

UNOFFICIAL COPY

①

9 1 2 1 9 1 2 1 9 3 2 7

THIS INSTRUMENT WAS PREPARED BY BOOK COUNTY, ILLINOIS
AND SHOULD BE RETURNED TO:

Elizabeth H. Belkin, Esq.
Neal Gerber & Eisenberg
Two North LaSalle Street
Suite 2100
Chicago, Illinois 60602

1991 MAY -9 PM 1:05

91219327

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT is made as of the 15th day of April, 1991, by FIRST CHICAGO TRUST COMPANY OF ILLINOIS, as successor to Mount Prospect State Bank, not individually but as Trustee under that certain Trust Agreement dated August 29, 1983, and known as Trust No. 1336 (the "Trust"), and SCHAUMBURG ATRIUM CENTER, a joint venture formed under the laws of the State of Illinois ("Beneficiary") (the Trust and Beneficiary, collectively, "Mortgagor"), in favor of AUSA LIFE INSURANCE COMPANY, an Iowa corporation having its principal office at 4333 Edgewood Road N.E., Cedar Rapids, Iowa 52499 ("Mortgagee").

W I T N E S S E T H:

\$ 101.00

WHEREAS, in and by that certain Promissory Note of even date herewith (the "Note"), a copy of which is attached hereto as Exhibit "A" and by this reference made a part hereof, Mortgagor is indebted to Mortgagee in the original principal sum of Eleven Million Two Hundred Fifty Thousand and No/100 Dollars (\$11,250,000.00), with interest thereon at the rates set forth in the Note being due and payable as provided in the Note, such loan being conditioned upon the keeping, observance, performance and compliance with all the other terms, conditions and agreements on Mortgagor's part to be kept, observed and performed under the Note, this Mortgage, that certain Collateral Assignment of Beneficial Interest Under Land Trust of even date herewith made by Beneficiary in favor of Mortgagee, that certain Unconditional Assignment of Leases and Rents made by Mortgagor in favor of Mortgagee, that certain Unconditional Assignment of Management Agreements, Service Agreements, Sales Agreements and Contracts of even date herewith made by Beneficiary in favor of Mortgagee, that certain Environmental Indemnity of even date herewith made by Beneficiary in favor of Mortgagee, and any and all other documents now or hereafter delivered to secure the payment of such indebtedness (collectively, the "Loan Documents").

NOW, THEREFORE, in order to secure the payment of all sums due or to become due under the Note, or under the terms of this Mortgage and the other Loan Documents, or any extensions, refinancings, refundings or modifications thereof, as well as to

72 83853 DN

91219327

UNOFFICIAL COPY

9 1 2 1 9 3 2 7

secure the performance and observance of all Mortgagor's covenants and agreements contained in this Mortgage and the other Loan Documents or any amendments thereof (whether or not Mortgagor is personally liable for such payment, performance or observance) not to exceed a sum equal to two hundred percent (200%) of the indebtedness evidenced by the Note, and in consideration of the premises and the further sum of Ten Dollars (\$10.00) to Mortgagor in hand well and truly paid by Mortgagee, and for other good and valuable consideration at and before the sealing and delivery hereof, the receipt and sufficiency of which is hereby acknowledged, Mortgagor has granted, bargained and sold, mortgaged, conveyed, remised, aliened, enfeoffed, released, confirmed, assigned, transferred and set-over, and by these presents does grant, bargain and sell, mortgage, convey, remise, alien, enfeoff, release, confirm, assign, transfer and set-over unto Mortgagee, its successors and assigns, all of Mortgagor's right, title and interest in and to that certain tract of land situated in Schaumburg, Illinois, more particularly described in Exhibit "B" attached hereto and made a part hereof (the "Land").

TOGETHER with the tenements, hereditaments, appurtenances and all the estates and rights of Mortgagor in and to the Land.

TOGETHER with all the right, title and interest of Mortgagor in and to all streets, roads and public places, opened or proposed, adjoining the Land, and all easements and rights of way, public or private, now or hereafter used in connection with the Land.

TOGETHER with all right, title and interest of Mortgagor, now owned or hereafter acquired, in and to any land lying in the bed of any street, road or avenue, open or proposed, in front of or adjoining the Land to the extent of the interest of Mortgagor therein, now or hereafter acquired.

TOGETHER with all right, title and interest of Mortgagor, now owned or hereafter acquired, in and to any and all sidewalks, vaults and alleys, and all strips and gores of land, adjacent to or used in connection with the Land.

TOGETHER with all buildings, structures and improvements (the "Improvements") of every kind and description owned by Mortgagor and now or hereafter erected or placed on the Land.

TOGETHER with all fixtures, fittings, appliances, apparatus, equipment, machinery, chattels, building materials and articles of personal property of every kind and character, together with the renewals, replacements and substitutions thereof, additions and accessions thereto (hereinafter collectively called the "Fixtures"), owned by Mortgagor and now or at any time hereafter affixed to or attached to or placed upon or used in any way in connection with the complete and comfortable use, enjoyment or

UNOFFICIAL COPY

9 1 2 1 9 3 2 7

occupancy for operation and maintenance of the Improvements (excepting any personal property owned by any tenant occupying any of the Improvements and used by such tenant in the use or occupancy of the space occupied by it to the extent the same does not become the property of Mortgagor under the lease or other agreement with such tenant or unit owner or pursuant to applicable law), all of which now or hereafter so affixed, placed or used are intended to be subject to the lien of this Mortgage as if part of the real estate, and all cash and non-cash proceeds thereof.

TOGETHER with all right, title and interest of Mortgagor in and to any and all deposits made under any conditional bill of sale, chattel mortgage or security interest (other than that created hereby) to which any Fixtures are or shall be subject, and all deposits made thereunder, together with the benefit of any payments now or hereafter made thereon.

TOGETHER with all right, title and interest of Mortgagor as lessee under any and all leases relating to any Fixtures, together with any options to purchase the Fixtures which are subject to such leases and together with the benefit of any payments now or hereafter made thereon.

TOGETHER with the reversions, remainders, easements, issues and profits arising or issuing from the Land and from the Improvements thereon including, but not limited to, the rents, issues and profits arising or issuing from all leases, subleases, room rent agreements, licenses and concession agreements, now or hereafter entered into covering all or any part of said Land or the Improvements, or both, to the extent of Mortgagor's interest in same, all of which leases, subleases, room rent agreements, licenses, concession agreements, rents, issues and profits are hereby assigned and, if requested by Mortgagee, shall be caused to be further assigned to Mortgagee by Mortgagor. The foregoing assignment shall include, without limitation, cash or securities deposited under leases to secure performance by lessees of their obligations thereunder, whether such cash or securities are to be held until the expiration of the terms of such leases or applied to one or more installments of rent coming due prior to the expiration of such terms. Mortgagee, or any officer of Mortgagee, is hereby irrevocably appointed attorney-in-fact for Mortgagor, with the power, coupled with an interest, to collect such rents, issues and profits after default by Mortgagor. Mortgagor will execute and deliver to Mortgagee on demand such assignments and instruments as Mortgagee may require to implement, confirm, maintain and continue the assignment hereunder.

TOGETHER with any and all awards, damages, payments and other compensation and any and all claims therefor and rights thereto which may result from taking or injury by virtue of the exercise of the power of eminent domain of or to, or any damage, injury or

UNOFFICIAL COPY

9 1 2 1 9 3 2 7

destruction in any manner caused to, the Land, the Improvements, or any part thereof, or from any change of grade or vacation of any street abutting thereon, all of which awards, damages, payments, compensation, claims and rights are hereby assigned, transferred and set over to Mortgagee to the fullest extent that Mortgagor may under the law so do. Mortgagee, or any officer of Mortgagee, is hereby irrevocably appointed attorney-in-fact, coupled with an interest, for Mortgagor to settle for, collect and receive any such awards, damages, payments and compensation from the authorities making the same, to appear in and prosecute any proceeding therefor, and to give receipts and acquittances therefor.

TOGETHER with all of Mortgagor's right, title and interest in and to all contracts and agreements relative to the construction, remodeling, use and occupancy of the Improvements.

TOGETHER with all right, title and interest of Mortgagor in and to all unearned premiums accrued, accruing or to accrue under any and all insurance policies now or hereafter obtained by Mortgagor.

TOGETHER with all proceeds of the conversion, voluntary or involuntary, of any or all of the foregoing into cash or liquidated claims, including without limitation, proceeds of insurance and condemnation awards.

ALL of which property and rights therein hereinabove described or mentioned being hereinafter collectively called, the "Mortgaged Property").

TO HAVE AND TO HOLD the Mortgaged Property unto Mortgagee, its successors and assigns, forever, free from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois (which rights and benefits are hereby expressly released and waived), for the uses and purposes herein set forth, together with all right to retain possession of the Mortgaged Property after any default in the payment of all or any part of the indebtedness hereby secured or the breach of any covenant or agreement herein contained, or upon the occurrence of any Event of Default as hereinafter defined.

AND at all times until the entire unpaid indebtedness under the Loan Documents, including all sums now or hereafter due Mortgagee thereunder, are fully paid, together with all interest thereon, Mortgagor covenants, promises and agrees with Mortgagee as follows:

ARTICLE I

COVENANTS AS TO PAYMENT, PERFORMANCE AND TITLE

Section 1.01. Mortgagor shall pay to Mortgagee, without offset, counterclaim or defense, the entire unpaid principal indebtedness of the Note, including all sums now or hereafter due Mortgagee under the terms hereof or under the terms of any of the other Loan Documents, together with all interest thereon, punctually as and when the same shall become due by the terms thereof or hereof. Mortgagor shall fully and faithfully observe and perform all of the terms, provisions, conditions, covenants and agreements on the part of Mortgagor to be observed and performed under the Note and the other Loan Documents.

Section 1.02. Mortgagor represents that: (i) Mortgagor has good and marketable title to the Land, in fee simple, subject only to those matters set forth on Exhibit "C" attached hereto and by this reference made a part hereof and such other matters approved by Mortgagee: (ii) Mortgagor has good title to the Fixtures; and (iii) this Mortgage is a first and prior lien on and security interest in and to the Mortgaged Property subject to no other lien and subject to no other encumbrances except those, if any, permitted in writing by Mortgagee. Mortgagor shall not, without the prior written consent of Mortgagee, install in or locate on the Mortgaged Property any equipment or fixtures which are subject to any security interest, lien or title retention arrangement of any kind other than that created hereby. Mortgagor represents that neither the rents, issues and profits of the Mortgaged Property nor any part thereof have been previously assigned or will be assigned hereafter, except to Mortgagee as further security for the obligations secured hereby. Mortgagor shall preserve such title as herein described and shall forever represent and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever except to the extent as may be expressly permitted hereunder.

ARTICLE II

COVENANTS AS TO TAXES, ASSESSMENTS, ETC.

Section 2.01. In order to more fully protect the security of this Mortgage, Mortgagor, together with, and in addition to, the monthly installments of principal and interest payable under the terms of the Note, on the first day of each month until the said Note is fully paid, shall pay to Mortgagee a sum (the "Impositions") equal to the ground rents, if any, and all taxes and special assessments next due on the Mortgaged Property covered by this Mortgage, plus the premiums that will next become due and payable on policies of fire, extended coverage, and other insurance

UNOFFICIAL COPY

9 1 2 1 9 3 2 7

on the Mortgaged Property covered hereby and as required by Mortgagee (all as estimated by Mortgagee), less all sums already paid therefor, divided by the number of months to elapse before one (1) month prior to the date when such ground rents, if any, premiums, taxes and assessments will become delinquent, such sums to be held by Mortgagee without interest in trust to pay said ground rents, if any, premiums, taxes, and assessments before the same become delinquent. The amount of the Impositions, together with all payments to be made under the Note, shall be added together and the aggregate amount thereof shall be paid by Mortgagor each month in a single payment to be applied by Mortgagee to the following items in the order set forth:

(a) Ground rents, if any, taxes, special assessments, fire, hazard, other insurance premiums as same may be due and payable,

(b) Interest on the Note as same may be due and payable;

(c) Amortization of the principal of the Note as same may be due and payable, it being understood and agreed that any deficiency in the amount of such aggregate monthly payment shall be payable on demand.

Section 2.02. In the event that the total of the payments made by Mortgagor under Section 2.01 hereof for ground rents, if any, taxes, assessments and insurance payments shall exceed the amount of the payments actually made by Mortgagee for ground rents, if any, taxes, assessments, and insurance premiums, such excess (as determined by Mortgagee as a result of its annual analysis of escrow accounts) shall be credited to subsequent payments to be made by Mortgagor hereunder as same may be due and payable after Mortgagee has completed its annual analysis of escrow accounts. If, however, monthly payments made by Mortgagor under Section 2.01 hereof shall not be sufficient to pay ground rents, if any, taxes, assessments and insurance premiums when the same shall become due and payable, then Mortgagor shall pay to Mortgagee any amount equal the deficiency on or before the date the payment of such ground rents, if any, taxes, and assessments or insurance premiums shall be due. If at any time Mortgagor shall tender to Mortgagee, in accordance with the provisions of the Note, a full payment of the entire indebtedness represented thereby, Mortgagee shall, in computing the amount of such indebtedness, credit to the account of Mortgagor, all payments made under the provision of Section 2.01 hereof which Mortgagee has not become obligated to pay. If there shall be a default under any of the provisions of this Mortgage resulting in a public sale of the Mortgaged Property, or if the Mortgagee acquires the Mortgaged Property otherwise after default, Mortgagee shall apply the balance then remaining in the funds accumulated under Section 2.01 hereof as a credit against the amount of the indebtedness of the then remaining unpaid balance

UNOFFICIAL COPY

9 1 2 1 9 3 2 7

under the Note and any other sums due under this Mortgage and the other Loan Documents.

Section 2.03. Mortgagor shall pay, or cause to be paid, all ground rents, if any, taxes, assessments, water rents and other governmental or municipal charges or other lawful charges, for which provision has not been made hereinbefore, and shall promptly deliver the official receipts therefor to Mortgagee. In default thereof Mortgagee shall have the right to pay same, and any amount so paid, with any penalty or interest thereon, shall be an indebtedness secured by this Mortgage.

Section 2.04. If, by the laws of the United States of America, or of any state or municipality having jurisdiction over Mortgagee, Mortgagor or the Mortgaged Property, any tax is imposed or becomes due in respect of the issuance of the Note or the recording of this Mortgage, Mortgagor shall pay such tax in the manner required by such law. In the event that any law, statute, rule, regulation, order or court decree has the effect of deducting from the value of the Mortgaged Property for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the interest of Mortgagee in the Mortgaged Property, or the manner of collection of taxes, so as to affect this Mortgage, the indebtedness secured by this Mortgage or Mortgagee, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes, or reimburse Mortgagee therefor on demand, unless Mortgagee determines, in Mortgagee's reasonable judgment, that such payment or reimbursement by Mortgagor is unlawful; in which event the indebtedness secured by this Mortgage shall be due and payable within thirty (30) days after written demand by Mortgagee to Mortgagor.

ARTICLE III

INSURANCE

Section 3.01. Mortgagor shall keep, or cause to be kept, the Improvements, now existing or hereinafter erected on the Mortgaged Property, insured as Mortgagee may, from time to time, require against loss by fire and other hazard, casualties and contingencies including that of business interruptions, and shall carry public liability insurance protecting the liability of both Mortgagor and Mortgagee against personal injury or death and damages to personal property, all in such amounts and for such periods as may be required by Mortgagor and shall pay, or cause to be paid, promptly when due any premiums on all such insurance provision for payment of which has not been made hereinbefore:

UNOFFICIAL COPY

9 1 2 1 9 3 2 7

(a) The amount of hazard insurance required shall be written at least in the amount of the lesser of (i) one hundred (100%) of the replacement cost of the Mortgaged Property and (ii) the full amount secured by this Mortgage; with no coinsurance and shall include an agreed amount endorsement. In the event that the insurable value of the Improvements shall be less than the full amount secured by this Mortgage, then such occurrence shall be an event of default hereunder.

