".

WHEREAS, the Note is guaranteed by an Additional Guaranty dated as of May 31, 1990 executed and delivered by Kezios Properties, an Illinois general partnership ("Beneficiary"), Dean Kezios and Spiro G. Kezios (the "Guaranty"). Dean Kezios and Spiro G. Kezios are the sole general partners of Beneficiary and own one hundred percent (100%) of the stock of PNC. Beneficiary is the sole beneficiary of Mortgage, it is in Mortgagor's financial interest and benefit to enter into this Mortgage in order to induce Lender to extend the Loan.

DEPT-01 RECORDING

\$33.50

THE GRANT

T#2222 TRAN 3483 01/24/91 15:16:00

#9954 # \*91-038319

TO SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon; the repayment of the obligations evidenced by the Guaranty; the payment of all charges provided herein and all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; the performance of the covenants and agreements contained herein, in the Note and in the Guaranty; and the payment of all future advances and all other indebtedness of Mortgagor, its Beneficiary, or Maker to Lender whether now or hereafter existing (collectively, the "Secured Indebtedness" or "Indebtedness") and also for other good and valuable consideration, the receipt and sufficiency whereof is acknowledged, Mortgagor does hereby convey, grant, and mortgage to Lender the real estate ("Real Estate") located in the County of Cook, State of Illinois and described on Exhibit A, subject only to the covenants, conditions, easements and restrictions set forth on Exhibit B, if any ("Permitted Encumbrances"). The Real Estate has the common street address of 201 North Wells Street, Chicago, Illinois ("Premises Address");

TOGETHER WITH all buildings, structures, improvements, tenements, fixtures, easements, mineral, oil and gas rights, water rights, appurtenances thereunto belonging, title or reversion in any parcels, strips, streets and alleys adjoining the Real Estate, any land or vaults lying within any street, thoroughfare, or alley adjoining the Real Estate, and any privileges, licenses, and franchises pertaining thereunto, all of the foregoing now or hereafter acquired, all leasehold estates and all rents, issues, and profits thereof, for so long and during all such times as Mortgagor, its successors and assigns may be entitled thereto, all the estate, interest, right, title or other claim or demand which Mortgagor now has or may hereafter have or acquire

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with respect to: (i) proceeds of insurance in effect with respect to the Premises and (ii) any and all awards, claims for damages, judgments, settlements and other compensation made for or consequent upon the taking by condemnation, eminent domain or any like proceeding, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Premises, including, without limitation, any awards and compensation resulting from a change of grade of streets and awards and compensation for severance damages (collectively "Awards") (which are each pledged primarily and on a parity with the Real Estate and not secondarily), and all apparatus, equipment or articles now or hereafter located thereon used to supply heat, gas, air conditioning, water, light, power, refrigeration (whether single units or centrally controlled), and ventilation, and any other apparatus, equipment or articles used or useful in the operation of the Premises including all additions, substitutions and replacements thereof. All of the foregoing are declared to be a part of the Real Estate whether physically attached or not. All similar apparatus, equipment, articles and fixtures hereafter placed on the Real Estate by Mortgagor or its successors or assigns shall be considered as constituting part of the Real Estate. (All of the foregoing, together with the Real Estate (or the leasehold estate if this Mortgage is on a leasehold) are hereinafter referred to as the "Premises".)

To have and to hold the Premises unto the Lender, its successors and assigns forever, for the purposes and uses set forth herein, free from all rights and benefits under any Homestead Exemption laws of the state in which the Premises is located, which rights and benefits Mortgagor does hereby expressly release and waive.

#### COVENANTS AND AGREEMENTS

Mortgagor and Lender covenant and agree as follows:

1. Payment of Principal and Interest. Mortgagor shall promptly pay or cause to be paid when due all Secured Indebtedness.

2. Funds for Taxes and Insurance. Subject to applicable law, if requested by Lender, Mortgagor shall thereafter pay or cause to be paid to Lender on the day monthly payments of principal and interest are payable under the Note, until the Note is paid in full and the Guaranty is released, the following amounts (collectively "Funds"): (i) a sum equal to all general and special real estate and property taxes and assessments (including condominium and planned unit development assessments, if any) and ground rents on the Premises, if any (collectively "Impositions") next due on the Premises, all as estimated by Lender, divided by the whole number of months to elapse before the month prior to the date when such Impositions will become due and payable; provided that in the case of the first such deposit, there shall be deposited in addition an amount which, when added to the aggregate amount of monthly sums next payable under this subparagraph (i), will result in a sufficient reserve to pay the Impositions next becoming due one month prior to the date when such Impositions are, in fact, due and payable, plus (ii) a sum equal to an installment of the premium or premiums that will become due and payable to renew the insurance required in Paragraph 6, each installment to be in such an amount that the payment of approximately equal installments will result in the accumulation of a sufficient sum of money to pay renewal premiums for such insurance at least one (1) month prior to the expiration or renewal date or dates of the policy or policies to be renewed, if any, all as are reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof.

The Funds shall be held by Lender or, at Lender's election, in an institution the deposits or accounts of which are insured or guaranteed by a Federal or state agency ("depository account"). Lender shall apply the Funds to pay the Impositions, except that in the event of default, Lender may apply the Funds to the Secured Indebtedness as Lender sees fit. Lender shall not be required to pay any interest or earnings on the Funds unless otherwise required by law, in which case, all interest shall accrue in the depository account and Lender may charge for so holding and applying the Funds, analyzing the account or verifying and compiling assessments and bills. Upon

Mortgagor's request, Lender shall provide to Mortgagor an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit was made. The Funds are pledged as additional security for the sums secured by this Mortgage. The Funds are for the benefit of Mortgagor and Lender only and no third party shall have any right to or interest in the Funds or the application thereof.

If the amount of Funds held by Lender, together with the future monthly installments of Funds payable prior to the due dates of Impositions, shall exceed the amount required to pay said Impositions and insurance premiums as they fall due, such excess shall be retained by Lender or in the depository account and credited to subsequent monthly installments of Funds. If the amount of the Funds held by Lender shall not be sufficient to pay the Impositions and insurance premiums as they fall due, Mortgagor shall immediately pay or cause to be paid to Lender any amount necessary to make up the deficiency in one or more payments as Lender may require.

Upon payment in full of all Secured Indebtedness, Lender shall promptly refund to Mortgagor, or to any person to whom Mortgagor directs, any Funds held by Lender. If, under Paragraph 19, the Premises are sold or are otherwise acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Premises or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the Secured Indebtedness.