(b) In addition to the insurance coverage hereinabove specified, Mortgagor shall provide loss of rent insurance (sometimes described as business interruption or loss of income insurance) arising out of damages to or destruction from any of the insured perils in the aggregate amount of (i) eighty percent (80%) of the gross possible rents for the Mortgaged Property for one (1) year or (ii) one year's debt service under the indebtedness evidenced by the Note, whichever is greater.

(c) In addition to the insurance hereinabove specified, there shall be maintained public liability and property damage insurance on the Mortgaged Property insuring Mortgagor and Mortgagee in the amount of at least One Million and No/100 Dollars (\$1,000,000.00) per occurrence with no aggregate limit.

(d) The insurance shall be in effect as of the date of execution of this Mortgage with premiums paid one (1) year in advance or with payments out of the closing escrow to provide reserves for the number of months less than twelve (12) for which said premiums are not then paid.

(e) All insurance provided for herein shall be effected under valid and enforceable policies, in form and substance then standard in the State of Illinois and satisfactory to Mortgagee, issued by insurers of recognized responsibility approved by Mortgagee or possessing a rating of A, Class XII, or better according to Best Key Rating Guide, as shown in its latest available issue.

(f) Upon the execution of this Mortgage, and thereafter upon each renewal of each policy furnished hereunder, an original or certified copy of such policies (including the original signature of the issuing agent in cases of a certified copy) and originals of all renewal certificates shall be delivered to Mortgagee. All such policies shall contain an agreement by the insurers that such policies shall not be cancelled, terminated, modified to the detriment of Mortgagee or allowed to expire without at least thirty (30)

days prior written notice to Mortgagee and Mortgagor shall cause such insurers to provide that any loss shall be payable to Mortgagee notwithstanding any act of negligence by Mortgagor which might otherwise result in forfeiture of said insurance.

(g) In the event of loss, Mortgagor shall give immediate notice by mail to Mortgagee, who may make proof of loss if not made promptly by Mortgagor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Mortgagee instead of Mortgagor and Mortgagee, jointly, and the insurance proceeds, or any part thereof, may be applied by Mortgagee, at its option, either to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damage. In the event of foreclosure of this Mortgage or other transfer of title to the Mortgaged Property and extinguishment of the indebtedness secured hereby, all rights, title, and interest of Mortgagor in and to all insurance policies then in force shall pass to the purchaser or grantee.

(h) The insurer under all insurance provided for herein shall waive its right of subrogation against Mortgagee and all tenants of the Mortgaged Property.

(i) No insurance provided for herein shall have a maximum deductible in excess of the sum of Five Thousand and No/100 Dollars (\$5,000.00).

(j) Boiler insurance must be provided covering any boilers located on the Mortgaged Property.

(k) Flood insurance must be provided if the Mortgaged Property is located in a governmental designated flood plain.

(l) Dram Shop coverage must be provided if intoxicating beverages are served from any portion of the Mortgaged Property.

Section 3.02. Mortgagor may effect for its own account any insurance not required under the provisions of this Mortgage, but any insurance effected by Mortgagor on the Mortgaged Property, whether or not required under this Article III, shall be for the mutual benefit of Mortgagor and Mortgagee, and shall be subject to all other provisions of this Article III and of Article X hereof, and Mortgagor shall provide Mortgagee written notice of such insurance prior to it being effected, together with an original policy or certified copy (containing the original signature of the issuing agent) of all such policies promptly upon their issuance.

Section 3.03. All policies of insurance provided for herein, and any other policies relating to the Mortgaged Property procured by Mortgagor, shall name as the first (1st) insured or loss payee Mortgagor and Mortgagee "AND/OR ANY WHOLLY OWNED SUBSIDIARY OR AFFILIATE NOW IN EXISTENCE OR HEREAFTER FORMED OR ACQUIRED, AS THEIR INTERESTS MAY APPEAR", which mailing address shall read c/o AEGON USA Realty Advisors, Inc., Mortgage Loan Department, 4333 Edgewood Road, N.E., Cedar Rapids, Iowa 52499, including a lender's loss payee endorsement or mortgagee clause where applicable and waiver of subrogation clauses attached.

ARTICLE IV

REPAIRS, MAINTENANCE AND REMOVAL

Section 4.01. Except as provided in Article VI or elsewhere herein, Mortgagor shall not cause or permit any building, structure or improvement or other property now or hereafter covered by the lien of this Mortgage and comprising part of the Mortgaged Property to be removed, or demolished or structurally changed or altered, in whole or in part, in any material manner or any Fixtures comprising part of the Mortgaged Property to be removed, severed or destroyed, without the prior written consent of Mortgagee except that Mortgagor shall have the right to remove Fixtures without the prior written consent of Mortgagee provided that simultaneously with, or prior to, any such removal such Fixtures shall be replaced with other Fixtures to perform the function of the Fixtures so removed and of a value at least equal to that of the Fixtures replaced and free from any title retention or security agreement or other encumbrance. By such removal and replacement Mortgagor shall be deemed to have subjected such replacement Fixtures to the lien and security interest of this Mortgage. Mortgagor shall not abandon or cause or permit any waste to the Mortgaged Property. Mortgagor shall pay all license fees and similar municipal charges for the use of the Mortgaged Property and the vaults or other areas now or hereafter comprising part thereof or used in connection therewith and shall not, unless so required by any governmental agency having jurisdiction, discontinue such use without prior written consent of Mortgagee.

Section 4.02. Throughout the term of this Mortgage, Mortgagor, at its sole cost and expense, shall take, or cause to be taken, good care of the Mortgaged Property and the sidewalks, curbs and vaults, if any, adjoining the Mortgaged Property and shall keep the same, or cause the same to be kept, in good order and condition, and make, or cause to be made, all necessary repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, and unforeseen and foreseen. All repairs made during the term of this Mortgage shall be equal in quality and class to the original work. The necessity for and

adequacy of repairs to the building and improvements pursuant to this Article hereof shall be measured by the standard which is appropriate for facilities and buildings of similar construction and class, provided that Mortgagor shall in any event make all repairs necessary to avoid any structural damage or injury to the buildings, structures and improvements and to keep the buildings, structures and improvements in a proper condition for their intended uses.

Section 4.03. Mortgagor shall permit Mortgagee and Mortgagee's representatives to enter the Mortgaged Property at reasonable times upon reasonable notice to inspect the same. In case any Event of Default (as hereinafter defined) shall occur, Mortgagee may, at its option, enter the Mortgaged Property to protect, restore or repair any part thereof. Mortgagee shall not be liable to Mortgagor or any person in possession under Mortgagor if Mortgagee shall enter the Mortgaged Property, provided, however, if an employee of Mortgagee (as opposed to a third (3rd) party engaged by Mortgagee) should enter the Mortgaged Property at such time as no Event of Default shall have occurred and be continuing, Mortgagee shall be liable to Mortgagor in the event that Mortgagor suffers any loss directly as a result of the negligence or deliberate malfeasance of such employee.

ARTICLE V

COMPLIANCE WITH LAWS, ORDINANCES, ETC.

Section 5.01. Subject to the provisions of Section 5.01 hereof, throughout the term of this Mortgage, Mortgagor, at its sole cost and expense, shall promptly comply with all present and future laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, courts, departments, commissions, boards and officers, any national or local Board of Fire Underwriters, or any other body exercising functions similar to those of any of the foregoing, foreseen or unforeseen, ordinary as well as extraordinary, which may be applicable to the Mortgaged Property or any part thereof and the sidewalks, curbs and vaults adjoining the Mortgaged Property or to the use or manner of use of the Mortgaged Property whether or not such law, ordinance, order, rule, regulation or requirement shall necessitate structural changes or improvements, or the removal of any encroachments or projections, ornamental, structural or otherwise, onto or over the streets adjacent to the Mortgaged Property, or onto or over property contiguous or adjacent thereto.

Section 5.02. Mortgagor shall have the right, after prior written notice to Mortgagee, to contest by appropriate legal proceedings diligently conducted in good faith, without cost or expense to Mortgagee, the validity or application of any law,

UNOFFICIAL COPY

9 1 2 1 9 3 2 7

ordinance, order, rule, regulation or requirement of the nature referred to in Section 5.01 hereof, and which does not subject Mortgagee to any criminal or civil liability, subject to the following:

(a) If by the terms of any such law, ordinance, order, rule, regulation or requirement, compliance therewith may legally be delayed pending the prosecution of any such proceeding without the incurrence of any lien or charge of any kind against the Mortgaged Property (as may be determined in Mortgagee's sole judgment) or if Mortgagor bonds over such lien, Mortgagor may delay compliance therewith until the final determination of such proceeding.

(b) If any lien or charge against the Mortgaged Property would or might be incurred by reason of any such delay (as may be determined in Mortgagee's sole judgment), Mortgagor nevertheless may contest as aforesaid and delay as aforesaid, provided Mortgagor (i) furnishes to and maintains with Mortgagee or a title company acceptable to Mortgagee security, at all times reasonably satisfactory to Mortgagee, against any loss or injury by reason of such contest or delay and (ii) prosecutes such contest with due diligence.

Section 5.03. Mortgagor will promptly perform and observe, or cause to be performed or observed, all of the terms, covenants and conditions of all instruments of record affecting the Mortgaged Property, non-compliance with which may affect the security of this Mortgage, or which may impose any duty or obligation upon Mortgagor or any lessee or other occupant of the Mortgaged Property or any part thereof, and Mortgagor shall do or cause to be done all things necessary to preserve intact and unimpaired any and all easements, appurtenances and other interests and rights in favor of or constituting any portion of the Mortgaged Property.

Section 5.04. Mortgagor shall not initiate or acquiesce in any zoning reclassification with respect to the Land without Mortgagee's prior written consent.

Section 5.05. Mortgagor promises and agrees that if there be commenced or pending any suit, action, arbitration, or other proceedings affecting the Mortgaged Property, or any part thereof, Mortgagor shall appear in and defend any such matter and shall pay all costs and damages arising because of such proceedings. Further, in such case, Mortgagor shall immediately upon service thereof deliver to Mortgagee two (2) copies of each notice, petition, summons, complaint, notice of motion, order to show cause, and all other processes, pleadings and papers, however designated, served in such action or proceeding. Any appearance by Mortgagee in any of the above stated actions shall be at the

UNOFFICIAL COPY

9 1 2 1 9 3 2 7

Mortgagee's option, and shall be at the sole cost and expense of Mortgagor.

ARTICLE VI

CHANGES AND ALTERATIONS BY MORTGAGOR

Section 6.01. Subject to any provisions of Articles X and XI hereof to the contrary, Mortgagor shall have the right, from time to time during the term of this Mortgage, to make, at its sole cost and expense, additional changes and alterations in or to the buildings, structures or improvements included in the Mortgaged Property, subject, however, to the following:

(a) No structural change or alteration involving an estimated cost of more than Fifty Thousand and No/100 Dollars (\$50,000.00) for any single change or alteration, nor One Hundred Thousand and No/100 Dollars (\$100,000.00) for all such changes and alterations in the aggregate while the Mortgage shall remain unsatisfied of record, shall be undertaken without Mortgagee's prior written consent except for tenant improvement work made in strict compliance with the terms and conditions of lease approved by Mortgagee as provided hereunder.

(b) No change or alteration shall be undertaken until Mortgagor shall have procured and paid for, so far as the same may be required from time to time, all permits and authorizations of all municipal departments and governmental subdivisions having jurisdiction thereover, or have caused same to be procured and paid for.

(c) Any structural change or alteration involving an estimated cost of more than Fifty Thousand and No/100 Dollars (\$50,000.00) shall be conducted under the supervision of any architect and/or engineer selected by Mortgagor and approved in writing by Mortgagee in its reasonable discretion, it being understood and agreed that such architect and/or engineer may be a person or entity affiliated with Mortgagor provided that the fees of such affiliated person or entity do not exceed the market rate for such services. No such structural change or alteration shall be made except in accordance with detailed plans and specifications and cost estimates prepared and approved in writing by such architect and/or engineer and approved in writing by Mortgagee.

(d) Any change or alteration shall, when completed, be of such a character as not to materially reduce the economic value of the Mortgaged Property below its value immediately before such change or alteration.

UNOFFICIAL COPY

9 1 2 1 9 3 2 7

(e) Any change or alteration, once commenced, shall be made promptly and in a good and workmanlike manner and in compliance with all applicable permits and authorizations and building and zoning laws and with all other laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, departments, commissions, boards and officers, any national or local Board of Fire Underwriters, or any other body hereafter exercising functions similar to those of any of the foregoing having jurisdiction thereover.

(f) If the estimated cost of any such change or alteration shall be in excess of Fifty Thousand and No/100 Dollars (\$50,000.00), Mortgagee shall have the right to require Mortgagor, before commencement of work, to furnish to Mortgagee a performance bond or other security reasonably satisfactory to Mortgagee, in an amount at least equal to the estimated cost of such change or alteration, guaranteeing the completion thereof within a reasonable time, free and clear of all liens, encumbrances, chattel mortgages, conditional bills of sale, and other charges, and in accordance with the plans and specifications approved by Mortgagee.

(g) Mortgagor shall pay to Mortgagee all reasonable fees and expenses incurred by Mortgagee in connection with such change or alteration including, but not limited to, the fees and expenses of any architect selected by Mortgagee to review the plans and specifications and inspect the work on behalf of Mortgagee.

ARTICLE VII

MECHANICS' AND OTHER LIENS

Section 7.01. Mortgagor shall pay or bond, or cause to be paid or bonded, from time to time when the same shall become due, all claims and demands of mechanics, materialmen, laborers, and others which, if unpaid, might result in, or permit the creation of, a lien on the Mortgaged Property or any part thereof, or on the revenues, rents, issues, income and profits arising therefrom. Mortgagor shall do or cause to be done everything necessary so that the lien and priority hereof shall be fully preserved, at the cost of Mortgagor, without expense to Mortgagee.

Section 7.02. Mortgagor agrees that should the Mortgaged Property at any time be or become subject to the lien of any mortgage or deed of trust other than this Mortgage in connection with which payments on account of the indebtedness secured hereby are to be made directly or indirectly by or through the mortgagee

UNOFFICIAL COPY

9 1 2 1 9 3 2 7

or beneficiary of such other mortgage or deed of trust, regardless of the identity of the mortgagee or beneficiary thereunder, the whole of the principal and interest and other sums hereby secured at the option of Mortgagee shall immediately become due and payable.

Section 7.03. Except as otherwise expressly permitted hereunder, Mortgagor shall not, without the written consent of Mortgagee, create or suffer to be created any security interest under the Illinois Uniform Commercial Code (the "Code"), together with any amendments or supplements thereto, or other encumbrance in favor of any party other than Mortgagee, or create or suffer any reservation of title by any such other party, with respect to any Fixtures, nor shall any such Fixtures or property be the subject matter of any lease or other transaction whereby the ownership or any beneficial interest in any of such property is held by any person or entity other than Mortgagor (or Mortgagee as provided herein). All such property shall be purchased for cash or in such manner that no lien shall be created thereon except the lien of this Mortgage, unless Mortgagee shall agree in writing to the contrary before a contract to purchase any such property is executed.

Section 7.04. Except as otherwise expressly permitted hereunder, Mortgagor shall not create or permit to accrue upon all or any part of the Mortgaged Property any debt, lien or charge, and shall promptly cause to be paid and discharged, any lien or charge whatsoever which by any present or future law may be or become superior to, or on a parity with or inferior to this Mortgage, either in lien or in distribution out of the proceeds of any judicial sale of the Mortgaged Property, or any part thereof, and any lien or charge not permitted by this Article VII, except (a) the lien of this Mortgage, and (b) matters to which Mortgagee shall agree in writing, or which Mortgagee shall permit Mortgagor to contest, pursuant to Section 5.02 hereof.

ARTICLE VIII

USE OF PROPERTY

Section 8.01. Mortgagor shall use, or caused to be used, the Mortgaged Property principally and continuously as an office building. Mortgagor shall not use, or permit the use of the Mortgaged Property for any other principal use without the prior written consent of the Mortgagee. Mortgagor shall not use or permit the use of the Mortgaged Property, or any part thereof, for any other purpose which in the reasonable opinion of Mortgagee would adversely affect the then value or character of the Mortgaged Property, or any part thereof.

UNOFFICIAL COPY

9 1 2 1 9 3 2 7

Section 8.02. Mortgagor shall not suffer or permit the Mortgaged Property, or any portion thereof, to be used by the public, as such, without restriction or in such manner as might reasonably tend to impair Mortgagor's title to the Mortgaged Property or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse usage or adverse possession by the public, as such, or of implied dedication of the Mortgaged Property or any portion thereof.

ARTICLE IX

LEASES, MONTHLY AND ANNUAL STATEMENTS

Section 9.01. Any and all leases, licenses and concession agreements (collectively referred to herein as "Leases") entered into with respect to the Mortgaged Property, or any portion thereof, shall be subject in all respects (including without limitation tenant, term and rental) to the prior written approval of Mortgagee, it being understood and agreed that if Mortgagee shall have provided Mortgagor with written approval of a form lease for use in leasing space at the Mortgaged Property (the "Approved Form"), the aforesaid required approval of Mortgagee to a proposed lease which is submitted on the Approved Form shall be subject only to Mortgagee's prior written approval of the proposed tenant and the proposed economic terms.

Section 9.02. Mortgagor shall deliver to Mortgagee, within one hundred twenty (120) days after the end of each fiscal year of Mortgagor, complete financial statements (including annual balance sheets and profit and loss statements) certified to Mortgagee as being true, correct and accurate by independent Certified Public Accountants selected by Mortgagor, if required by Mortgagee, covering operations on the Mortgaged Property for each concluded fiscal year. Said statement shall include, but need not be limited to, gross income and resources, itemized operating expenses, depreciation charts, net income before and after taxes and such other details as Mortgagee may request. The above required statements shall be in such detail as Mortgagee reasonably requests, shall segregate income and expenses attributable to the Mortgaged Property and shall include the gross sales figures of any tenant paying percentage or other rental with respect thereto. Mortgagor shall furnish Mortgagee such other financial information relating to the Mortgaged Property as may reasonably be required by institutional investors in connection with the purchase of the Note or any interest therein. Failure to so furnish such statements or any default in the payment of the Note secured hereby shall also entitle Mortgagee to cause Mortgagor's books and records pertaining to the Mortgaged Property to be audited at the expense of Mortgagor or Mortgagor's successors and assigns and, in such event, Mortgagor and Mortgagor's successors and assigns hereby

agree to cooperate with and assist Mortgagee and such auditors. Mortgagor shall keep and maintain complete, accurate, and customary records and books of accounts with respect to all of Mortgagor's business transactions pertaining to the Mortgaged Property and shall retain the same intact throughout the term hereof. Mortgagee shall be entitled to all reasonable times to inspect, to make notations from, and to photocopy or microfilm, all such records and books of accounts.

Section 9.03. Mortgagor shall not amend, modify, abridge or terminate (except for default by the tenant) any leases of any portion of the Mortgaged Property nor, shall any surrender thereof be accepted by Mortgagor without the prior written consent of Mortgagee, nor shall Mortgagor collect rent under any of said leases for more than one month in advance, (i) except upon the execution of a lease, provided that such advance rent in excess of one (1) month's rent is to be applied to the rents at the beginning of the term of the lease or (ii) except as a security deposit to be applicable either against the rent due at the end of the term of the lease or repair of damages to the leased premises or to be refunded upon the expiration of the term thereof.

Section 9.04. Deliberately omitted.

Section 9.05. Mortgagor covenants and agrees that no lease or any rentals under any lease, or any rents, issues or profits issuing from the Mortgaged Property, shall be sold, assigned, transferred, mortgaged, pledged or otherwise disposed of or encumbered, except to Mortgagee or as otherwise expressly permitted hereunder, whether by operation of law or otherwise, without the prior written consent of Mortgagee in each instance first had and obtained and any attempt to do so shall be null and void.

Section 9.06. Mortgagor shall not execute any lease for all or any substantial portion of the Mortgaged Property except for actual occupancy by the lessee thereunder. Mortgagor shall perform faithfully the lessor's covenants under any existing or future lease affecting the Mortgaged Property, or any part thereof, and neither do, nor neglect to do, nor permit to be done or left undone, anything, other than pursuing the enforcement of the terms of such leases in the exercise of the lessor's remedies thereunder following default on the part of any tenant in the performance of its prescribed obligations, which may cause the modification or termination of any said leases, or of the obligations of any tenant or any person claiming through such tenant, or which may diminish or impair the value of any lease, or the rents provided for therein, or the interest of the lessor or of the Mortgagee therein or thereunder. Mortgagor shall not permit any assignment of any lease by the tenant thereunder or any subletting of all or any part of the premises demised by any lease without the prior written consent of Mortgagee. Mortgagor shall not execute a mortgage or

create or permit a lien which may be or become superior to any lease affecting the Mortgaged Property, or any part thereof without the prior written consent of Mortgagee. Mortgagor shall give Mortgagee prompt notice by certified mail, return receipt requested, of any notice of default, the nature of which would permit cancellation or termination of any lease, or notice of cancellation received from any tenant of the Mortgaged Property or any part thereof.

Section 9.07. If any leases for any portion of the Mortgaged Property provide for the giving by the lessee of certificates with respect to the status of such leases, Mortgagor shall exercise its right to request such certificates within ten (10) days after any demand therefor by Mortgagee.

Section 9.08. Mortgagor shall deliver to Mortgagee, within ninety (90) days after the end of each fiscal year of Mortgagor, a rent roll listing all tenants of the Mortgaged Property by name, identifying the unit number of their demised premises, the square footage of their demised premises.

Section 9.09. Mortgagor agrees at any time, and from time to time during the term hereof, and within twenty (20) days after demand therefor from Mortgagee, to execute and deliver to Mortgagee, or any party designated by Mortgagee, a certificate in recordable form certifying the amount then due pursuant to this Mortgage and the obligations secured hereby, the terms of payment thereof, the dates to which payment have been made, that this Mortgage and all other instruments and obligations securing the Note are in full force and effect and that there are no defenses or offsets thereto, or specifying in what regards this Mortgage or such other instruments and obligations are not in full force and effect and the nature of any defense or offsets thereto, together with such other information as Mortgagee may request.

Section 9.10. Mortgagor shall not enter into or amend, modify, abridge or terminate (except for default by the manager) any management agreement for the Mortgaged Property without the prior written approval of Mortgagee.

ARTICLE X

DAMAGE OR DESTRUCTION

Section 10.01. In case of casualty to the Mortgaged Property resulting in damage or destruction, Mortgagor shall promptly give written notice thereof to Mortgagee.

Section 10.02. Unless Mortgagee elects to apply insurance proceeds to reduce the indebtedness secured hereby, then,

UNOFFICIAL COPY

9 1 2 1 9 3 2 7

regardless of the amount of any such damage or destruction, Mortgagor shall, at its sole cost and expense, and whether or not the insurance proceeds, if any, shall be sufficient for the purpose, restore, repair, replace, rebuild or alter the same as nearly as possible to its value, condition and character immediately prior to such damage or destruction, or with such changes or alterations as may be made at Mortgagor's election in conformity with and subject to the conditions of Article VI hereof, it being understood and agreed that Mortgagee shall permit Mortgagor to apply such insurance proceeds toward payment of the cost and expense of restoring, repairing, replacing, rebuilding or altering the Mortgaged Property as aforesaid so long as the cost and expense of same does not exceed the sum of Three Million and No/100 Dollars (\$3,000,000.00). Such restoration, repairs, replacements, rebuilding or alteration shall be commenced promptly and prosecuted with reasonable diligence. If (i) estimates received and/or made by Mortgagee disclose that the cost of restoration would be in excess of the amount of the insurance proceeds available therefor or (ii) during the period of restoration by Mortgagor the amount of the insurance proceeds shall not be sufficient to complete such restoration, then, in either of such events, Mortgagor shall deposit with Mortgagee the amount required to complete such restoration or such other security as shall be satisfactory to Mortgagee.

Section 10.03. All proceeds of and payments under insurance policies with respect to any casualty event shall be paid to Mortgagee and applied by Mortgagee first to payment of the actual costs, fees and expenses, if any, incurred by Mortgagee in connection with adjustment of the loss and settlement with the insurance company. The remainder of such insurance proceeds shall be applied by Mortgagee, at the sole discretion of Mortgagee, either (i) in reduction of the outstanding indebtedness secured by this Mortgage or (ii) to the payment of the cost of the aforesaid restoration, repairs, replacement, rebuilding or alterations, including the cost of temporary repairs and the cost of protection of property pending the completion of permanent restoration, repairs, replacement, rebuilding or alterations (all of which temporary and permanent repairs, restoration, replacement, rebuilding, alterations and protection of property are hereinafter collectively referred to as the "restoration"). No interest shall be allowed to Mortgagor on account of any proceeds held by Mortgagee.

Section 10.04. If under the provisions of this Article X insurance proceeds are to be applied to the cost of restoration, Mortgagee shall hold such insurance proceeds, together with any amounts deposited with Mortgagee pursuant to Section 10.02 hereof, and advance the same for application to the cost of the restoration from time to time as the restoration progresses. Such funds will be advanced upon the written request of Mortgagor and upon Mortgagor's compliance with such reasonable requirements therefor as Mortgagee shall impose. Upon completion of all of the restoration in a good and workmanlike manner and substantially in accordance with any plans and specifications therefor which Mortgagee may have required, and upon receipt by Mortgagee of evidence satisfactory to Mortgagee that the restoration has been completed and paid for in full and that the Mortgaged Property is not and will not become subject to any mechanic's or materialmen's liens on account of the restoration or any part thereof, any balance of the insurance proceeds or sums deposited with Mortgagee pursuant to Section 10.02 hereof and not applied to the cost of restoration or applied to reduce the indebtedness secured by this Mortgage, if any, shall be paid over to Mortgagor.

Section 10.05. Notwithstanding any provision of this Article X to the contrary, if at any time during any restoration of the Mortgaged Property Mortgagor shall be in default under any provision of this Mortgage or the other Loan Documents, Mortgagee shall have no obligation to continue to apply insurance money to restoration and may apply such insurance money in any such manner as Mortgagee, in its reasonable discretion, may determine including, without limitation, application to reduction of the indebtedness secured hereby.

Section 10.06. In no event shall the application to the obligation of Mortgagor, whether or not then due or payable, of any insurance proceeds postpone, abate or reduce any of the periodic installments of principal and interest thereafter to become due under the Note until the Note is paid in full. If Mortgagee shall acquire title to the Mortgaged Property either by virtue of a deed in lieu of foreclosure or a judicial sale thereof pursuant to proceedings under the Note or this Mortgage, then all of Mortgagor's estate, right, title and interest in and to all such policies, including unearned premiums thereon and the proceeds thereof, shall vest in Mortgagee.

ARTICLE XI

CONDEMNATION

Section 11.01. Mortgagor shall give Mortgagee immediate notice of any actual or threatened commencement of condemnation proceedings or the exercise of the right to eminent domain

UNOFFICIAL COPY

9 1 2 1 9 3 2 7

immediately upon Mortgagor becoming aware of same. In the event that the Mortgaged Property, or any part thereof, shall be taken in condemnation proceedings or by exercise of any right of eminent domain (hereinafter called collectively, "condemnation proceedings"), Mortgagee may on behalf of Mortgagor participate in any such condemnation proceedings and may on behalf of Mortgagor adjust, contest, accept, reject or compromise any proposed award and collect and receive the proceeds thereof and endorse drafts, and Mortgagee is hereby irrevocably appointed attorney-in-fact of Mortgagor, coupled with an interest, for such purposes. The decision of Mortgagee with regard to the adjustment, contest, acceptance, rejection or compromise of any proposed award issued in connection with any condemnation proceedings shall be binding upon Mortgagor. Any award that may be made in any such proceeding or the proceeds thereof shall be deposited with Mortgagee and distributed in the manner set forth in this Article XI. The parties agree to execute any and all further documents that may be required in order to facilitate collection of any award or awards and the making of any such deposit with Mortgagee.

Section 11.02. If at any time during the term of this Mortgage title to the whole or materially all of the Mortgaged Property shall be taken in condemnation proceedings or by agreement between Mortgagor and Mortgagee and those authorized to exercise such right, Mortgagee shall apply such award or proceeds which it receives pursuant to Section 11.01 hereof to payment of the indebtedness secured by this Mortgage and any balance then remaining shall be paid to Mortgagor. In the event that the amount of any such award or proceeds received by Mortgagee shall not be sufficient to pay the then unpaid principal balance of the said indebtedness, with the accrued interest thereon, and any other sums secured by this Mortgage, Mortgagor shall, within ten (10) days after receiving notice of the application of the award or proceeds as aforesaid pay such deficiency to Mortgagee. For the purposes of this Section 11.02 "materially all of the Mortgaged Property" shall be deemed to have been taken if the portion of the Mortgaged Property taken shall preclude, in Mortgagee's sole reasonable judgment, the effective use of the Mortgaged Property as an economically viable unit for the purposes permitted by Article VIII hereof.

Section 11.03. If at any time during the term of this Mortgage title to less than the whole or materially all of the Mortgaged Property shall be taken as aforesaid, all of the award or proceeds collected by Mortgagee pursuant to Section 11.01 hereof shall, at the option of the Mortgagee, (i) be applied to reduce the indebtedness secured by this Mortgage or (ii) be held by Mortgagee and applied and paid over toward the cost of demolition, repair and restoration, substantially in the same manner and subject to the same conditions as those provided in Article X hereof with respect to insurance and other monies. Any balance remaining in the hands

of Mortgagee after payment of such costs of demolition, repair and restoration shall be paid to Mortgagor provided no Event of Default shall have occurred and be continuing. In the event that the costs of such demolition, repairs and restoration shall exceed the net amount collected by Mortgagee, Mortgagor shall, promptly upon demand, pay the amount of such deficiency to Mortgagee. No interest shall be allowed to Mortgagor on account of any award held by Mortgagee.

Section 11.04. If at any time during the term of this Mortgage the temporary use of the whole or any part of the Mortgaged Property shall be taken in condemnation proceedings, all of the award or proceeds collected by Mortgagee pursuant to Section 11.01 hereof shall be held by Mortgagee and applied by Mortgagee toward the payment of the monthly interest payment or of the monthly payments of principal and interest due on the indebtedness secured by this Mortgage and such other sums as are due to Mortgagee under the Note and this Mortgage until such time as the indebtedness secured by this Mortgage and such other sums as are due to Mortgagee under the Note and this Mortgage are completely satisfied and paid, except that, if such taking by condemnation proceedings results in changes and alterations to the Mortgaged Property or any part thereof which would necessitate an expenditure to restore the Mortgaged Property or any part thereof to its former condition, then such portion of the award or proceeds as in Mortgagee's reasonable estimation shall be necessary to cover the cost of restoration shall, at the option of Mortgagee, be retained by Mortgagee, without application as aforesaid, and be applied and paid over toward the restoration of the Mortgaged Property, or any part thereof, to its former condition in substantially the same manner and subject to the same conditions as those provided in Article X hereof with respect to insurance and other monies. In the event that the costs of such restoration shall exceed the net amount collected by Mortgagee, Mortgagor shall, promptly upon demand, pay a sum equal to the amount of such deficiency to Mortgagee.