3. Application of Payments. Unless prohibited by applicable law, all payments received by Lender under this Mortgage, the Note, the Guaranty, the Loan Agreement, the Collateral Assignment of Leases and Rents of even date herewith from Mortgagor and Beneficiary to Lender, the Collateral Assignment of Beneficial Interest dated May 31, 1990 from Beneficiary to Lender ("Assignment of Beneficial Interest"), and all other documents given to Lender to further evidence, secure or guarantee the Secured Indebtedness (collectively, and as amended, modified or extended, the "Loan Documents") shall be applied by Lender first to payments required from Mortgagor to Lender under Paragraph 2, then to any sums advanced by Lender pursuant to any of the Loan Documents to protect the security of this Mortgage or any of the other Loan Documents and any costs or expenses in connection therewith, then to interest payable on the Note and to any prepayment premium which may be due, then to Note principal (and if principal is due in installments, application shall be to such installments in the inverse order of their maturity), and then to the Guaranty. Any applications to principal of proceeds from insurance policies, as provided in Paragraph 6, or of condemnation awards, as provided in Paragraph 10, shall not extend or postpone the due date of any monthly installments of principal or interest, or change the amount of such installments or of the other charges or payments provided in the Note, the Guaranty or other Loan Documents.

4. Prior Encumbrances; Liens. Mortgagor shall perform all of Mortgagor's obligations under any mortgage, deed of trust or other security agreement (collectively "Prior Encumbrances") creating a lien having priority over this Mortgage, including Mortgagor's covenants to make payments when due. Any act or omission of Mortgagor which, with the giving of notice or the passage of time would constitute a default or event of default under any Prior Encumbrance or under any ground lease shall be a default under this Mortgage. Mortgagor shall promptly deliver to Lender all notices given or received of any defaults or events of default under any Prior Encumbrance or any ground lease. Although this Paragraph requires Mortgagor to comply with Prior Encumbrances, it does not entitle Mortgagor to create or allow a Prior Encumbrance that would be otherwise prohibited by this Mortgage, such as Prohibited Transfers under Paragraph 17, or prohibited by the other Loan Documents.

Mortgagor shall keep the Premises free from mechanics' and all other encumbrances and liens, except Permitted Encumbrances and statutory liens for real estate taxes and assessments not yet due and payable.

5. Taxes and Assessments; Rents. Mortgagor shall pay or cause to be paid when due all Impositions and water, sewer and other charges, fines and Impositions attributable to the Premises and leasehold payments, if any, and

all other sums due under any ground lease attributable to the Premises. Mortgagor shall provide evidence satisfactory to Lender of compliance with these requirements promptly after the respective due dates for payment. Mortgagor shall pay, in full, but under protest in the manner provided by Statute, any tax or assessment Mortgagor desires to contest.

6. Insurance. Mortgagor, at its sole cost and expense, shall insure and keep insured the Premises against such perils and hazards, and in such amounts and with such limits, as Lender may from time to time require, and, in any event, including:

(a) Insurance against loss to the Premises on an "All Risk" policy form, covering insurance risks no less broad than those covered under a Standard Multi Peril (SMP) policy form, which contains a 1987 Commercial ISO "Causes of Loss - Special Form", and such other risks as Lender may reasonably require, including, but not limited to, insurance covering the cost of demolition of undamaged portions of any portion of the Premises when required by code or ordinance and the increased cost of reconstruction to conform with current code or ordinance requirements, in amounts equal to the full replacement cost of the Premises (other than the Real Estate), including fixtures and equipment, mortgagor's interest in leasehold improvements, and the cost of debris removal, with 100% co-insurance with an agreed amount endorsement, inflation guard endorsement, and deductibles of not more than \$100,000.00;

(b) Rent and rental value/extra expense insurance (if the Premises are tenant occupied) in amounts sufficient to pay during any period in which the Premises may be damaged or destroyed, on a gross rents basis for a period of twelve (12) months or such greater time as Lender may deem appropriate: (i) all rents derived from the Premises and (ii) all amounts (including, but not limited to, all Impositions, utility charges and insurance premiums) required to be paid by Mortgagor or by tenants of the Premises;

(c) Business interruption/extra expense insurance (if the Premises are owner occupied) in amounts sufficient to pay during any period in which the Premises may be damaged or destroyed, on a gross income basis for a period of twelve (12) months or such greater time as Lender may deem appropriate (i) all business income derived from the Premises and (ii) all amounts (including, but not limited to, all Impositions, utility charges and insurance premiums) required to be paid by Mortgagor;

(d) Broad form boiler and machinery insurance including business interruption/extra expense and rent and rental value insurance, on all equipment and objects customarily covered by such insurance and/or involved in the heating, cooling, electrical and mechanical systems of the Premises (if any are located at the Premises), providing for full repair and replacement cost coverage, and other insurance of the types and in amounts as Lender may reasonably require, but in no event less than that customarily carried by persons owning or operating like properties;

(e) During the making of any alterations or improvements to the Premises (i) insurance covering claims based on the owner's or employer's contingent liability not covered by the insurance provided in subsection (h) below and (ii) workers' compensation insurance covering all persons engaged in such alterations or improvements;

(f) Insurance against loss or damage by flood or mud slide in compliance with the Flood Disaster Protection Act of 1973, as amended from time to time, if the Premises are now, or at any time while the Secured Indebtedness remains outstanding shall be, situated in any area which an appropriate governmental authority designates as a special flood hazard area, Zone A or Zone V, in amounts equal to the full replacement value of all above grade structures on the Premises;

(g) Insurance against loss or damage by earthquake, if the Premises are now, or at any time while the Secured Indebtedness remains outstanding shall be, situated in any area which is classified as a Major Damage Zone,



Zones 3 and 4, by the International Conference of Building Officials in an amount equal to the probable maximum loss for the Premises, fixtures and equipment, plus the cost of debris removal;

(h) Commercial general public liability insurance, with the location of the Premises designated thereon, against death, bodily injury and property damage arising in connection with the Premises with Mortgagor listed as the named insured with such limits as Lender may reasonably require, but in no event less than \$1,000,000, and written on a 1986 Standard ISO occurrence basis form or equivalent form, and excess umbrella liability insurance with such limits as the Lender may reasonably require, but in no event less than \$10,000,000; and

(i) Such other insurance relating to the Premises and the use and operation thereof, as Lender may, from time to time, reasonably require, including, but not limited to, dramshop, products liability and worker's compensation insurance.

All insurance shall: (i) be carried in companies with a Best's rating of A or better, or otherwise acceptable to Lender; (ii) in form and content acceptable to Lender; (iii) provide thirty (30) days' advance written notice to Lender before any cancellation, material modification or notice of non-renewal; and (iv) provide that no claims shall be paid thereunder without ten (10) days' advance written notice to Lender.

All physical damage policies and renewals shall contain a standard mortgage clause naming the Lender as mortgagee, which clause shall expressly state that any breach of any condition or warranty by Mortgagor shall not prejudice the rights of Lender under such insurance; and a loss payable clause in favor of the Lender for personal property, contents, inventory, equipment, loss of rents and business interruption. All liability policies and renewals shall name the Lender as an additional insured. No additional parties shall appear in the mortgage or loss payable clause without Lender's prior written consent. All deductibles shall be in amounts acceptable to Lender. In the event of the foreclosure of this Mortgage or any other transfer of title to the Premises in full or partial satisfaction of the Secured Indebtedness, 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.

Any notice pertaining to insurance and required pursuant to this Paragraph 6 shall be given in the manner provided in Paragraph 15 below at Lender's address stated above (Attention: Richard Boutil, Metro Chicago Business Banking). The insurance shall be evidenced by the original policy or a true and certified copy of the original policy, or in the case of liability insurance, by certificates of insurance. Mortgagor shall use its best efforts to deliver originals of all policies and renewals (or certificates evidencing the same), marked "paid," to Lender at least thirty (30) days before the expiration of existing policies and in any event, Mortgagor shall deliver originals of such policies or certificates to Lender at least fifteen (15) days before the expiration of existing policies. If Lender has not received satisfactory evidence of such renewal or substitute insurance in the time frame herein specified, Lender shall have the right, but not the obligation, to purchase such insurance for Lender's interest only. Any amounts so disbursed by Lender pursuant to this Paragraph 6 shall be a part of the Secured Indebtedness and shall bear interest at the default interest rate provided in the Note (the "Default Rate"). Nothing contained in this Paragraph 6 shall require Lender to incur any expense or take any action hereunder, and inaction by Lender shall never be considered a waiver of any right accruing to Lender on account of this Paragraph 6.

Mortgagor shall not carry any separate insurance on the Premises concurrent in kind or form with any insurance required hereunder or contributing in the event of loss without Lender's prior written consent, and any such policy shall have attached standard non-contributing mortgagee clause, with loss payable to Lender, and shall meet all other requirements set forth herein.

At Lender's option, but not more often than annually, Mortgagor shall provide Lender with a report from an independent insurance consultant of

regional or national prominence, acceptable to Lender, certifying that Mortgagor's insurance is in compliance with this Paragraph 6.

Mortgagor shall give immediate notice of any loss to Lender. In case of loss covered by any of such policies, Lender is authorized to adjust, collect and compromise in its discretion, all claims thereunder and in such case, Mortgagor covenants to sign upon demand, or Lender may sign or endorse on Mortgagor's behalf, all necessary proofs of loss, receipts, releases, and other papers required by the insurance companies to be signed by Mortgagor. Mortgagor hereby irrevocably appoints Lender as its attorney-in-fact for the purposes set forth in the preceding sentence. Lender may deduct from such insurance proceeds any expenses incurred by Lender in the collection and settlement thereof, including, but not limited to, attorneys' and adjusters' fees and charges.

If all or any part of the Premises 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 6, Mortgagor shall promptly and with all due diligence restore and repair the Premises whether or not the net insurance proceeds, award or other compensation (collectively, the "Proceeds") are sufficient to pay the cost of such restoration or repair. Lender may require that all plans and specifications for such restoration or repair be submitted to and approved by Lender in writing prior to commencement of the work. 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 the Proceeds, the entire amount of the Proceeds, shall either: (i) be applied to the Secured Indebtedness 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 6 to finance the cost of restoration or repair with any excess to be applied to the Secured Indebtedness in the inverse order of maturity. Any application of the Proceeds to reduce the Secured Indebtedness shall constitute a voluntary prepayment subject to any prepayment premiums or fees provided in the Note, the Guaranty or other Loan Documents. Lender may apply the Proceeds to such prepayment premiums or fees. If the amount of the Proceeds to be made available to Mortgagor pursuant to this Paragraph 6 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 the Proceeds. If Mortgagor is required to deposit funds under this Paragraph 6, the deposit of such funds shall be a condition precedent to Lender's obligation to disburse the Proceeds held by Lender hereunder. The amount of the Proceeds, 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 require (i) evidence of the estimated cost of completion of such restoration or repair satisfactory to Lender and (ii) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, plats of survey, and other evidence of cost, payment and performance acceptable to Lender. If Lender requires mechanics' and materialmen's lien waivers in advance of making disbursements, such waivers shall be deposited with an escrow trustee satisfactory to Lender. No payment made prior to final completion of the repair or restoration shall exceed ninety percent (90%) of the value of the work performed from time to time. 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 the Secured Indebtedness except and to the extent the funds are applied thereto pursuant to this Paragraph 6. Without limitation of the foregoing, Lender shall have the right at all times to apply such funds to the cure of any Event of Default or the performance of any obligations of Mortgagor under the Loan Documents.

7. Use, Preservation and Maintenance of Premises; Leaseholds; Condominiums; Planned Unit Developments. Mortgagor shall keep the Premises in good condition and repair and shall not commit waste or permit impairment or deterioration of the Premises. Mortgagor shall not allow, store, treat or dispose of Hazardous Material as defined in Paragraph 27, nor permit the same to exist or be stored, treated or disposed of, from or upon the Premises. Mortgagor shall promptly restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or destroyed. Mortgagor shall comply with all requirements of law or municipal ordinances with respect to the use, operation, and maintenance of the Premises, including all environmental, health and safety laws and regulations, and shall make no material alterations in the Premises except as required by law, without the prior written consent of Lender. Mortgagor shall not grant or permit any easements, licenses, covenants or declarations of use against the Premises. If this Mortgage is on a unit in a condominium or a planned unit development, Mortgagor shall perform all of Mortgagor's obligations under the declaration of covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents. If this Mortgage is on a ground leasehold, Mortgagor shall perform or cause to be performed all obligations of the lessee under the underlying ground lease.

8. Protection of Lender's Security. If Mortgagor fails to perform any of the covenants and agreements contained in this Mortgage, the Note, the Guaranty or the other Loan Documents, or if any action or proceeding is threatened or commenced which materially affects Lender's interest in the Premises, then Lender, at Lender's option, upon notice to Mortgagor, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as it deems expedient or necessary to protect Lender's interest, including (i) making repairs; (ii) discharging Prior Encumbrances in full or part; (iii) paying, settling, or discharging tax liens, mechanics' or other liens, and paying ground rents (if any); (iv) procuring insurance; and (v) renting, operating and managing the Premises and paying operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Premises shall be operational and usable for its intended purposes. Lender, in making such payments of Impositions and assessments, may do so in accordance with any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of same or into the validity thereof.

Any amounts disbursed by Lender pursuant to this Paragraph 8 shall be a part of the Secured Indebtedness and shall bear interest at the Default Rate. Nothing contained in this Paragraph 8 shall require Lender to incur any expense or take any action hereunder, and inaction by Lender shall never be considered a waiver of any right accruing to Lender on account of this Paragraph 8.