Section 11.05. Mortgagor shall not be entitled to share or retain any award or awards made in condemnation proceedings for consequential damages or for the taking of rights in, under or above the streets adjoining said lands, or the rights and benefits of light, air or access to said streets, or for the taking of space, or rights therein, below the surface of, or above, the Mortgaged Property, provided however, that any award of compensation received by Mortgagee for any such taking shall at the option of Mortgagee be either applied to the reduction of the indebtedness secured hereby or paid over toward the cost of such demolition, repair and restoration of the Mortgaged Property as shall be necessitated by such taking, substantially in the same manner and subject to the same conditions as those provided in Article X hereof with respect to insurance and other monies, and

UNOFFICIAL COPY

9 1 2 1 9 3 2 7

any balance remaining in the hands of Mortgagee shall be retained by Mortgagee, and applied in the same manner as provided in Section 11.03 with respect to the balance of the award or awards therein referred to.

Section 11.06. In the case of any taking covered by the provisions of this Article XI, Mortgagor and Mortgagee (to the extent that Mortgagee has not been reimbursed therefor by out of any award or awards), Mortgagor shall pay Mortgagee for all reasonable costs, fees, reimbursements to Mortgagee and expenses incurred in the determination and collection of any such awards.

Section 11.07. Notwithstanding any taking by condemnation proceeding, Mortgagor shall continue to pay interest on the entire principal sum secured by this Mortgage at the rate provided in the Note until any such award or payment shall have been actually received by Mortgagee and applied to the principal sum as provided in this Article XI, if it is to be applied under this Article XI. Any reduction in the principal sum resulting from Mortgagee's application of such award or payment as hereinafter set forth shall be deemed to take effect only on the date of such application. If prior to Mortgagee's receipt of such award or payment the Mortgaged Property shall have been sold to Mortgagee or its nominee on foreclosure of this Mortgage, Mortgagee or such nominee shall have the right to receive and retain the entire award or payment.

Section 11.08. In no event shall the application to the obligation secured hereby of any payment to Mortgagee pursuant to this Article XI postpone, abate or reduce any of the periodic installments of interest or principal thereafter to become due under the Note until the Note is paid in full.

ARTICLE XII

NOTICES

Section 12.01. Any notice, demand or request which may be permitted, required or desired to be given in connection with this Note or any of the other Loan Documents shall be given in writing and directed to Mortgagor and Mortgagee as follows or as otherwise directed in writing by such party from time to time:

Mortgagor:	Schaumburg Atrium Center c/o TMA Group Development Corporation 145 East Algonquin Arlington Heights, Illinois 60005 Attention: Harvey X. Koloms
------------	---

UNOFFICIAL COPY

9 1 2 1 9 3 2 7

With a copy to: (If by Federal Express, or other courier service or personal delivery)

Lincoln National Life Insurance Company
200 East Berry Street
Second Floor
Fort Wayne, Indiana 46804
Attention: Robert Tellman

(If by mail)

1300 South Clinton Street
P. O. Box 1110
Fort Wayne, Indiana 46801
Attention: Robert Tellman

Mortgagee: c/o AEGON USA Realty Advisors, Inc.
4333 Edgewood Road, N.E.
Cedar Rapids, Iowa 52499
Attention: Mortgage Loan Department

With a copy to its attorneys:

Neal Gerber & Eisenberg
Two North LaSalle Street
Suite 2200
Chicago, Illinois 60602
Attention: Elizabeth H. Belkin, Esq.

Notices shall be either (i) personally delivered (including delivery by Federal Express or other courier service) to the offices set forth above, in which case they shall be deemed delivered on the date of delivery to said offices, or (ii) sent by certified mail, return receipt requested, in which case they shall be deemed delivered on the date shown on the receipt unless delivery is refused or delayed by the addressee in which event they shall be deemed delivered on the date of deposit in the U.S. mail.

Section 12.02. Except as provided in Section 12.01 hereof, if at any time during the term of this Mortgage more than one (1) person or corporation shall be the owner of the Mortgaged Property, then any notices, demands or requests given by Mortgagee to any one of such persons or corporations shall be deemed to have been duly given to Mortgagor for all purposes under this Mortgage, and any notices, demands or requests given by any one of such persons or corporations owning the Mortgaged Property to Mortgagee shall be deemed to have been duly given by Mortgagor for all purposes under this Mortgage, it being the intention that each person or corporation owning the Mortgaged Property irrevocably designates all other such persons or corporations, or any one of them, as their, his, her or its agent for the purpose of giving and

receiving all notices, demands and requests required to be given or received under the provisions of the Mortgage.

ARTICLE XIII

EVENTS OF DEFAULT AND REMEDIES

Section 13.01. If any of the following events (herein called "Events of Default") shall occur and be continuing, that is to say:

(a) if default shall be made in the payment of any installment of the principal of, or interest on, the indebtedness secured by this Mortgage or any other sum which is payable under the Note, this Mortgage or any other Loan Document; or

(b) if material default shall be made by Mortgagor in the performance of, or compliance with, any of the provisions, warranties, covenants, agreements, promises, terms or conditions contained in this Mortgage or any of the Loan Documents and, except as expressly provided herein, such default shall continue for a period of thirty (30) days after notice thereof from Mortgagee to Mortgagor except that (i) in the case of a default which cannot with due diligence be cured within such period of thirty (30) days, the time of Mortgagor within which to cure the same shall be extended for such period as may be necessary to cure the same with due diligence, provided Mortgagor proceeds diligently to cure the same, and (ii) in the case of a default the existence of which jeopardizes the security provided by this Mortgage, the occurrence of such default shall constitute an immediate Event of Default irrespective of whether or not any such cure period shall have elapsed; or

(c) if default shall be made in the due observance or performance of any other covenant, condition or agreement on the part of Mortgagor contained in any other Loan Document, or if an event of default, as defined in any other Loan Document, shall occur, and such event of default shall continue beyond any applicable period of grace provided in such Loan Document; or

(d) if Mortgagor shall fail to operate the Mortgaged Property, or any part thereof; or

(e) if Mortgagor shall fail to procure or maintain insurance on the Mortgaged Property pursuant to Section 3.01 hereof; or

UNOFFICIAL COPY

9 1 2 1 9 3 2 7

(f) if Mortgagor files any petition in bankruptcy, or for an arrangement, reorganization, or any other form of debtor relief under any present or future law relating to bankruptcy or debtor relief, or such a petition is filed against Mortgagor and Mortgagor does not oppose such filing and such petition is not dismissed within sixty (60) days after such filing; or Mortgagor is adjudicated as a bankrupt or insolvent; or if there is appointed a receiver or trustee to take possession of all or a substantial portion of the assets of Mortgagor or the Guarantor, or any of the foregoing, or of the Mortgaged Property; or if there is a general assignment by Mortgagor for the benefit of creditors; or if the Mortgaged Property, or any part thereof, be taken or seized under levy of execution or attachment; or

(g) if any representation or disclosure made to Mortgagee by or on behalf of Mortgagor proves to be materially false or misleading on the date as of which made, whether or not that representation or disclosure appears in this Mortgage; or

(h) if Mortgagor, being the owner of the Mortgaged Property, should involuntarily dissolve, liquidate, or terminate; or

(i) if there is passed any law which renders payment by Mortgagor of any and all taxes levied on this Mortgage or the Mortgaged Property or performance of any material term, covenant, or condition hereof, or any material obligation secured hereby, unlawful, usurious, inoperative, void, or voidable, or which prohibits Mortgagee from exercising any of its rights hereunder or under any other instrument or agreement to which the Mortgagor is a party or by which it is bound; or

(j) if there is a transfer, sale, conveyance, assignment (by operation of law or otherwise) or encumbrance (other than to secure repayment of the indebtedness evidenced by the Note) of any of the Mortgaged Property or any other property of Mortgagor, or the transfer, sale, conveyance, assignment (by operation of law or otherwise) or encumbrance (other than to secure repayment of the indebtedness evidenced by the Note) of any or all of the joint venture interest of Mortgagor other than the transfer, sale or conveyance (but not encumbrance) of not more than ten percent (10%) in the aggregate of such joint venture interest during the time that the indebtedness evidenced by this Note remains outstanding except as otherwise expressly permitted hereunder and except that Lincoln National Life Insurance Company, an Indiana corporation ("Lincoln National"), shall have the right to transfer its joint venture interest to any of its subsidiary corporations, its parent

UNOFFICIAL COPY

9 1 2 1 9 3 2 7

corporation or to any other corporation in which the majority of the stock is owned directly or indirectly by Lincoln National or its parent company without the approval of Mortgagee provided that Lincoln National delivers to Mortgagee written notice of such transfer at least thirty (30) days prior to the effective date of such transfer;

(k) if the holder of a junior or senior mortgage or other lien on the Mortgaged Property including, without limitation, the Subordinate Financing (as hereinafter defined), shall declare a default or institute foreclosure or other proceedings for the enforcement of its remedies thereunder, or both, it being understood and agreed that the foregoing shall not be deemed to imply that Mortgagee consents to any such junior or senior mortgage or other liens;

(l) if there shall be a modification or other amendment of the Subordinate Financing Documents (as hereinafter defined) without the prior written consent of Mortgagee, which consent Mortgagee may withhold in Mortgagee's sole discretion;

then, upon the happening of any one or more of said Events of Default, the entire unpaid balance of the principal, the accrued interest, and all other sums secured by the Note or this Mortgage plus an amount equal to the amount of the Prepayment Premium (as defined in the Note) shall, at the option of Mortgagee, become immediately due and payable without notice or demand, and in any such Event of Default Mortgagee may forthwith, and without further delay, undertake any one (1) or more of the following:

(1) Foreclosure. Institute an action of mortgage foreclosure, or take such other action as the law may allow, at law or in equity, for the enforcement thereof and realization on the mortgage security or any other security which is herein or elsewhere provided for, and proceed thereon to final judgment and execution thereon for the entire unpaid balance of the principal indebtedness, with interest, at the rates and pursuant to the methods of calculation specified in the Note and this Mortgage to the date of default and thereafter at the Default Rate (as defined in the Note), together with all other sums secured by this Mortgage, all costs of suit, interest at the Default Rate on any judgment obtained by Mortgagee from and after the date of any Sheriff's Sale of the Mortgaged Property (which may be sold in one (1) parcel or in such parcels, manner or order as Mortgagee shall elect) until actual payment is made by the Sheriff of the full amount due Mortgagee, and an attorney's reasonable fee for collection, without further stay, any law, usage or custom to the contrary notwithstanding:

UNOFFICIAL COPY

9 1 2 1 9 3 2 7

(2) Entry. Mortgagee personally, or by its agents or attorneys, may enter into and upon all or any part of the Mortgaged Property, and each and every part thereof, and may exclude Mortgagor, its agents and servants wholly therefrom without liability for trespass, damages or otherwise and Mortgagor agrees to surrender possession to Mortgagee on demand after the happening of any Event of Default; and having and holding the same, may use, operate, manage and control the Mortgaged Property and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receivers; and upon every such entry, Mortgagee, at the expense of the Mortgaged Property, from time to time, either by purchase, repairs or construction, may maintain and restore the Mortgaged Property, whereof it shall become possessed as aforesaid and may insure the same; and likewise, from time to time, at the expense of the Mortgaged Property Mortgagee may make all necessary or proper repairs, renewals and replacements and such useful alterations, additions, betterments and improvements thereto and thereon as to it may deem advisable; and in every such case Mortgagee shall have the right to manage and operate the Mortgaged Property and to carry on the business thereof and exercise all rights and powers of Mortgagor with respect thereto either in the name of Mortgagor or otherwise as it shall deem best; and Mortgagee shall be entitled to collect and receive all earnings, revenues, rents, issues, profits and income of the Mortgaged Property and every part thereof, and after deducting the expenses of conducting the business thereof and of all maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvements and amounts necessary to pay for taxes, assessments, insurance and prior or other proper charges upon the Mortgaged Property or any part thereof, as well as just and reasonable compensation for the services of Mortgagee and for all attorneys, counsel, agents, clerks, servants and other employees by it properly engaged and employed, Mortgagee shall apply the moneys arising as aforesaid, first, to the payment of the principal of the Note and the interest thereof, when and as the same shall become payable and second, to the payment of any other sums required to be paid by Mortgagor under this Mortgage or under any other Loan Document.

(3) Receivership. Have a receiver appointed to enter into possession of the Mortgaged Property, collect the earnings, revenues, rents, issues, profits and income therefrom and apply the same as the court may direct. Mortgagee shall be entitled to the appointment of a receiver without the necessity of proving either the inadequacy of the security or the insolvency of Mortgagor or any other person who may be legally or equitably liable to pay moneys secured hereby and Mortgagor and each such person shall be deemed to

have waived such proof and to have consented to the appointment of such receiver. Should Mortgagee or any receiver collect earnings, revenues, rents, issues, profits or income from the Mortgaged Property, the moneys so collected shall not be substituted for payment of the debt nor shall they be used to cure the default, without the prior written consent of Mortgagee. Mortgagee shall be liable to account only for earnings, revenues, rents, issues, profits and income actually received by Mortgagee.

(4) Sale of Personal Property. Mortgagee shall have such rights and remedies in respect of so much of the Mortgaged Property as may, under applicable law, be personal property, or any part thereof, as are provided by the Code and such other rights and remedies in respect thereof which it may have at law or in equity or under this Mortgage including, without limitation, the right to take possession of the Mortgaged Property wherever located and to sell all or any portion thereof at public or private sale, without prior notice to Mortgagor, except as otherwise required by law (and if notice is required by law, after ten (10) days' prior written notice, or such longer period of time as may be required by law), at such place or places and at such time or times and in such manner and upon such terms, whether for cash or on credit, as Mortgagee in its sole discretion may determine. Mortgagee shall apply the proceeds of any such sale first to the payment of the reasonable costs and expenses incurred by Mortgagee in connection with such sale or collection, including reasonable attorney's fees and legal expenses, second to the payment of the indebtedness evidenced by the Note, whether on account of principal or interest or otherwise as Mortgagee in its sole discretion may elect, and then to pay the balance, if any, as required by law. Upon the occurrence of any Event of Default Mortgagor, upon demand by Mortgagee, shall promptly assemble any equipment and fixtures included in the Mortgaged Property and make them available to Mortgagee at a place to be designated by Mortgagee which shall be reasonably convenient to Mortgagee and Mortgagor.

(5) Sale of the Mortgaged Property. Mortgagee may sell any of the Mortgaged Property, not specifically designated as personal property and subject to subparagraph (4) above, in one (1) parcel or in such parcels, manner or order as Mortgagee deems appropriate and in accordance with any applicable law. Mortgagee shall apply the proceeds of any such sale first to the payment of the reasonable costs and expenses incurred by Mortgagee in connection with such sale or collection, including reasonable attorney's fees and legal expenses, second to the payment of the indebtedness evidenced by the Note, whether on account of principal or interest or

UNOFFICIAL COPY

9 1 2 1 9 3 2 7

otherwise as Mortgagee in its sole discretion may elect, and then to pay the balance, if any, as required by law.

Section 13.02. Upon the occurrence of an Event of Default hereunder, Mortgagee in pursuance of the foregoing remedies, or in addition thereto, (i) shall be entitled to resort to its several securities and escrow deposits for the payment of the sums secured hereby in such order and manner as Mortgagee may think fit without impairing Mortgagee's lien in, or rights to, any of such securities or escrow deposits and without affecting the liability of any person, firm or corporation for the sums secured hereby, except to the extent that the indebtedness secured hereby shall have been reduced by the actual monetary consideration, if any, received by Mortgagee from the proceeds of such security; (ii) may, in Mortgagee's sole discretion, release for such consideration, or none, as Mortgagee may require, any portion of the Mortgaged Property without, as to the remainder of the security, in anywise impairing or affecting the lien of this Mortgage, or the priority thereof, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the indebtedness secured hereby shall have been reduced by the actual monetary consideration, if any, received by Mortgagee for such release; and/or (iii) may accept the assignment or pledge of any other property in place thereof as Mortgagee may require without being accountable for so doing to any other lienor.