9. Inspection of Premises and Books and Records. Mortgagor shall permit Lender and its representatives and agents to inspect the Premises from time to time during normal business hours and as frequently as Lender requests. Mortgagor shall keep and maintain full and correct books and records showing in detail the income and expenses of the Premises. From time to time upon not less than five (5) days demand, Mortgagor shall permit Lender or its agents to examine and copy such books and records and all supporting vouchers and data at its offices or at the address identified above.

10. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Premises, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid directly to Lender. Mortgagor hereby grants a security interest to Lender in and to such proceeds. Lender is authorized to collect such proceeds and, at Lender's sole option and discretion, to apply said proceeds either to restoration or repair of the Premises or in payment of the Secured Indebtedness. In the event the Premises are restored, Lender may pay the condemnation proceeds in accordance with its customary construction loan payment procedures, and may charge its customary fee for such services. In the event the condemnation proceeds are applied to reduce the Secured Indebtedness, any such application shall constitute a prepayment, and any

prepayment premium required by the Loan Documents shall then be due and payable as provided therein. Lender may apply the condemnation proceeds to such prepayment premium.

11. Mortgagor Not Released; Forbearance by Lender Not a Waiver; Remedies Cumulative. Any extension or other modification granted by Lender to any successor in interest of Mortgagor of the time for payment of all or any part of the Secured Indebtedness shall not operate to release, in any manner, Mortgagor's liability. Any forbearance or inaction by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the later exercise of any such right or remedy. Any acts performed by Lender to protect the security of this Mortgage, as authorized by Paragraph 8 or otherwise, shall not be a waiver of Lender's right to accelerate the maturity of the Indebtedness. All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively. No consent or waiver by Lender to or of any breach or default by Mortgagor shall be deemed a consent or waiver to or of any other breach or default.

12. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements contained herein shall bind, and the rights hereunder shall inure to, the respective heirs, executors, legal representatives, successors and permitted assigns of Lender and Mortgagor. If this Mortgage is executed by more than one Mortgagor, each Mortgagor shall be jointly and severally liable hereunder.

13. Excess Loan Charges. If any loan secured by this Mortgage is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Maker which exceeded permitted limits ("Excess Loan Charges") will, at Lender's option, either be refunded to Maker or applied as a credit against the then outstanding principal balance or accrued and unpaid interest thereon. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note. Neither Mortgagor nor any other guarantor or obligor on the Note shall have any action against Lender for any damages whatsoever arising from the payment of Excess Loan Charges.

14. Legislation Affecting Lenders' Rights. If an enactment, modification or expiration of an applicable governmental law, ruling or regulation has the effect of rendering any provision of the Note, the Guaranty, this Mortgage or any of the other Loan Documents unenforceable according to its terms, Lender, at its option, may require immediate payment in full of all sums secured by this Mortgage and may invoke any remedies permitted by Paragraph 10.

15. Notice. Except for any notice required under applicable law to be given in another manner, any notices required or given under this Mortgage shall be in writing and shall be deemed to have been properly given, served and received (i) if delivered by messenger, when delivered, (ii) if mailed in the United States mail, certified or registered, postage prepaid, return receipt requested, on the second business day after deposit in the mail, (iii) if telexed, telegraphed or telecopied, six (6) hours after being dispatched by telex, telegram or telecopy, if such sixth hour falls on a business day within the hours of 8:00 a.m. through 5:00 p.m. of the time in effect at the place of receipt, or at 8:00 a.m. on the next business day thereafter if such sixth hour is later than 5:00 p.m., or (iv) if delivered by reputable overnight express courier, freight prepaid, the next business day after delivery to such courier. Notices shall be given to Mortgagor at the address provided below and to Lender at Lender's address stated above (Attention: Richard Beutel, Metro Chicago Business Banking) with a copy to Lender at Lender's address stated above (Attention: Suzanne Gross, Law Department). Any party hereto may change the address to which notices are given by notice as provided herein.

16. Governing Law; Severability. The laws of Illinois shall govern the interpretation and enforcement of this Mortgage. The foregoing sentence shall not limit the applicability of Federal law to this Mortgage. If any provision



or clause of this Mortgage, or the application thereof, is adjudicated to be invalid or unenforceable, the validity or enforceability of the remainder of this Mortgage shall be construed without reference to the invalid or unenforceable provision or clause.

17. Prohibitions on Transfer of the Premises or of an Interest in Mortgagor. It shall be an immediate default if, without the prior written consent of Lender, which consent may be granted or withheld at Lender's sole discretion, Mortgagor shall create, effect or consent to or shall suffer or permit any conveyance, sale (including an installment sale), assignment, transfer, lien, pledge, hypothecation, mortgage, security interest, or other encumbrance or alienation, whether by operation of law, voluntarily or otherwise, (collectively "Transfer") of (1) the Premises or any part thereof or interest therein; (2) all or a portion of the beneficial interest of Mortgagor or the power of direction; (3) if Beneficiary consists of or includes a Corporation, all or a portion of the stock of such corporation that results or could result in a material change in the identity of the person(s) or entity(ies) previously in control of such corporation; or (4) if Beneficiary consists of or includes a partnership or joint venture, all or a portion of an interest in such partnership, or a joint venture interest of a joint venturer in such joint venture that results or could result in a material change in the identity of the person(s) or entity(ies) in control of such partnership or joint venture (each of the foregoing is referred to as a "Prohibited Transfer"). In the event of such default, Lender, at its sole option, may declare the entire unpaid balance, including interest, immediately due and payable.

18. Event of Default. Each of the following shall constitute an event of default ("Event of Default") under this Mortgage:

(a) Mortgagor's or Beneficiary's failure to pay any amount due herein or secured hereby, or any installment of principal or interest when due and payable whether at maturity or by acceleration or otherwise under the Note, this Mortgage, or any other Loan Document, which failure continues for more than five (5) days after the due date; provided, however, that this grace period shall not apply to the other sub-paragraphs of this Paragraph 18;

(b) Mortgagor's or Beneficiary's failure to perform or observe any other covenant, agreement, or other provision contained in the Note, the Guaranty, this Mortgage (other than an Event of Default described elsewhere in this Paragraph 18) or any other Loan Document and such failure continues for a period of twenty-one (21) days after the earlier of Mortgagor's or Beneficiary's becoming aware of such failure or the effective date of notice thereof given by Lender to Mortgagor; provided however, that this grace period shall not apply to the other sub-paragraphs of this Paragraph 18;

(c) The occurrence of any breach of representation or warranty contained in this Mortgage or any other Loan Document;

(d) A Prohibited Transfer occurs;