Section 13.03. Mortgagor hereby waives and releases (a) all errors, defects and imperfections in any proceedings instituted by Mortgagee under this Mortgage, (b) all benefit that might accrue to Mortgagor by virtue of any present or future laws exempting the Mortgaged Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale under execution, or providing for any stay of execution, exemption from civil process, or extension of time for payment, (c) all benefits that might accrue to Mortgagor from requiring valuation or appraisement of any part of the Mortgaged Property levied or sold or execution of any judgment recovered for the indebtedness secured hereby and (d) all notices not herein elsewhere specifically required of Mortgagor's default or of Mortgagee's exercise, or election to exercise, any option under this Mortgage. Mortgagor further agrees to waive the issuance and service of process and enter its voluntary appearance in any action, suit or proceeding brought in connection with any Event of Default and, if required by Mortgagee, to consent to the appointment of a receiver or receivers of the Mortgaged Property and of all the earnings, revenues, rents, issues, profits and income thereof. Mortgagor will not at any time insist upon, or plead, or, in any manner whatever, claim or take any benefit or advantage of any right under any statute heretofore or hereafter enacted to redeem the property so sold, or any part thereof, and Mortgagor hereby expressly waives all benefit or advantage of any such law or laws, and covenants not to hinder, delay or impede the

UNOFFICIAL COPY

9 1 2 1 3 2 7

execution of any power herein granted or delegated to Mortgagee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. Mortgagor, for itself and all who may claim under it, waives, to the extent that it lawfully may, all right to have the Mortgaged Property marshalled upon any foreclosure hereof.

Section 13.04. No failure by Mortgagee to insist upon the strict performance of any covenant, agreement, provision, term or condition of this Mortgage or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of such covenant, agreement, provision, term or condition. No covenant, agreement, provision, term or condition of this Mortgage to be performed or complied with by Mortgagor, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by Mortgagee. No waiver of any breach shall affect or alter this Mortgage, but each and every covenant, agreement, provision, term and condition of this Mortgage shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

Section 13.05. In the event of any breach or threatened breach by Mortgagor of any of the covenants, agreements, terms or conditions contained in this Mortgage, Mortgagee shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise as though other remedies were not provided for in this Mortgage.

Section 13.06. No recovery of any judgment by Mortgagee and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of Mortgagor shall affect in any matter or to any extent the lien of this Mortgage upon the Mortgaged Property or any part thereof, or any liens, rights, powers or remedies of Mortgagee hereunder, but such liens, rights, powers and remedies of Mortgagee shall continue unimpaired as before.

Section 13.07. In the event that Mortgagee shall have the right to foreclose this Mortgage, Mortgagor authorizes Mortgagee, at its option, to foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendant to any such foreclosure proceeding and to foreclose their rights will not be asserted by Mortgagor as a defense to any proceeding instituted by Mortgagee to collect the indebtedness secured hereby or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

Section 13.08. Neither this Mortgage, the existence of terms of any other security for the performance of the obligations secured hereby, nor the existence or terms of any other instrument

UNOFFICIAL COPY

9 1 2 1 7 3 2 7

or agreement shall be deemed to require any marshalling of assets or otherwise permit Mortgagor to designate the order in which any security shall be sold.

Section 13.09. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy, if not applied in rebuilding or restoring the Improvements, as aforesaid, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct. In the case of foreclosure of this Mortgage, the court, in its decree, may provide that the mortgagee's clause attached to each of the casualty insurance policies may be cancelled and that the decree creditor may cause a new loss clause to be attached to each of said casualty insurance policies making the loss thereunder payable to said decree creditors; and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statutes in such case made and provided, then in every such case, each and every successive redeemer may cause the preceding loss clause attached to each casualty insurance policy to be cancelled and a new loss payable clause to be attached thereto, making the loss thereunder payable to such redeemer. In the event of foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the insurance policies without credit or allowance to Mortgagor for prepaid premiums thereon.

Section 13.10. To the full extent permitted by law, Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner whatsoever claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor claim, take or insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale or sales claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date hereof, it being the

intent hereof that any and all such rights or redemption of Mortgagor and of all other persons, are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent applicable law or laws or otherwise granted or deleted to Mortgagee, but will suffer and permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note.

Section 13.11. Each right, power and remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter provided by law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient to Mortgagee. The exercise of any one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein. Except as otherwise specifically required herein, notice of the exercise of any right, remedy or power granted to Mortgagee by this Mortgage is not required to be given.

Section 13.12. Upon the occurrence of an Event of Default hereunder, either before or after acceleration of the indebtedness secured by this Mortgage or the foreclosure of the lien hereof and during the period of redemption, if any, Mortgagee may, but shall not be required to, make any payment or perform any act herein required of Mortgagor (whether or not Mortgagor is personally liable therefor) in any form and manner deemed expedient to Mortgagee. Mortgagee may, but shall not be required to, rent, operate and manage the Mortgaged Property and such Improvements and pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Mortgaged Property shall be operational and usable for their intended purposes. All monies paid, and all expenses paid or incurred in connection therewith, including reasonable attorney's fees and other monies advanced by Mortgagee to protect the Mortgaged Property and the lien hereof, or to complete construction, furnishing and equipping or to rent, operate and manage the Mortgaged Property or to pay any such operating costs and expenses thereof or to keep the Mortgaged Property operational and usable for their intended purpose shall be so much additional indebtedness secured by this Mortgage, whether or not the indebtedness secured by this Mortgage, as a result thereof, shall

91219327

exceed the face amount of the Note, and shall become immediately due and payable on demand, and with interest thereon at the Default Rate specified in the Note. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any Event of Default nor shall the provisions of this Section 13.13 or any exercise by Mortgagee of its rights hereunder prevent any default from constituting an Event of Default. Mortgagee, in making any payment hereof authorized (a) relating to taxes, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; (b) for the purchase, discharge, compromise or settlement of any lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted; or (c) in connection with the completion of construction, furnishing or equipping of the Mortgaged Property or the rental, operation or management of the Mortgaged Property or the payment of operating costs and expenses thereof, may do so in such amounts and to such persons as Mortgagee may deem appropriate. Nothing contained herein shall be construed to require Mortgagee to advance or expend monies for any purpose mentioned herein, or for any other purpose.

ARTICLE XIV

NON WAIVER, ETC.

Section 14.01. Neither Mortgagor nor any other person now or hereafter obligated for the payment of the whole or any part of the sums now or hereafter secured by this Mortgage shall be relieved of such obligation by reason of the failure of Mortgagee to comply with any request of Mortgagor or of any other person so obligated to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or of any obligations secured by this Mortgage, or by reason of the release, regardless of consideration, of the whole or any part of the security held for the indebtedness secured by this Mortgage, or by reason of any agreement or stipulation between any subsequent owner or owners of the Mortgaged Property and Mortgagee extending the time of payment or modifying the terms of the Note or Mortgage without first having obtained the consent of Mortgagor or such other person, and in the latter event, Mortgagor and all such other persons shall continue liable to make such payments according to the terms of any such agreement of extension or modification unless expressly released and discharged in writing by Mortgagee. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, Mortgagee may release the obligation of anyone at any time liable for any of the indebtedness secured by this Mortgage or any part of the security held for the indebtedness and may extend the time of payment or otherwise modify the terms of the

Note of this Mortgage, or both, without, as to the security or the remainder thereof, in any way impairing or affecting the lien of this Mortgage or the priority of such lien, as security for the payment of the indebtedness as it may be so extended or modified, over any subordinate lien. The holder of any subordinate lien shall have no right to terminate any lease affecting the Mortgaged Property whether or not such lease be subordinate to this Mortgage without the prior written consent of Mortgagee. For the payment of the indebtedness secured hereby Mortgagee may resort to any other security therefor held by Mortgagee in such order and manner as Mortgagee may elect.

Section 14.02. If any term or provision of this Mortgage, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Mortgage, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Mortgage shall be valid and be enforced to the fullest extent permitted by law; provided, however, that if any provision requiring the payment of money by Mortgagor is to any extent invalid or unenforceable, Mortgagee may, at its option and upon notice to Mortgagor, declare the indebtedness secured hereby immediately due and payable.

Section 14.03. Any act to be performed by Mortgagor under this Mortgage or any other Loan Document shall be performed by Mortgagor at Mortgagor's sole cost and expense.

Section 14.04. If Mortgagor shall fail to pay any Impositions when and as required by Article II hereof, or fail to procure, pay for and deliver to Mortgagee any policy or policies of insurance when and as required by Article III hereof, or fail to maintain, protect, restore or repair the Mortgaged Property as required by Article IV hereof, or fail to pay and discharge any lien, encumbrance or security interest when and as required by Article VII hereof, or fail to fully and timely perform any other obligation of Mortgagor hereunder or under any of the other Loan Documents, Mortgagee shall be under no obligation to take action to correct such failures. However, at its option, Mortgagee may take such action and expend such sums as Mortgagee reasonably deems necessary to correct such failures or any consequences thereof, but such action or payment by Mortgagee shall not constitute a waiver by Mortgagee of the performance of said act, and Mortgagee may declare Mortgagor's failure to perform such act an Event of Default notwithstanding Mortgagee's having undertaken the performance of the act, it being understood and agreed that Mortgagee shall not be obligated to inquire into the validity of any apparent or any written tax, assessment adverse title, lien, encumbrance, claim or charge prior to making such an advance for the purpose of preventing, removing or paying same and that, should Mortgagee make

UNOFFICIAL COPY

9 1 2 1 9 3 2 7

such payment, Mortgagee shall be subrogated to all rights, equities and liens discharged by any such expenditures. Mortgagor shall repay to Mortgagee promptly upon demand any amounts expended by Mortgagee to correct such failure or any consequences thereof, and all expenses of Mortgagee in taking such action, with interest at the Default Rate set forth in the Note from the incurring of such expense or the making of such payment, as the case may be. The payment of such amounts to Mortgagee shall be secured by this Mortgage and Security Agreement.

ARTICLE XV

GENERAL COVENANTS

Section 15.01. Mortgagor shall promptly pay, upon request, all expenses and costs incurred by Mortgagee, including reasonable attorney's fees, together with interest thereon at the Default Rate as provided in the Note from the date of the payment thereof by Mortgagee, in connection with any action, proceeding, litigation or claim instituted or asserted by or against Mortgagee or in which Mortgagee becomes engaged including, without limitation, bankruptcy, reorganization, arrangements, receivership or similar proceedings, wherein it becomes necessary in the opinion of Mortgagee to protect Mortgagee's interest in the Mortgaged Property or the security afforded hereby, or to defend or uphold the lien of this Mortgage, or the validity or effectiveness of any assignment of any claim, award, payment, property damage, insurance policy or any other right or property conveyed, encumbered or assigned by Mortgagor to Mortgagee hereunder, or the priority of any of the same, and all such expenses and costs, and said interest thereon, shall be added to and become part of the principal indebtedness of Mortgagor hereunder and be secured in all respects hereby as if part of the original indebtedness evidenced by the Note; provided, however, that in any action to foreclose this Mortgage or to recover or collect the sums due hereunder, the provisions of law and of this Mortgage relative to the recovery of costs, disbursements, commissions, allowances and attorney's fees shall prevail unaffected by this Section.

Section 15.02. Mortgagor shall pay any tax due or to become due in respect of the issuance of the Note in the manner required by the laws of the United States of America or of any state having jurisdiction over the Mortgagor.

Section 15.03. Mortgagor represents and warrants to Mortgagee that the indebtedness evidenced by the Note and secured hereby is a business loan within the purview of Paragraph 6404 of Chapter 17 of the Illinois Revised Statutes (1989), transacted solely for the purpose of carrying on the business of the beneficiary of Mortgagor as contemplated by said Statutes.

Section 15.04. Mortgagor and Mortgagee agree that this Mortgage shall constitute a Security Agreement within the meaning of the Commercial Code with respect to (i) any and all sums at any time on deposit for the benefit of Mortgagee or held by the Mortgagee (whether deposited by or on behalf of the Mortgagor or anyone else) pursuant to any of the provisions of the Mortgage and (ii) with respect to any personal property included in the granting clauses of this Mortgage which personal property may not be deemed to be affixed to the Mortgaged Property or may not constitute a "fixture" within the meaning of the Code, (all of which property is hereinafter collectively referred to as "Personal Property") and all replacements of such Personal Property, substitutions for such Personal Property, additions to such Personal Property, and the proceeds thereof (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as the "Collateral"), and that a security interest in and to the Collateral is hereby granted to the Mortgagee, and the Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to the Mortgagee, all to secure payment of the indebtedness secured by this Mortgage. 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 Mortgaged Property; and the following provisions of this Section 15.06 shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:

(a) Mortgagor (such party being the Debtor as that term is used in the Code) is and shall be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefitting Mortgagee and the holder(s) of any mortgage permitted hereunder.

(b) The Collateral is and shall be used by Mortgagee solely for business purposes.

(c) The Collateral shall be kept on the Land, and, except for Obsolete Collateral (as hereinafter defined), shall not be removed therefrom without the consent of Mortgagee (being the Secured Party as that term is used in the Code). The Collateral may be affixed to the Land but will not be affixed to any other real estate.

(d) The only persons presently having any security interest in the Mortgaged Property are Mortgagor.

(e) No Financing Statement (other than with respect to liens and encumbrances, if any, expressly identified herein,

UNOFFICIAL COPY

9 1 2 1 9 3 2 7

covering any of the Collateral or any proceeds thereof, is on file in any public office except pursuant hereto; and Mortgagor shall at its own cost and expense, upon demand, furnish to Mortgagee such further information and shall execute and deliver to Mortgagee such financing statements and other documents in form satisfactory to Mortgagee and shall do all such acts and things as Mortgagee may at any time or from time to time request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the indebtedness by this Mortgage, subject to no other liens or encumbrances, other than liens or encumbrances benefitting Mortgagee or permitted hereunder; and Mortgagor will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by Mortgagee to be necessary or desirable.

(f) Upon Default hereunder, Mortgagee shall have the remedies of a secured party under the Code, including without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as Mortgagor can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace), upon any place where the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to the real estate, such removal shall be subject to the conditions stated in the Code); and Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations, as provided in the Code. Mortgagee may (i) render the Collateral unusable without removal (ii) dispose of the Collateral on the Mortgaged Property or (iii) require Mortgagor to make it available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. Mortgagee will give Mortgagor at least twenty (20) days notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Mortgagor hereinafter set forth at least twenty (20) days before the time of the sale or disposition. Mortgagee may buy at any public sale and, if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, Mortgagee may buy at private sale. Any such sale may be held as part of and in conjunction with any foreclosure

UNOFFICIAL COPY

9 1 2 1 9 3 2 7

sale of the Mortgaged Property, the Mortgaged Property including the Collateral to be sold as one lot if Mortgagee so elects. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling or the like and the reasonable attorney's fees and reasonable legal expenses incurred by Mortgagee, shall be applied against the Indebtedness Hereby Secured in such order or manner as Mortgagee shall select. Mortgagee shall account to Mortgagor for any surplus realized on such disposition.

(g) The terms and provisions contained in this Section 15.05 shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

(h) This Mortgage is intended to be a financing statement within the purview of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Mortgaged Property. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are hereinafter set forth. This Mortgage is to be filed for record with the Recorder of Deeds of the Country where the Mortgaged Property is located. Mortgagor is the record owner of the Mortgaged Property.

(i) To the extent permitted by applicable law, the security interest created hereby is also specifically intended to cover and include all leases for all or a part of the Mortgaged Property between Mortgagor or beneficiary of Mortgagor as lessor, and various tenants named therein, as lessee, including without limiting the generality of the foregoing, the present and continuing right to make claim for, collect, receive and receipt for any and all of the rents, income, revenues, issues and profits and moneys payable as damages or in lieu of the rent and moneys payable as the purchase price of the Mortgaged Property or any part thereof or of awards or claims for money and other sums of money payable or receivable thereunder howsoever payable, and to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which Mortgagor or any lessor respectively is or may become entitled to do under the Leases.

Section 15.05. Wherever used in this Mortgage, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word "Mortgagor" shall mean the party executing this instrument, its successors and assigns or any subsequent owner or owners of the Mortgaged Property or the beneficiaries thereof, the word "Mortgagee" shall mean the party to whom this Mortgage is given or any subsequent holder or holders of this Mortgage, the word "Note" shall mean the Note or bond

UNOFFICIAL COPY

9 1 2 1 9 3 2 7

secured by this Mortgage, the word "person" shall mean an individual, corporation, general partnership, limited partnership, unincorporated association, or any other legal entity; the singular shall include the plural and the plural the singular; the masculine or feminine or neuter gender shall each include the other genders; all the covenants, waivers, warrants, promises and releases by and obligations or liabilities imposed upon Mortgagor shall be joint and several.

Section 15.06. This Mortgage cannot be changed except by an agreement in writing, signed by the party against whom enforcement of the change is sought.

Section 15.07. The captions of this Mortgage are for convenience and reference only and in no way define, limit or describe the scope or intent of this Mortgage nor in any way affect this Mortgage.

Section 15.08. This Mortgage shall be construed and enforced in accordance with the laws of the state in which the Land is situate.

Section 15.09. Mortgagor shall, at its sole cost and expense, promptly upon request of Mortgagee, do all acts and things including, but not limited to, the execution and delivery of any further deeds, conveyances, mortgages, assignments and further assurances, reasonably deemed necessary by Mortgagee, to establish, confirm, maintain and continue the lien created and intended to be created hereby, all assignments made or intended to be made pursuant hereto, and all other rights and benefits conferred or intended to be conferred on Mortgagee hereby, and Mortgagor shall pay all costs incurred by Mortgagee in connection therewith, including all filing and recording costs, cost of searches, and reasonable counsel fees incurred by Mortgagee.

Section 15.10. Mortgagor represents and warrants to Mortgagee that (i) it has fully complied with all legal requirements applicable to Mortgagor, (ii) it has the power, authority and legal right to carry on the business now being conducted by it and to engage in the transactions contemplated by this Mortgage and the Note and (iii) the execution and delivery of and the carrying out of the transactions contemplated by this Mortgage, the execution and delivery of the Note and this Mortgage, and the performance and observance of the terms, covenants, agreements and provisions of all of the foregoing, have been duly authorized by all necessary actions of Mortgagor and will not conflict with or result in a breach of the terms or provisions of any existing law or any existing rule, regulation or order of any court or governmental body.

Section 15.11. Mortgagor hereby agrees that Mortgagee shall be subrogated to the lien of any and all prior encumbrances, liens, or changes paid or discharged from the proceeds of the Note and, even though said prior liens may have been released of record, the repayment of the Note shall be secured by such liens on the portion of the Mortgaged Property affected thereby to the extent of such payments.

Section 15.12. This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon Mortgagor and its successors and assigns (including, without limitation, each and every record owner from time to time of the Property or any other person having any interest therein), and shall inure to the benefit of Mortgagee and its successors and assigns. Wherever herein Mortgagee is referred to, such reference shall be deemed to include the holder from time to time of the Note, whether so expressed or not; and each such holder from time to time of the Note shall have and enjoy all of the rights, privileges, powers, options and benefits afforded hereby and hereunder, and may enforce all and every of the terms and provisions hereof, as fully and to the same extent and with the same effect as if such holder of the Note from time to time were herein by name specifically granted such rights, privileges, powers, options and benefits and was herein by name designated Mortgagee.

Section 15.13. Mortgagor hereby represents and warrants to Mortgagee that neither Mortgagor, nor any other person or entity, has ever caused or permitted any Hazardous Material (as defined below) to be placed, held, located or disposed on, under or at the Mortgaged Property, or any part thereof, and that the Mortgaged Property has never been used, whether by Mortgagor or by any other person or entity, as a dump site or a storage site, whether temporary or permanent, for any Hazardous Material. For purposes of this Mortgage, the term "Hazardous Material" shall mean any hazardous, toxic or dangerous substance or material or defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act, any so-called "Superfund" or "Superlien" law or any other federal, state or local statute, law, ordinance, code, regulation, order, or other requirement of any governmental authority regulating, relating to or imposing liability for, or standard of conduct concerning, any hazardous, toxic or dangerous waste, substance or material as now or any time hereafter in effect.

ARTICLE XVI

TRANSFER AND FURTHER ENCUMBRANCE OF THE MORTGAGED PROPERTY

Section 16.01. Mortgagor shall not transfer, sell, convey, assign (by operation of law or otherwise) or further encumber the Mortgaged Property or any part thereof.

Section 16.02. Notwithstanding the provisions contained in Section 16.01 hereof to the contrary, Mortgagee may permit, in its sole and absolute direction, Mortgagor to transfer, sell, convey or assign the Mortgaged Property to a proposed buyer, provided that Mortgagee determines that in its sole and absolute discretion, the proposed buyer has sufficient financial strength, credit-worthiness and management capabilities, and further provided that prior to any such transfer, sale, conveyance or assignment, Mortgagee is paid a transfer fee in an amount equal to one percent (1%) of the then outstanding principal balance of the Note and further provided that the proposed buyer fully assumes the same liabilities as Mortgagor under the Note.

Section 16.03. Notwithstanding the provisions contained in Section 16.01 hereof to the contrary, Mortgagee hereby agrees that Mortgagor shall have the right to encumber the Mortgaged Property with a second (2nd) mortgage lien ("Subordinate Financing") in the amount of One Million of Three Hundred Fifty Thousand and No/100 Dollars (\$1,350,000.00) in favor of one (1) or more partners of Beneficiary (the "Subordinate Financing") provided that the terms and conditions of the documents evidencing and securing the Subordinate Financing (the "Subordinate Financing Documents") are acceptable to Mortgagee, in Mortgagee's sole discretion, and include the following provisions:

(a) that no portion of the outstanding balance due and payable under the Subordinate Financing may be prepaid prior to payment in full of the outstanding balance due and payable under the Note and the other Loan Documents unless the funds to be used for any such prepayment shall be funds available from cash flow generated by the Mortgaged Property or raised as a result of additional capital contributions made by the joint venturers of Beneficiary after payment of all costs and expenses incurred in connection with the Mortgaged Property and retention of adequate reserves for repairs, maintenance and capital improvements, as determined by Mortgagee;

(b) that the Subordinate Financing shall be made and shall continue subject to the lien created by, as well as all of the terms and conditions of, this Mortgage;

UNOFFICIAL COPY

9 1 2 1 9 3 2 7

(c) that the mortgagee under the Subordinate Financing shall not acquire by subrogation, contract or otherwise any lien upon or other estate, right or interest in the Mortgaged Property (including, but not limited to, any estate, right or interest which may arise in respect to real estate taxes, assessments or other governmental charges) which is or may be prior in right to this Mortgage or any extension, modification or supplement thereto;

(d) that the Subordinate Financing and the lien thereof shall be expressly subject and subordinate to any and all advances, in whatever amounts and whenever made, with interest thereon, and to any expenses, charges and fees incurred thereby, including, without limitation, any and all of such advances, interest (including accrued but unpaid or capitalized interest, or both), expenses, charges and fees which may increase the indebtedness secured by this Mortgage above the original principal amount thereof;

(e) that the mortgagee under the Subordinate Financing and its successors and assigns, or any other legal holder of the Subordinate Financing, shall assign and release unto Mortgagee:

(i) all of its right, title, interest or claim, if any, in and to the proceeds of any and all policies of insurance covering the Mortgaged Property for application upon the indebtedness secured by or other disposition thereof in accordance with the provisions of this Mortgage;

(ii) all of its right, title and interest or claim, if any, in and to any and all awards or other compensation made for any taking of the Mortgaged Property, or any portion thereof, to be applied upon the indebtedness secured by or disposed of in accordance with the provisions of this Mortgage;

(f) that the mortgagee under the Subordinate Financing shall not permit a termination of any or all of the leases entered into with respect to the Mortgaged Property, or any portion thereof, without the prior written consent of Mortgagee, which consent Mortgagee may withhold in Mortgagee's sole discretion;

(g) that so long as this Mortgage shall remain upon the Mortgaged Property or any part thereof, upon demand at any time, the mortgagee under the Subordinate Financing shall execute, acknowledge and deliver any and all further subordinations or other instruments in recordable form that Mortgagee may require.

ARTICLE XVII

NON-RECOURSE PROVISION

Section 17.01. Nothing contained in this Mortgage or any of the other Loan Documents shall be deemed to cause Beneficiary to be personally liable to pay the principal, interest or other charges, penalties, prepayment premiums (including the Prepayment Premium), fees or costs due under the Note or any of the other Loan Documents or to be personally liable for the performance of any covenants, obligations, indemnities or agreements contained herein or therein, or for the breach of any representation or warranty contained herein or therein, and Mortgagee shall not seek any personal or deficiency judgment thereon, it being understood and agreed that the sole remedy of Mortgagee shall be against the Mortgaged Property; provided, however, the foregoing shall not in any way affect any rights Mortgagee may have (as a secured party or otherwise) under the Loan Documents, or any of them, or rights Mortgagee may have: (a) to recover any funds, damages, or costs and expenses (including without limitation reasonable attorneys' fees) incurred by Mortgagee as a result of a breach by Beneficiary of any environmental representation or covenant, or both, or Hazardous Material being placed, held, located or disposed on or waste committed on the Mortgaged Property or fraud by Beneficiary in its application for the loan repayment of which is secured by this Mortgage and in the Loan Documents, or any of them, or any combination of the foregoing; (b) to recover any condemnation or insurance proceeds, or other similar funds or payments attributable to the Mortgaged Property, or any combination of the foregoing, which were paid with respect to the Mortgaged Property and not used for reconstruction or which were misapplied by Beneficiary in violation of the terms of this Mortgage or any of the other Loan Documents; (c) to recover any rent or other payments made by tenants, or any combination of the foregoing, which were paid and misapplied in any fraudulent or otherwise wrongful manner; or (d) as a result of the retention of any rental or other income, or any combination of the foregoing arising with respect to the Mortgaged Property which is collected after Mortgagee has given written notice that an Event of Default has occurred under the Loan Documents, or any of them, or which is fraudulently and wrongfully misapplied, or both, or any combination of the foregoing, or to recover from Beneficiary as a result of the existence of any combination of any of the situations set forth in this Paragraph. It is expressly understood and agreed that nothing contained in this Paragraph shall in any manner or way constitute or be deemed to be a release or impairment of the debt evidenced by the Note or otherwise affect or impair the enforceability of the Loan Documents. Further, nothing in this Paragraph shall preclude Mortgagee from foreclosing under this Mortgage or proceeding

without limitation against any and all security held by Mortgagee for the Note, or from enforcing any of its rights and remedies in law or in equity except as expressly provided in this Paragraph or from pursuing any combination of the foregoing.

ARTICLE XVIII

TRUSTEE EXCULPATORY PROVISIONS

Section 18.01. This Mortgage is executed by Trustee, not personally but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee, and under the express direction of the Beneficiary. It is expressly understood and agreed that nothing herein or in said Agreement contained shall be construed as creating any liability whatsoever against said Trustee personally, and in particular without limiting the generality of the foregoing, there shall be no personal liability to pay any indebtedness accruing hereunder or to perform any covenant, either express or implied, herein contained, or to keep, preserve or sequester any property of said Trust, and that all personal liability of said Trustee of every sort, if any, is hereby expressly waived by Mortgagee, and by every person now or hereafter claiming any right or security hereunder; and that so far as the said Trustee is concerned the owner of any indebtedness or liability accruing hereunder shall look solely to the Mortgaged Property for the payment thereof. It is further understood and agreed that the said Trustee has no agents or employees and merely holds naked legal title to the Mortgaged Property herein described.

IN WITNESS WHEREOF, Mortgagor, intending to be legally bound hereby, has caused this Mortgage to be duly executed, on the day and year first above written, intending the same to be a sealed instrument.

FIRST CHICAGO TRUST COMPANY OF ILLINOIS, not individually but as Trustee as aforesaid

ATTEST:

By: Peter D. Walter
Asst. Secretary (Title)

By: [Signature]
Asst. Vice President (Title)

SCHAUMBURG ATRIUM CENTER, a joint venture formed under the laws of the State of Illinois

By: The Lincoln National Life Insurance Company, an

UNOFFICIAL COPY

9 1 2 1 9 3 2 7

Indiana corporation, a
joint venturer

By: Lincoln National Investment
Management Company, an
Illinois corporation, its
attorney-in-fact

By: *Jack R. Davis*
Vice President (Title)

By: *Peter A. Tsolinas*
Peter A. Tsolinas,
a joint venturer

Property of Cook County Clerk's Office

91219327

UNOFFICIAL COPY

9 1 2 1 9 3 2 7

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

I, the undersigned, a notary public, do hereby certify, that Paul M. Greene, personally known to me to be the Asst. Vice President of FIRST CHICAGO TRUST COMPANY OF ILLINOIS, an Illinois corporation, and Peter D. Walter, personally known to me to be the Asst. Secretary of said Trust Company, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Asst. Vice President and Asst. Secretary of said Trust Company they executed the foregoing instrument pursuant to the authority given by said Trust Company, as their free and voluntary act, and as the free and voluntary act and deed of said Trust Company, for the uses and purposes therein set forth.

Given under my hand and official seal, this 7th day of ~~April~~^{May}, 1991.

Evelyn Hasz
Notary Public

[Notary Seal]



My Commission expires:

91219327

UNOFFICIAL COPY

9 1 2 1 9 3 2 7

STATE OF Indiana)
COUNTY OF Allen) SS:

I, Julie A. Romine, a notary public, do hereby certify, that Jack B. Davis, the Vice President of LINCOLN NATIONAL INVESTMENT MANAGEMENT COMPANY, an Illinois corporation, as attorney-in-fact for THE LINCOLN NATIONAL LIFE INSURANCE COMPANY, an Indiana corporation, a joint venturer of SCHAUMBURG ATRIUM CENTER, a joint venture formed under the laws of the State of Illinois, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and he acknowledged that as such Vice President of said Corporation, he executed the foregoing instrument pursuant to authority given by said Corporation in its capacity as attorney-in-fact for The Lincoln National Life Insurance Company, a joint venturer of said joint venture, as his free and voluntary act, and as the free and voluntary act and deed of said Corporation in its capacity as a joint venturer of said joint venture, for the uses and purposes therein set forth.

Given under my hand and official seal, this 15th day of April, 1991.

Julie A. Romine
Notary Public

[Notarial Seal]

My commission expires:

JULIE A. ROMINE, Notary Public
Resident of Allen County, Indiana
My Commission Expires February 15, 1994

91219327

UNOFFICIAL COPY

9 1 2 1 9 3 2 7

STATE OF Illinois)
COUNTY OF Cook) SS:

I, Malley Pokorny, a notary public, do hereby certify, that PETER M. TSOLINAS, a joint venturer of SCHAUMBURG ATRIUM CENTER, a joint venture formed under the laws of the State of Illinois, personally known to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as joint venturer of said joint venture, he executed the foregoing instrument as his free and voluntary act, and as the free and voluntary act of said joint venture, for the uses and purposes therein set forth.

Given under my hand and official seal, this 15th day of April, 1991.