(e) Mortgagor or any Beneficiary shall: (i) file a voluntary petition in bankruptcy, insolvency, debtor relief or for arrangement, reorganization or other relief under the Federal Bankruptcy Code or any similar state or federal law; (ii) consent to or suffer the appointment of or taking possession by a receiver, liquidator, or trustee, (or similar official) of the Mortgagor or Beneficiary or for any part of the Premises or any substantial part of the Mortgagor's or Beneficiary's other property; (iii) make any assignment for the benefit of Mortgagor's or Beneficiary's creditors; (iv) fail generally to pay Mortgagor's or Beneficiary's debts as they become due; or (v) a court having jurisdiction shall enter a decree or order for relief in respect of Mortgagor or Beneficiary in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law;

(f) All or a substantial part of Mortgagor's or Beneficiary's assets are attached, seized, subjected to a writ or distress warrant, or are levied upon;

(g) (i) the dissolution or termination of existence of Mortgagor or Beneficiary, if Beneficiary is other than a natural person, voluntarily or involuntarily, whether by reason of death of a general partner of Mortgagor or Beneficiary or otherwise; or (ii) the amendment or modification in any respect of Mortgagor's or Beneficiary's articles or agreement of partnership or its corporate resolutions or its articles of incorporation or bylaws that would materially and adversely affect Mortgagor's or Beneficiary's performance of its obligations under the Note, the Guaranty, this Mortgage or the other Loan Documents;

(h) This Mortgage shall not constitute a valid lien on and security interest in the Premises (subject only to the Permitted Encumbrances), or if such lien and security interest shall not be perfected;

(1) The Premises are abandoned; or

(2) An indictment or other charge is filed against Mortgagor or Beneficiary in any jurisdiction, under any federal or state law, for which forfeiture of the Premises or of other collateral securing the Secured Indebtedness or of any other funds, property or other assets of Mortgagor, Beneficiary or Lender is a potential penalty unless such charge is dismissed within ten (10) days after filing.

19. ACCELERATION; REMEDIES. AT ANY TIME AFTER AN EVENT OF DEFAULT, LENDER, AT LENDER'S OPTION, MAY DECLARE ALL SUMS SECURED BY THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS TO BE IMMEDIATELY DUE AND PAYABLE WITHOUT FURTHER DEMAND AND MAY FORECLOSE THIS MORTGAGE BY JUDICIAL PROCEEDING. LENDER SHALL BE ENTITLED TO COLLECT IN SUCH PROCEEDING ALL EXPENSES OF FORECLOSURE, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COSTS INCLUDING ABSTRACTS AND TITLE REPORTS, ALL OF WHICH SHALL BECOME A PART OF THE SECURED INDEBTEDNESS AND IMMEDIATELY DUE AND PAYABLE, WITH INTEREST AT THE DEFAULT RATE. THE PROCEEDS OF ANY FORECLOSURE SALE OF THE PREMISES SHALL BE APPLIED AS FOLLOWS: FIRST, TO ALL COSTS, EXPENSES AND FEES INCIDENT TO THE FORECLOSURE PROCEEDINGS; SECOND, AS SET FORTH IN PARAGRAPH 3 OF THIS MORTGAGE; AND THIRD, ANY BALANCE TO MORTGAGOR OR AS A COURT MAY DIRECT.

20. Appointment of Receiver. Upon acceleration under Paragraphs 17 and 19, and without further notice to Mortgagor, Lender shall be entitled to have a receiver appointed by a court to enter upon, take possession of and manage the Premises.

21. Release. Upon payment of all Secured Indebtedness, Lender shall release this Mortgage upon payment by Mortgagor of all costs and fees to release same, if any. Mortgagor shall be responsible for recording the release, including all related costs of recordation.

22. Accommodation. Mortgagor has executed and delivered this Mortgage as an accommodation instrument so as to subject its interests in the Premises to the lien of this Mortgage as security for the Loan. Mortgagor hereby agrees, to the fullest extent permitted by law, not to assert or take advantage of:

(a) Any right to require Lender to proceed against PNC or any other person or to proceed against or exhaust any other security held by Lender at any time or to pursue any other remedy available to before exercising any right or remedy under this Mortgage;

(b) Any defense that may arise by reason of:

(i) Lender's failure to proceed against PNC or any of PNC's property, or any other party against whom Lender's might assert a claim, before proceeding against Mortgagor or Beneficiary under this Mortgage;

(ii) The release, suspension, discharge or impairment of any of Lender's rights against PNC or any other party against whom Lender might assert a claim, whether such release, suspension, discharge or impairment is explicit, tacit or inadvertent;

(iii) Lender's failure to pursue any other remedies available to Lender that would reduce the burden of the indebtedness secured hereby on Mortgagor's or Beneficiary's interests in the Premises;

(iv) Any extension of the time for the payment or performance of any of any PNC's obligations under this Mortgage or any of the other Loan Documents;

(v) Any amendment of this Mortgage or any of the Loan Documents, whether or not such amendment materially affects the risk that Mortgagor and Beneficiary have assumed by executing this Mortgage;

(vi) The incapacity, lack of authority, death or disability of PNC or any other person or persons; or

(vii) The failure of Lender to file or enforce a claim against the estate (in either administration, bankruptcy or any other proceedings) of PNC or any other person or persons;

(c) Demand, protest and notice of any kind, including without limitation, the following notices:

(i) Notice of the evidence, creation or incurring of any new or additional indebtedness or obligation (provided that such indebtedness or obligation is not secured by this Mortgage);

(ii) Notice of any action or non-action on the part of PNC or Lender in connection with any obligation or evidence of indebtedness held by Lender as collateral;

(iii) Notice of payment or non-payment by PNC of the indebtedness secured by this Mortgage;

(d) Any defense to enforcement of all or any part of the indebtedness secured hereby (including without limitation an action against PNC for a deficiency judgment following a foreclosure sale) which defense is based on an election of remedies by Lender, including without limitation an election by Lender to proceed against the Premises by non-judicial rather than judicial foreclosure which election destroys or otherwise impairs the subrogation rights or other rights of Mortgagor or the right of Mortgagor to proceed against PNC or both;

(e) Any duty on the part of Lender to disclose to Mortgagor any default by PNC under this Mortgage, or any other Loan Document;

(f) Any duty on the part of Lender to disclose to Mortgagor or Beneficiary any facts Lender may now know or may hereafter know about PNC or PNC's successors in interest (if any) regardless of whether Lender (i) has reason to believe that any such facts materially increase the risk beyond the risk which Mortgagor or Beneficiary intends to assume by executing this Mortgage, (ii) has reason to believe that these facts are unknown to Mortgagor or Beneficiary, or (iii) has a reasonable opportunity to communicate such facts to Mortgagor or Beneficiary, it being understood and agreed that Mortgagor and Beneficiary are fully responsible for being and keeping informed of the financial condition of PNC or any successor in interest of PNC and of all circumstances bearing on the risk of non-payment of any indebtedness of PNC to Lender that is secured hereby; and

(g) Any right to object to the release of any portions of the Premises from the lien of this Mortgage notwithstanding the fact that such releases may be made without Lender's having received any or adequate consideration therefor.