Malley Pokorny
Notary Public

[Notary Seal]

My commission expires:



91219327

UNOFFICIAL COPY

9 1 2 1 9 3 2 7

PROMISSORY NOTE

\$11,250,000.00

As of April 15, 1991

FOR VALUE RECEIVED, the undersigned, FIRST CHICAGO TRUST COMPANY OF ILLINOIS, as successor to Mount Prospect State Bank, not individually but as Trustee under that certain Trust Agreement dated August 29, 1983, and known as Trust No. 1336 (the "Trust"), and SCHAUMBURG ATRIUM CENTER, a joint venture formed under the laws of the State of Illinois ("Beneficiary") (the Trust and Beneficiary, collectively, "Maker"), promises to pay to the order of AUSA LIFE INSURANCE CORPORATION, an Iowa corporation having its principal office at 4333 Edgewood Road NE, Cedar Rapids, Iowa 52499 ("Payee"), the aggregate principal sum of Eleven Million Two Hundred Fifty Thousand and No/100 Dollars (\$11,250,000.00) with interest thereon, payable in arrears, for each day all, or any part, of the principal balance hereof shall remain outstanding, at the rate of ten and one-quarter percent (10.25%) per annum, computed daily on the basis of a three hundred sixty (360) day year.

The principal and interest due under this Note shall be paid in regular monthly installments of One Hundred Thousand Eight Hundred Eleven and 40/100 Dollars (\$100,811.40) each (based on a thirty (30) year amortization schedule), commencing on the first (1st) day of the second (2nd) full month after the date hereof, and continuing on the first (1st) day of each month thereafter. Payments of interest and principal shall be made as aforesaid until such principal and interest are fully paid, except that a final payment of principal and interest, if not made sooner, shall be due and payable on the fifth (5th) anniversary of the date of this Note (the "Maturity Date"). All installments of principal and interest shall be paid at the office of Payee in Cedar Rapids, Iowa, or at such other place as Payee shall, from time to time, designate in writing to Maker. Payments made under this Note shall be in lawful money of the United States of America which shall be legal tender for public and private debts at the time of such payment.

This Note is secured by that certain Mortgage of even date herewith (the "Mortgage") made by Maker in favor of Payee creating a first (1st) mortgage lien on the real property legally described therein (the "Property"), that certain Collateral Assignment of Beneficial Interest Under Land Trust of even date herewith made by Beneficiary in favor of Payee, that certain Unconditional Assignment of Leases and Rents of even date herewith made by Maker in favor of Payee, that certain Unconditional Assignment of Management Agreements, Service Agreements, Sales Agreements and Contracts of even date herewith made by Beneficiary in favor of Payee, that certain Environmental Indemnity of even date herewith made by Beneficiary in favor of Payee and certain other documents (said security instruments, collectively, the "Loan Documents"), and any default under any of the Loan Documents shall constitute

91219327

UNOFFICIAL COPY

an event of default under this Note. The Loan Documents are hereby incorporated herein by this reference as fully and with the same effect as if set forth herein at length.

All payments on account of the indebtedness evidenced by this Note shall be first (1st) applied to the payment of all sums secured by the Loan Documents other than principal and interest due hereunder, in such order as Payee shall designate, then to interest on the unpaid balance hereof and the remainder to principal.

In the event that there shall occur:

(a) Any default hereunder or any event of default under any Loan Documents; or

(b) Maturity of the indebtedness evidenced hereby, whether by passage of time, acceleration, declaration or otherwise;

then, in any such event, and continuing until such default or event of default is cured, or the indebtedness evidenced hereby is paid or satisfied in full, the entire principal balance hereof, together with all other indebtedness secured by the Loan Documents, shall bear interest at a rate equal to six percent (6%) above the rate of interest then being charged by Payee for comparable loans (the "Default Rate"). Without limiting the foregoing, in the event any installment of interest or principal and interest is not paid within ten (10) days after the due date thereof, in addition to payment of interest at the Default Rate, Maker shall pay to Payee a late charge of five percent (5%) of the amount then due and payable (the "Late Charge") to defray the expenses incident to handling any such delayed payment or payments.

The occurrence of any one (1) or more of the following events shall constitute a default hereunder:

(a) Nonpayment of principal, interest or other amounts payable under this Note;

(b) A breach of any terms and conditions of this Note (other than nonpayment of principal, interest or other amounts payable under this Note) which is not cured within thirty (30) days after notice of such breach is delivered to Maker, or such longer period of time if such breach cannot be cured within said thirty (30)-day period and Maker is diligently pursuing the cure of same, except that in cases where the existence of such breach jeopardizes the security provided by the Loan Documents, the occurrence of such breach shall constitute an immediate default hereunder irrespective of whether or not any such cure period has elapsed;

(c) Any representation or warranty made by or on behalf of Maker under or in connection with this Note being materially false as of the date of which such representation or warranty was made; and

(d) An Event of Default (as defined in the Mortgage) beyond any applicable cure period.

If a default described in Subsection 13.01(f) of the Mortgage occurs, the principal sum remaining unpaid hereunder, together with accrued interest thereon and other charges payable hereunder, shall be and become at once due and payable at the place herein provided for payment without any election or action of any kind on the part of Payee. In the event of any other default hereunder, at the election of Payee and without notice, the principal sum remaining unpaid hereunder, together with accrued interest thereon, and any and all other payments due hereunder, shall be and become at once due and payable at the place herein provided for payment.

Maker shall have the right to prepay the outstanding indebtedness due hereunder in whole, but not in part, at any time provided that, simultaneously with such prepayment, Maker shall pay to Payee a prepayment premium (the "Prepayment Premium") in an amount equal to one percent (1%) of the amount of such prepayment unless the Monthly Interest Payment (as hereinafter defined) is greater than the Monthly Reinvestment Payment (as hereinafter defined), in which event the Prepayment Premium shall be the greater of (i) an amount equal to one percent (1%) of the amount of such prepayment, and (ii) an amount equal to the present value of a sum computed by multiplying (x) the difference between the Monthly Reinvestment Payment and the Monthly Interest Payment by (y) the Reinvestment Yield (as hereinafter defined) (compounded monthly) and by (z) the number of months remaining from the date of such prepayment until the Maturity Date. As used herein, "Reinvestment Yield" shall mean the yield on the U.S. Treasury "Primary Issue" comparable in term to the remaining term of the Note published two (2) weeks prior to the date of such prepayment or, if none is published, the yield on a comparable Treasury Bond, Treasury Note or Treasury Bill "Secondary Issue" which Payee deems to be similar to such Primary Issue. "Monthly Interest Payment" shall mean an amount equal to 10.25% of the outstanding principal balance under the Note on the date of such prepayment (the "Outstanding Principal") divided by twelve (12) and "Monthly Reinvestment Payment" shall mean an amount equal to the Reinvestment Yield multiplied by the Outstanding Principal divided by twelve (12). In the event that as a result of a default hereunder or under any of the Loan Documents, the principal sum remaining unpaid hereunder, together with accrued interest thereon and other charges payable hereunder, shall become at once due and payable hereunder, then in addition to all other sums due and owing

UNOFFICIAL COPY

9 1 2 1 0 3 2 7

to Payee, Maker shall pay to Payee a sum equal to the Prepayment Premium.

Maker represents and warrants to Payee that: (a) the loan evidenced by this Note is a business loan within the purview and intent of Paragraph 6404 of Chapter 17 of the Illinois Revised Statutes (1985), transacted solely for the purpose of owning and operating the business of Maker as contemplated by said Act; (b) the execution and delivery of this Note have been duly authorized and constitutes a valid and binding obligation of Maker; (c) neither the execution, delivery nor performance of this Note will violate or conflict with any law, rule, regulation, order, judgment, decree, indenture, instrument or agreement by which Maker or its property is bound; and (d) there is no litigation or proceeding pending or threatened against or affecting Maker, its property or any guarantor of this Note which, if adversely determined, would materially adversely affect Maker, or its property, or the ability of Maker to perform its obligations hereunder, or the financial condition of any guarantor of this Note.

Funds representing the proceeds of the indebtedness evidenced hereby which are disbursed by mail, wire transfer or other delivery to Maker, to escrows or otherwise for the benefit of the Maker, or to Payee in repayment of the indebtedness of Maker to Payee, shall, for all purposes, be deemed outstanding hereunder and to have been held by Maker as of the date of such mailing, wire transfer, repayment or other delivery and interest shall accrue and be payable upon such funds from and after the date of such wire transfer, mailing, repayment or delivery and until repayment is actually received by Payee.

This Note shall be governed by the laws of the State of Illinois. In the event that any term or provision of this Note, or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Note, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Note shall be valid and be enforced to the fullest extent permitted by law; provided, however, that if any provision requiring the payment of money by Maker is to any extent invalid or unenforceable, Payee may, at its option and without notice, declare the indebtedness secured hereby immediately due and payable.

All parties hereto severally waive presentment for payment, notice of dishonor, protest and notice of protest. No delay or omission of Payee to exercise any right or power hereunder shall impair any such right or power, or be deemed or construed to be a waiver of any default hereunder or an acquiescence therein. No

91219327

UNOFFICIAL COPY

waiver shall be valid unless in writing signed by Payee, and then only to the extent specifically set forth in such writing.

Time is of the essence of this Note. All remedies provided hereunder or by law shall be cumulative, and shall be available to Payee until this Note shall have been paid in full. Any single or partial exercise of any remedy hereunder shall not preclude any subsequent or further exercise of any thereof, or the exercise of any other remedy.

Makers, sureties, and guarantors severally waive notice of default, demand for payment, diligence in filing suit, protest, presentment and notice of dishonor and agree that time for payment of any installment may be extended, from time to time, without notice at the option of Payee.

In the event of default in payment of this Note, or of default under any of the Loan Documents, and if the same is placed in the hands of an attorney for collection, or for foreclosure, in addition to payment of interest on the entire unpaid balance hereof at the Default Rate, together with Late Charges, the undersigned agrees to pay all reasonable attorney's fee and all costs of collection. In the event that (a) proceedings at law, in equity, or bankruptcy, or an action for receivership or other legal proceedings are instituted or threatened in connection herewith, or (b) Payee is made a party or is threatened in connection herewith, or (c) this Note is placed in the hands of an attorney-at-law for collection or, upon default, to enforce any of the rights or requirements contained herein or in the Loan Documents, then, in any such event, Maker hereby agrees to pay all costs of collecting or attempting to collect the sums due under this Note, defending the rights of Payee in any such proceedings or threatened proceedings or protecting or enforcing such rights including, without limitation, reasonable attorneys' fees (whether or not suit is brought), in addition to all principal, interest and other amounts payable hereunder and under the Loan Documents, all of which shall be deemed to be secured by the Loan Documents.

Upon any endorsement, assignment or other transfer of this Note by Payee or by operation of law including, without limitation, the endorsement to a third (3rd) party upon sale of this Note, the term "Payee", as used herein, shall mean such endorsee, assignee or other transferee or successor to Payee then becoming the holder of this Note. This Note shall inure to the benefit of Payee and its successors and assigns.

Any notice, demand or request which may be permitted, required or desired to be given in connection with this Note or any other Loan Documents shall be given in writing and directed to Maker and Payee as set forth in the Mortgage.

UNOFFICIAL COPY

9 1 2 1 9 3 2 7

Nothing contained in this Note or the Loan Documents, or any of them, shall be deemed to cause Beneficiary to be personally liable to pay the principal, interest or other charges, penalties, prepayment premiums (including the Prepayment Premium), fees or costs due under this Note or the Loan Documents, or any of them, or to be personally liable for the performance of any covenants, obligations, indemnities or agreements contained herein or therein, or for the breach of any representation or warranty contained herein or therein, and Payee shall not seek any personal or deficiency judgment thereon, it being understood and agreed that the sole remedy of Payee shall be against the Property; provided, however, the foregoing shall not in any way affect any rights Payee may have (as a secured party or otherwise) hereunder or under the Loan Documents or under any of them, or rights Payee may have: (a) to recover any and all funds, damages, or costs and expenses (including without limitation reasonable attorneys' fees) incurred by Payee as a result of a breach by Beneficiary of any environmental representation or covenant, or both, or Hazardous Material (as defined in the Mortgage) being placed, held, located or disposed on or waste committed on the Property or fraud by Beneficiary in its application for the loan evidenced by this Note or in the Loan Documents, or any of them, or any combination of the foregoing; (b) to recover any and all condemnation or insurance proceeds, or other similar funds or payments attributable to the Property, or any combination of the foregoing, which were paid with respect to the Property and not used for reconstruction or which were misapplied in violation of the terms of this Note or the Loan Documents, or any of them; (c) to recover rent or other payments made by tenants, or any combination of the foregoing, which were paid and misapplied in any fraudulent or otherwise wrongful manner; or (d) as a result of the retention of any and all rental or other income, or any combination of the foregoing, arising with respect to the Property which is collected after Payee has given written notice of a default under this Note or the Loan Documents, or any of them, or which is fraudulently and wrongfully misapplied, or both, or any combination of the foregoing, or to recover from Beneficiary as a result of the existence of any combination of any of the situations set forth in this Paragraph. It is expressly understood and agreed that nothing contained in this paragraph shall in any manner or way constitute or be deemed to be a release or impairment of the debt evidenced by this Note or otherwise affect or impair the enforceability of this Note or the Loan Documents, or any of them, except to the extent expressly provided herein. Further, nothing in this paragraph shall preclude Payee from foreclosing under the Loan Documents or proceeding without limitation against any and all security held by Payee for this Note, or from enforcing any of its rights and remedies in law or in equity except as expressly provided in this paragraph or from pursuing any combination of the foregoing.

91219327

UNOFFICIAL COPY

9 4 2 1 9 3 2 7

This Note is executed by Trustee, not personally but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee, and under the express direction of Beneficiary. It is expressly understood and agreed that nothing herein or in said Agreement contained shall be construed as creating any liability whatsoever against said Trustee personally, and in particular without limiting the generality of the foregoing, there shall be no personal liability to pay any indebtedness accruing hereunder or to perform any covenant, either express or implied, herein contained, or to keep, preserve or sequester any property of said Trust, and that all personal liability of said Trustee of every sort, if any, is hereby expressly waived by Payee, and by every person now or hereafter claiming any right or security hereunder; and that so far as the said Trustee is concerned the owner of any indebtedness or liability accruing hereunder shall look solely to the Property for the payment thereof. It is further understood and agreed that the said Trustee has no agents or employees and merely holds naked legal title to the Property herein described.

Office of Cook County Clerk's Office

91219327

UNOFFICIAL COPY

9 1 2 1 9 3 2 7

IN WITNESS WHEREOF, Maker, intending to be legally bound hereby, has caused this Note to be duly executed, on the day and year first above written, intending the same to be a sealed instrument.

ATTEST:

FIRST CHICAGO TRUST COMPANY OF ILLINOIS, not individually but as Trustee as aforesaid

By: _____
(Title)

By: _____
(Title)

SCHAUMBURG ATRIUM CENTER, a joint venture, formed under the laws of the State of Illinois

By: The Lincoln National Life Insurance Company, an Indiana corporation, a joint venturer

By: Lincoln National Investment Management Company, an Illinois corporation, its attorney-in-fact

By: _____
(Title)

By: _____
Peter M. Tsolinas,
a joint venturer

UNOFFICIAL COPY

9 1 2 1 9 3 2 7

EXHIBIT "B"

Legal Description

PARCEL 1:

LOTS 1, 2, 3, AND 4 IN SCHAUMBURG ATRIUM CENTER, BEING A SUBDIVISION OF PART OF SECTION 34, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT 26942068, IN COOK COUNTY, ILLINOIS.