23. Security Agreement. Without limiting any other provisions of this Mortgage, this Mortgage constitutes a Security Agreement under the Uniform Commercial Code of the State of Illinois (herein called the "Code") with respect to all fixtures, apparatus, equipment or articles, and all replacements and substitutions, now or hereafter located on the Premises as set forth in the description of the Premises above, including but not limited to the air-conditioning, heating, gas, water, power, light, refrigeration, and ventilation systems which are presently located at the Premises, and with respect to all Awards, and all Funds and other sums which may be deposited with Lender pursuant hereto (all for the purposes of this paragraph called "Collateral"), and Mortgagor, as debtor, hereby grants to Lender, as secured

party, a security interest in such Collateral. All of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises. When the Secured Indebtedness shall become due, whether by acceleration or otherwise, Lender shall have all remedies of a secured party under the Code. This Mortgage is intended to be a financing statement with respect to any of the Collateral which constitute "fixtures" within the meaning of the Code. Mortgagor shall execute and deliver to Lender any other financing statements necessary to perfect the security interest in the Collateral created hereby. Any Code requirement for reasonable notice shall be met if such notice is delivered as provided herein at least five (5) days prior to the time of any sale, disposition, or other event or matter giving rise to the notice (which period of time and method of notice is agreed to be commercially reasonable).

24. Waiver of Redemption. Notwithstanding anything to the contrary herein contained, to the fullest extent permitted by the laws of the State of Illinois, Mortgagor hereby waives any and all rights of redemption from sale under any order, judgment or decree of foreclosure, on behalf of Mortgagor, and on behalf of (i) each and every person acquiring any interest in or title to the Premises subsequent to the date of this Mortgage; (ii) any trust estate of which the Premises is a part and all beneficiaries of such trust estate; and (iii) all other persons.

25. Business Loan. Mortgagor hereby represents that: (a) the proceeds of the Secured Indebtedness (the "Loan") will be used for the purposes specified in Section 6404(1)(a) or (c) of Chapter 17 of the Illinois Revised Statutes, as amended; (b) the Loan constitutes a "business loan" within the purview of that Section; (c) the Loan is a transaction exempt from the Truth in Lending Act, 15 U.S.C. §1601, et seq.; and (d) the proceeds of the Indebtedness will not be used for the purchase of registered equity securities within the purview of Regulation "U" issued by the Board of Governors of the Federal Reserve System.

26. Riders. The Condominium Rider, Revolving Credit Rider, Leasehold Financing Rider and all other riders attached hereto, if any, are incorporated herein and made a part hereof.

27. Environmental Matters

A. Definitions. For purposes of this Paragraph 27:

1. "Premises" means: The Real Estate including, improvements presently and hereafter situated thereon or thereunder, construction material used in such improvements, surface and subsurface soil and water, areas leased to tenants, and all business uses, and operations thereon.

2. "Environmental Laws" means:

(a) any federal statute, law, code, rule, regulation, ordinance, order, standard, permit, license or requirement (including consent decrees, judicial decisions and administrative orders) together with all related amendments, implementing regulations and reauthorizations, pertaining to the protection, preservation, conservation or regulation of the environment, including: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq. ("CERCLA"); the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. §2601 et seq. ("TOSCA"); the Clean Air Act, 42 U.S.C. §7401 et seq.; and the Clean Water Act, 33 U.S.C. §1251 et seq.;

(b) any state or local statute, law, code, rule, regulation, ordinance, order, standard, permit, license or requirement (including consent decrees, judicial decisions and administrative orders) together with all related amendments, implementing regulations and reauthorizations, pertaining to the protection, preservation, conservation or regulation of the environment, including, if the

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Premises are located in Illinois, the Illinois Environmental Protection Act, Ill. Rev. Stat. Ch. 111-1/2, §1001 et seq., (collectively, the "Illinois Environmental Act");

(c) any federal, state or local legislation enacted in the future pertaining to the protection, preservation, conservation or regulation of the environment, and all related amendments, implementing regulations and reauthorizations.

3. "Hazardous Material" means:

(a) "hazardous substances" as defined by CERCLA or the Illinois Environmental Act,

(b) "hazardous wastes," as defined by RCRA;

(c) any pollutant or contaminant, or hazardous, dangerous or toxic chemical, material, waste or substance ("pollutant") within the meaning of Environmental Laws, which Environmental Laws prohibit, limit or otherwise regulate the use, exposure, release, generation, manufacture, sale, transport, handling, storage, treatment, reuse, presence, disposal or recycling of such pollutant;

(d) more than 100 gallons of petroleum or crude oil;

(e) any radioactive material, including any source, special nuclear or by-product material as defined at 42 U.S.C. §2011 et seq. and amendments thereto and reauthorizations thereof;

(f) asbestos-containing materials in any form or condition; and

(g) polychlorinated biphenyls ("PCB").

4. "Environmental Actions" means:

(a) any notice of violation, correspondence, complaint, claim, citation, demand, inquiry or inquiries, report, action, assertion of potential responsibility, lien, encumbrance, or proceeding regarding the Premises, whether formal or informal, absolute or contingent, matured or unmatured, brought or issued by any governmental unit, agency or body, or any person or entity respecting:

(i) Environmental Laws;

(ii) public health risks;

(iii) the environmental condition of the Premises, or any portion thereof, or any property near the Premises, including actual or alleged damage or injury to wildlife, biota, air, surface or subsurface soil or water, or other natural resources; or

(iv) the use, exposure, release, generation, manufacture, transportation to or from, handling, storage, treatment, recycling, reuse, disposal or presence of Hazardous Material either on the Premises or transported off-site for sale, treatment, storage, recycling, reclamation, reuse or disposal;

(b) any violation or claim of violation by Mortgagor of any Environmental Laws;

(c) any lien for damages caused by, or the recovery of any costs incurred for the investigation, remediation or cleanup of any release or threatened release of Hazardous Material; or

(d) the destruction or loss of use of property, or the injury, illness or death of any employee, agent, representative, tenant or invitee of Mortgagor or any other person arising from or caused by the environmental condition of the Premises.

(Beneficiary)

B. Mortgagor's Representations. Mortgagor/herby represents to Lender that:

1. Compliance. The Premises have been and are currently in compliance with all Environmental Laws. All required governmental permits and licenses are in effect, and Mortgagor is in compliance therewith. Mortgagor has not received any notice of any Environmental Action respecting either the Premises or any off-site facility to which has been sent any such Hazardous Material for off-site treatment, recycling, reclamation, reuse, handling, storage or disposal.

2. Absence of Hazardous Material. No use, exposure, release, generation, manufacture, storage, treatment, transportation or disposal of Hazardous Material has occurred or is occurring on or from the Premises except as has been disclosed in writing to Lender ("Permitted Material"). All Hazardous Material used, treated, stored, transported to or from, generated or handled on the Premises has been disposed of on or off the Premises in a lawful manner. No environmental public health or safety hazards currently exist with respect to the Premises. No underground storage tanks (including petroleum storage tanks) are present on or under the Premises except as has been disclosed in writing to Lender ("Permitted Tanks").

3. Proceedings and Actions. There have been no past, and there are no pending or threatened, Environmental Actions to which Mortgagor is a party or which relate to the Premises.

C. Mortgagor's Covenants. Mortgagor hereby covenants and agrees with Lender as follows:

1. Compliance. The Premises shall comply with all Environmental Laws. All required governmental permits and licenses shall remain in effect or shall be renewed in a timely manner, and Mortgagor shall comply therewith. All Hazardous Material present, handled or generated on the Premises will be disposed of in a lawful manner. Mortgagor will satisfy all requirements of applicable Environmental Laws for the registration, operation, maintenance and removal of all underground storage tanks on the Premises, if any. Without limiting the foregoing, all Hazardous Material shall be handled in compliance with all applicable Environmental Laws.

2. Absence of Hazardous Material. Other than Permitted Material, no Hazardous Material shall be introduced to or used, generated, present, or handled on the Premises without thirty (30) days prior written notice to Lender.

3. Environmental Actions. Mortgagor shall immediately notify Lender of all Environmental Actions and provide copies within two (2) business days of receipt of all written notices, complaints, correspondence and other documents relating thereto. Mortgagor shall promptly cure and have dismissed with prejudice all Environmental Actions to the satisfaction of Lender, and Mortgagor shall keep the Premises free of any encumbrance arising from any judgment, liability or lien imposed pursuant to any Environmental Actions.

4. Future Environmental Audits. Mortgagor shall provide such information and certifications which Lender may reasonably request from time to time to insure Mortgagor's compliance with this Paragraph 27. To investigate Mortgagor's compliance with Environmental Laws and with this Paragraph 27, Lender shall have the right, but no obligation, at any time to enter upon the Premises, take samples, review Mortgagor's books and records, interview Mortgagor's employees and officers, and conduct such other activities as Lender, at its sole discretion, deems appropriate to ensure Mortgagor's compliance. Mortgagor shall cooperate fully in the conduct of such an audit. If Lender decides to conduct such an audit because of (i) an Environmental Action; (ii) Lender's considering taking possession of or title to the Premises after default by

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Mortgagor; (iii) a material change in the use of Premises, which in Lender's opinion, increases the risk of non-compliance with Environmental Laws; or (iv) the introduction of Hazardous Material other than Permitted Material to the Premises; then Mortgagor shall pay upon demand all costs and expenses connected with such audit, which until paid, shall become additional indebtedness secured by the Loan Documents and shall bear interest at the Default Rate. Nothing in this Paragraph 27 shall give or be construed as giving Lender the right to direct or control Mortgagor's actions in complying with Environmental Laws.

- D. Lender's Right to Rely. Lender is entitled to rely upon Mortgagor's representations, warranties and covenants contained in this Paragraph 27 despite any independent investigations by Lender or its consultants. Mortgagor shall take all necessary actions to determine for itself, and to remain aware of, the environmental condition of the Premises. Mortgagor shall have no right to rely upon any independent environmental investigations or findings made by Lender or its consultants.
- E. Indemnification. The term "Lender's Environmental Liability" shall mean any and all losses, liabilities, obligations, penalties, claims, fines, lost profits, litigation, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential, punitive and exemplary damages), disbursements or expenses of any kind or nature whatsoever (including attorneys' fees at trial and appellate levels and experts' fees and disbursements and expenses incurred in investigating, defending against, settling or prosecuting any litigation, claim or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against Lender or any of Lender's parent and subsidiary corporations, and their affiliates, shareholders, directors, officers, employees, and agents (collectively, "Affiliates") in connection with or arising from:
1. any Hazardous Material on, in, under or affecting all or any portion of the Premises, or any surrounding areas;
  2. any misrepresentation, inaccuracy or breach of any warranty, covenant or agreement contained or referred to in this Paragraph 27;
  3. any violation or claim of violation by Mortgagor of any Environmental Laws;
  4. the imposition of any lien for damages caused by, or the recovery of any costs incurred for the cleanup of, any release or threatened release of Hazardous Material; or
  5. any Environmental Actions.

Mortgagor shall indemnify, defend (at trial and appellate levels and with counsel, experts and consultants acceptable to Lender and at Mortgagor's sole cost) and hold Lender and its Affiliates free and harmless from and against Lender's Environmental Liability (collectively, "Mortgagor's Indemnification Obligations"). Mortgagor's Indemnification Obligations shall survive in perpetuity the repayment of the Note, the release of the Guaranty or any transfer of the Premises by Mortgagor, Lender or its Affiliates, including by foreclosure or by a deed in lieu of foreclosure.

Mortgagor, its successors and assigns, hereby waive, release and agree not to make any claim or bring any cost recovery action against Lender under or with respect to any Environmental Laws. To the extent that Lender is strictly liable under any Environmental Laws or Environmental Actions, Mortgagor's obligation to Lender under this indemnity shall likewise be without regard to fault on the part of Mortgagor or Lender with respect to the violation or condition which results in liability to Lender.

28. Zoning. Mortgagor's use and operation of the Premises shall comply with all applicable zoning laws, regulations and ordinances (including health and safety laws). The Premises are zoned to permit the current operation and use of the Premises. Mortgagor will not initiate or acquiesce in a zoning reclassification without Lender's consent.

29. Interpretation. This Mortgage shall be construed pursuant to the laws of the State of Illinois. The headings of sections and paragraphs in this Mortgage are for convenience only and shall not be construed in any way to limit or define the content, scope, or intent of the provisions. The use of singular and plural nouns, and masculine, feminine, and neuter pronouns, shall be fully interchangeable, where the context so requires. If any provision of this Mortgage, or any paragraph, sentence, clause, phrase or word, or the application thereof, in any circumstances, is adjudicated to be invalid, the validity of the remainder of this Mortgage shall be construed as if such invalid part were never included. Time is of the essence of the payment and performance of this Mortgage.

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

If any Mortgage provision shall grant to Lender any rights or remedies upon Mortgagor's default which are more limited than the rights that would otherwise be vested in Lender under the Act in the absence of such 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 or not enumerated in Paragraph 21 of this Mortgage, shall be added to the Indebtedness secured by this Mortgage or by the judgment of foreclosure.

31. Land Trustee Exculpation. This Mortgage is executed by Independent Trust Corporation, not personally, but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as Trustee. No personal liability shall be asserted or be enforceable against the Trustee because or in respect of this Mortgage or its making, issue or transfer, and all such liability, if any, is expressly waived by each taker and holder hereof; ~~except that Trustee in its personal and individual capacity warrants that it as trustee possesses full power and authority to execute this instrument.~~ Nothing herein shall modify or discharge the personal liability of any other party. Each original and successive holder of this Mortgage accepts the express condition that no duty shall rest upon the Trustee to sequester the rents, issues and profits arising from the Premises, or the proceeds arising from such Premises's sale or other disposition. In the Event of Default, the sole remedy of the holder, as far as Trustee is concerned, shall be foreclosure of the Mortgage, action against any other security at any time given to secure the payment of the Secured Indebtedness, action to enforce the personal liability of other makers on the Note or the guarantors of the Note, or any other remedies as the holder in its sole discretion may elect.

32. Accountant's Letters. At Lender's request, the Mortgagor shall deliver to Lender one or more letters addressed to Mortgagee and signed by each accountant or firm of accountants who prepared or certified any of the financial statements furnished, or who will prepare or certify any financial statement to be furnished, to Lender hereunder or under any of the other documents delivered to Lender in connection with the loan or the guaranty secured by this Mortgage, affirming that such accountant or firm of accountants understands that Mortgagee will rely on such financial statements and that the liability and responsibility of such accountant or firm of accountants to Mortgagee with respect thereto will not be eliminated diminished or affected in any way by Illinois Public Act 84-1251 (Laws 1986) or any other statutory, regulatory, administrative or other law, regulation, enactment, or ordinance.

33. Assignment of Beneficial Interest. In the event of any inconsistencies between the terms of the Assignment of Beneficial Interest and this Mortgage, the terms of this Mortgage shall control.

34. IRPTA. Mortgagor represents that the Premises are not subject to the Illinois Responsible Transfer Act of 1988, as amended (Ill. Rev. Stat. Ch. 30, par. 901).

35. Floodway and Floodplain. Mortgagor represents that the Premises are not in an Illinois regulatory floodway, as defined in Ill. Rev. Stat. Ch. 19, Par. 65g, Section 18(g) and that the Premises are not in a "special flood hazard area," or an "A" zone or a "V" zone, as shown on a Floodway Hazard Boundary Map or a Flood Insurance Rate Map published by the Federal Insurance Administration or the Federal Emergency Management Agency.

36. Expenses. Mortgagor agrees to pay or reimburse Lender from time to time, upon demand, for all expenses relating to the Loan and the Guaranty ("Loan Expenses"), including, but not limited to all recording charges, registration, taxes, recording taxes, mortgage taxes, title insurance charges, costs of surveys, certified copies of instruments, appraiser's fees and reasonable attorneys' fees (which, for purposes of this Mortgage, the Loan and the Guaranty, shall include fees and time charges of attorneys employed directly by Lender) incurred by Lender relative to the preparation and review of this Mortgage and the Loan Documents.

37. WAIVER OF JURY TRIAL. MORTGAGOR AND LENDER WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (i) UNDER THIS MORTGAGE, THE OTHER LOAN DOCUMENTS OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR THEREWITH; OR (ii) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS. MORTGAGOR AND LENDER AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the date first written above.

INDEPENDENT TRUST CORPORATION, not personally, but solely as trustee

Attest:

By: Walter C. Spreadbury  
WALTER C. SPREADBURY, Trust Officer

By: Cheryl Jaworsky  
Its: CHERYL JAWORSKY, Trust Officer.

Mortgagor's Address:  
1301 West 22nd Street  
Suite 702  
Oak Brook, Illinois 60521

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## JOINDER TO MORTGAGE BY BENEFICIARY

FOR GOOD AND VALUABLE CONSIDERATION RECEIVED, the undersigned, being sole owner of one hundred percent (100%) of the beneficial interest in the Land Trust which is the Mortgagor under the foregoing Mortgage, and the sole holder of the power of direction of said Land Trust, joins in the execution of, and hereby:

(a) adopts, consents to, remakes and restates all covenants, representations and warranties contained in the Mortgage, and intends hereby to be personally bound by and liable thereon and for the performance thereof;

(b) consents to and joins in the Security Agreement and the Assignment of Leases and Rents contained in the Mortgage, intending hereby to bind any interest the undersigned and the undersigned's successors and assigns may have in the Premises and the Real Estate described in the Mortgage, any rents, profits and avails of any leases or other agreements relating to any or all of the Real Estate, the Premises, or the other Collateral described in the Mortgage, and any and all personal property and other Collateral described in the Mortgage, as fully and with the same effect as if the undersigned were named as the Mortgagor in the Security Agreement contained in the Mortgage;

(c) agrees to cause Mortgagor to comply fully with and perform all duties, obligations, covenants and agreements undertaken by Mortgagor in the Mortgage;

(d) acknowledges and consents to the restrictions on transfer contained in the Mortgage, including the restrictions on transfer of the beneficial interest in the Trust;

(e) has or will duly authorize and direct Mortgagor to execute and deliver the Mortgage; and

(f) acknowledges and consents to the waiver of the statutory right of redemption, waiver of the right to jury trial and other waivers of the rights and remedies of Mortgagor or the undersigned contained in the Mortgage.

IN WITNESS WHEREOF, the undersigned has executed this Joinder as of the 15th day of November, 1990.

Kezios Properties, an Illinois general partnership

By: *Spiro G. Kezios*  
Spiro G. Kezios, its General Partner

By: *Dean Kezios*  
Dean Kezios, its General Partner

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 ) SS.  
COUNTY OF COOK )

This instrument was acknowledged before me on JANUARY 15, 1991, ~~1990~~ by Spiro G. Kezios, a general partner of Kezios Properties, an Illinois general partnership.

*Maureen E. Wojtowicz*  
Notary Public

My Commission expires:

4-4-94

"OFFICIAL SEAL"  
Maureen E. Wojtowicz  
Notary Public, State of Illinois  
My Commission Expires 4/4/94

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

This instrument was acknowledged before me on Jan. 22, 1991, ~~1990~~ by Dean Kezios, a general partner of Kezios Properties, an Illinois general partnership.

*Ina S. Epstein*  
Notary Public

My Commission expires:

" OFFICIAL SEAL "  
INA S. EPSTEIN  
NOTARY PUBLIC, STATE OF ILLINOIS  
MY COMMISSION EXPIRES 7/31/93

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CLERK'S OFFICE

EXHIBIT A

LEGAL DESCRIPTION

Lots 1 and 2 in Metropolitan's Resubdivision of Lot 5 in Block 19 in Original Town of Chicago in Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

PIN: 17-09-418-010  
17-09-418-011

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EXHIBIT B

PERMITTED ENCUMBRANCES

1. Taxes which are not yet due and payable.
2. Identified Leases as defined in the Collateral Assignment of Leases and Rents dated as of November 15, 1990 among Mortgagor, Beneficiary and Lender.

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