ALSO DESCRIBED AS FOLLOWS:

THAT PART OF SECTION 34, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTER LINE OF PLUM GROVE ROAD (ALSO KNOWN AS OLD PLUM GROVE ROAD) WITH THE NORTHERLY LINE OF ALGONQUIN ROAD ACCORDING TO DOCUMENT NO. 11195798; THENCE NORTH 66 DEGREES 50 MINUTES 41 SECONDS WEST ALONG SAID NORTHERLY LINE OF ALGONQUIN ROAD, 89.04 FEET TO THE MOST WESTERLY CORNER OF PROPERTY CONDEMNED FOR ROAD PURPOSES ACCORDING TO CASE NO. 71L11410; THENCE NORTH 57 DEGREES 00 MINUTES 18 SECONDS EAST ALONG THE NORTHWESTERLY LINE OF SAID LAND CONDEMNED FOR ROAD PURPOSES, 38.99 FEET TO A LINE 50.0 FEET, MEASURED AT RIGHT ANGLES, WESTERLY OF AND PARALLEL WITH THE CENTER LINE OF SAID PLUM GROVE ROAD; THENCE NORTH 00 DEGREES 51 MINUTES 17 SECONDS EAST ALONG SAID LAST DESCRIBED PARALLEL LINE, BEING ALSO THE WEST LINE OF LAND CONDEMNED FOR ROAD PURPOSES ACCORDING TO CASE NO. 71L11410, 659.03 FEET; THENCE NORTH 69 DEGREES 32 MINUTES 9 SECONDS WEST 605.0 FEET TO A POINT FOR A PLACE OF BEGINNING; THENCE CONTINUING NORTH 69 DEGREES 32 MINUTES 9 SECONDS WEST 925.47 FEET; THENCE SOUTH 20 DEGREES 27 MINUTES 51 SECONDS WEST, 600.15 FEET TO THE NORTHERLY LINE OF ALGONQUIN ROAD ACCORDING TO DOCUMENT NO. 11195798; THENCE SOUTH 69 DEGREES 32 MINUTES 09 SECONDS EAST ALONG SAID NORTHERLY LINE OF ALGONQUIN ROAD, 116.52 FEET TO A POINT OF CURVATURE; THENCE CONTINUING SOUTHEASTERLY ALONG SAID NORTHWESTERLY LINE OF ALGONQUIN ROAD, BEING A CURVED LINE, CONVEXED TO THE NORTH EAST, HAVING A RADIUS OF 21,535.94 FEET AND BEING TANGENT TO SAID LAST DESCRIBED STRAIGHT LINE AT THE LAST DESCRIBED POINT, AN ARC DISTANCE OF 780.24 FEET TO AN INTERSECTION WITH A LINE BEARING SOUTH 23 DEGREES 09 MINUTES 19 SECONDS WEST FROM THE AFOREDESCRIBED PLACE OF BEGINNING (THE CHORD OF SAID ARC BEARS SOUTH 68 DEGREES 29 MINUTES 52 SECONDS EAST 780.20 FEET); THENCE NORTH 2 DEGREES 9 MINUTES 19 SECONDS EAST 614.96 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR STORM SEWERS OVER AND ACROSS THAT PART OF SECTION 34, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTER LINE OF PLUM GROVE ROAD (ALSO KNOWN AS OLD PLUM GROVE ROAD) WITH THE NORTHERLY LINE OF ALGONQUIN ROAD ACCORDING TO DOCUMENT NO. 11195798; THENCE NORTH 66 DEGREES 50 MINUTES 41 SECONDS WEST ALONG SAID NORTHERLY LINE OF ALGONQUIN ROAD 89.04 FEET TO THE MOST WESTERLY CORNER OF PROPERTY CONDEMNED FOR ROAD PURPOSES; ACCORDING TO CASE NO. 71L11410; THENCE NORTH 57 DEGREES 00 MINUTES 18 SECONDS EAST ALONG THE NORTHWESTERLY

91219327

UNOFFICIAL COPY

9 1 2 1 7 3 2 7

LINE OF SAID LAND CONDEMNED FOR ROAD PURPOSES; 38.99 FEET TO A LINE 50.0 FEET, MEASURED AT RIGHT ANGLES, WESTERLY OF AND PARALLEL WITH THE CENTER LINE OF SAID PLUM GROVE ROAD; THENCE NORTH 00 DEGREES 51 MINUTES 17 SECONDS EAST ALONG SAID LAST DESCRIBED PARALLEL LINE, BEING ALSO THE WEST LINE OF LAND CONDEMNED FOR ROAD PURPOSES ACCORDING TO CASE NO. 71L11410, 659.03 FEET; THENCE NORTH 69 DEGREES 32 MINUTES 9 SECONDS WEST, 855.44 FEET TO A POINT FOR A PLACE OF BEGINNING; THENCE CONTINUING NORTH 69 DEGREES 32 MINUTES 09 SECONDS WEST, 10.0 FEET; THENCE NORTH 20 DEGREES 27 MINUTES 51 SECONDS EAST 250.0 FEET; THENCE SOUTH 69 DEGREES 32 MINUTES 09 SECONDS EAST 10.0 FEET; THENCE SOUTH 20 DEGREES 27 MINUTES 51 SECONDS WEST 250.0 FEET TO THE PLACE OF BEGINNING IN COOK COUNTY, ILLINOIS, AS CREATED BY RESERVATION IN THE DEED FROM SHELL OIL COMPANY TO FRANK F. STAPE BUILDERS, INC., A CORPORATION OF ILLINOIS, RECORDED JUNE 21, 1979 AS DOCUMENT 25016003, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR STORM SEWERS OVER AND ACROSS THAT PART OF THE NORTH WEST 1/4 OF SECTION 34, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST NORTHERLY CORNER OF LOT 1 IN SCHAUMBURG ATRIUM CENTER, BEING A SUBDIVISION OF PART OF SECTION 34, AFORESAID, ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT 26942068; THENCE SOUTH 69 DEGREES 32 MINUTES 09 SECONDS EAST, ALONG THE NORTHEASTERLY LINE OF SAID LOT 1, A DISTANCE OF 200 FEET TO THE PLACE OF BEGINNING; THENCE CONTINUING SOUTH 69 DEGREES 32 MINUTES 09 SECONDS EAST, ALONG SAID NORTHEASTERLY LOT LINE, A DISTANCE OF 10 FEET; THENCE NORTH 20 DEGREES 27 MINUTES 51 SECONDS EAST, AT RIGHT ANGLES TO SAID LOT LINE, A DISTANCE OF 76.55 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 10 SECONDS WEST, A DISTANCE OF 137 FEET; THENCE SOUTH 89 DEGREES 59 MINUTES 50 SECONDS WEST, AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 10 FEET; THENCE SOUTH 00 DEGREES, 00 MINUTES 10 SECONDS EAST, AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 135.20 FEET TO A POINT ON A LINE DRAWN AT RIGHT ANGLES TO THE NORTHEASTERLY LINE OF LOT 1, AFORESAID, THROUGH THE PLACE OF BEGINNING; THENCE SOUTH 20 DEGREES 27 MINUTES 51 SECONDS WEST, A DISTANCE OF 74.74 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS, AS CREATED BY EASEMENT AGREEMENT DATED JUNE 30, 1984 AND RECORDED AUGUST 23, 1984 AS DOCUMENT NUMBER 27227041 MADE BY AND BETWEEN LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 21, 1980 AND KNOWN AS TRUST NUMBER 102989 AND MOUNT PROSPECT STATE BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 29, 1983 AND KNOWN AS TRUST NUMBER 1336.

Schaumburg Atrium Center
826-860 Algonquin Road
Schaumburg, Illinois 60173

P.I.N. 02-34-102-053-0000
02-34-102-054-0000
02-34-102-055-0000
02-34-102-056-0000

91219327

UNOFFICIAL COPY
9 4 2 1 9 3 2 7

EXHIBIT "C"

Permitted Exceptions

Those matters set forth in Paragraphs 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 24 and 29 of Schedule B of the title commitment attached hereto as Schedule I and by this reference made a part hereof.

Property of Cook County Clerk's Office

91219327

UNOFFICIAL COPY

9 1 2 1 9 3 2 7

SCHEDULE I

Title Commitment

Property of Cook County Clerk's Office

91219327

UNOFFICIAL COPY

Chicago Title Insurance Company



Principal Office

111 WEST WASHINGTON STREET • CHICAGO, ILLINOIS 60602

Providing Title Related Services Since 1847

91219327

UNOFFICIAL COPY

Chicago Title Insurance Company

111 WEST WASHINGTON STREET • CHICAGO, ILLINOIS 60602

COMMITMENT FOR TITLE INSURANCE

CHICAGO TITLE INSURANCE COMPANY, a Missouri corporation, herein called the Company, for a valuable consideration, hereby commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest covered hereby in the land described or referred to in Schedule A, upon payment of the premiums and charges therefor, all subject to the provisions of Schedules A and B and to the Conditions and Stipulations hereof.

This Commitment shall be effective only when the identity of the proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A hereof by the Company, either at the time of the issuance of this Commitment or by subsequent endorsement.

This Commitment is preliminary to the issuance of such policy or policies of title insurance and all liability and obligations hereunder shall cease and terminate six months after the effective date hereof or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue such policy or policies is not the fault of the Company.

This commitment shall not be valid or binding until signed by an authorized signatory.

91219327

CONDITIONS AND STIPULATIONS

1. The term "mortgage", when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquires actual knowledge of any defect, lien, encumbrance, adverse claim, or other matter affecting the estate or interest or mortgage thereon covered by this Commitment, other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim, or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions and Stipulations.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions, the exclusions, conditions, and limitations of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.

Note For Information:

Covered Title Risks in ALTA Residential Title Policy: Subject to the exclusions, conditions, and limitations contained in the Policy and matters in Schedules A and B of the policy, the ALTA Residential Title Policy will cover the following title risks, if they affect your title on the policy date:

- (1) Someone else owns an interest in your title.
- (2) A document is not properly signed, sealed, acknowledged or delivered.
- (3) Forgery, fraud, duress, incompetency, incapacity or impersonation.
- (4) Defective recording of any document.
- (5) You do not have any legal right to access to and from the land.
- (6) There are restrictive covenants, limiting your use of the land.
- (7) There is a lien on your title because of a mortgage or deed of trust; a judgment, tax or special assessment; a charge by a homeowner's or condominium association.
- (8) There are liens on your title, arising now or later, for labor and material furnished before the policy date—unless you agreed to pay for the labor and material.
- (9) Others have rights arising out of leases, contracts, or options.
- (10) Someone else has an easement on your land.
- (11) Your title is unmarketable, which allows another person to refuse to perform a contract to purchase, to lease or to make a mortgage loan.
- (12) You are forced to remove your existing structure—other than a boundary wall or fence—because: it extends onto adjoining land or onto an easement; it violates a restriction shown in Schedule B; or it violates an existing zoning law.
- (13) You cannot use the land for a single family residence, because such a use violates a restriction shown in Schedule B, or an existing zoning law.
- (14) Other defects, liens, or encumbrances.

UNOFFICIAL COPY

CHICAGO TITLE INSURANCE COMPANY 2 7

APPLICABLE GENERAL EXCEPTIONS AND SCHEDULE B EXCEPTIONS (1) AND (2) APPEAR ON THE INSIDE OF THE COMMITMENT JACKET (FORM NO. 2606).

SCHEDULE A

CI:

NUMBER	EFFECTIVE DATE	REFER INQUIRIES TO
72 83 853	APRIL 23, 1991	ATTORNEYS DIVISION 2 630-3005

1. OWNERS POLICY TO BE ISSUED: NONE AMOUNT: \$0.00

PROPOSED INSURED:

NONE.

LOAN POLICY TO BE ISSUED: ALTA FORM AMOUNT: \$11,250,000.00

PROPOSED INSURED:

AUSA LIFE INSURANCE COMPANY, AN IOWA CORPORATION, AND ITS SUCCESSORS AND ASSIGNS.

2. THE ESTATE OR INTEREST IN THE LAND DESCRIBED OR REFERRED TO IN THIS COMMITMENT AND COVERED HEREIN IS A FEE SIMPLE AND TITLE THERETO IS AT THE EFFECTIVE DATE HERETO VESTED IN:

FIRST CHICAGO TRUST COMPANY OF ILLINOIS, SUCCESSOR TO MOUNT PROSPECT STATE BANK, A CORPORATION OF ILLINOIS, AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 29, 1983 AND KNOWN AS TRUST NUMBER 1336.

3. THE MORTGAGE COVERED BY THIS COMMITMENT IS DESCRIBED AS FOLLOWS:

TO COME.

4. THE LAND REFERRED TO IN THIS COMMITMENT IS DESCRIBED AS FOLLOWS:

PARCEL 1:

LOTS 1, 2, 3, AND 4 IN SCHAUMBURG ATRIUM CENTER, BEING A SUBDIVISION OF PART OF SECTION 34, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT 26942068, IN COOK COUNTY, ILLINOIS.

91219327

UNOFFICIAL COPY

CHICAGO TITLE INSURANCE COMPANY 7

PAGE 2

-SCHEDULE A CONTINUED-

72 83 853

ALSO DESCRIBED AS FOLLOWS:

THAT PART OF SECTION 34, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTER LINE OF PLUM GROVE ROAD (ALSO KNOWN AS OLD PLUM GROVE ROAD) WITH THE NORTHERLY LINE OF ALGONQUIN ROAD ACCORDING TO DOCUMENT NO. 11195798; THENCE NORTH 66 DEGREES 50 MINUTES 41 SECONDS WEST ALONG SAID NORTHERLY LINE OF ALGONQUIN ROAD, 89.04 FEET TO THE MOST WESTERLY CORNER OF PROPERTY CONDEMNED FOR ROAD PURPOSES ACCORDING TO CASE NO. 71L11410; THENCE NORTH 57 DEGREES 00 MINUTES 18 SECONDS EAST ALONG THE NORTHWESTERLY LINE OF SAID LAND CONDEMNED FOR ROAD PURPOSES, 38.99 FEET TO A LINE 50.0 FEET, MEASURED AT RIGHT ANGLES, WESTERLY OF AND PARALLEL WITH THE CENTER LINE OF SAID PLUM GROVE ROAD; THENCE NORTH 00 DEGREES 51 MINUTES 17 SECONDS EAST ALONG SAID LAST DESCRIBED PARALLEL LINE, BEING ALSO THE WEST LINE OF LAND CONDEMNED FOR ROAD PURPOSES ACCORDING TO CASE NO. 71L11410, 659.03 FEET; THENCE NORTH 69 DEGREES 32 MINUTES 9 SECONDS WEST 605.0 FEET TO A POINT FOR A PLACE OF BEGINNING; THENCE CONTINUING NORTH 69 DEGREES 32 MINUTES 9 SECONDS WEST 925.47 FEET; THENCE SOUTH 20 DEGREES 27 MINUTES 51 SECONDS WEST, 600.15 FEET TO THE NORTHERLY LINE OF ALGONQUIN ROAD ACCORDING TO DOCUMENT NO. 11195798; THENCE SOUTH 69 DEGREES 32 MINUTES 09 SECONDS EAST ALONG SAID NORTHERLY LINE OF ALGONQUIN ROAD, 116.52 FEET TO A POINT OF CURVATURE; THENCE CONTINUING SOUTHEASTERLY ALONG SAID NORTHWESTERLY LINE OF ALGONQUIN ROAD, BEING A CURVED LINE, CONVEXED TO THE NORTH EAST, HAVING A RADIUS OF 21,535.94 FEET AND BEING TANGENT TO SAID LAST DESCRIBED STRAIGHT LINE AT THE LAST DESCRIBED POINT, AN ARC DISTANCE OF 780.24 FEET TO AN INTERSECTION WITH A LINE BEARING SOUTH 23 DEGREES 09 MINUTES 19 SECONDS WEST FROM THE AFORESAID PLACE OF BEGINNING (THE CHORD OF SAID ARC BEARS SOUTH 68 DEGREES 29 MINUTES 52 SECONDS EAST 780.20 FEET); THENCE NORTH 23 DEGREES 9 MINUTES 19 SECONDS EAST 614.96 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR STORM SEWERS OVER AND ACROSS THAT PART OF SECTION 34, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTER LINE OF PLUM GROVE ROAD (ALSO KNOWN AS OLD PLUM GROVE ROAD) WITH THE NORTHERLY LINE OF ALGONQUIN ROAD ACCORDING TO DOCUMENT NO. 11195798; THENCE NORTH 66 DEGREES 50 MINUTES 41 SECONDS WEST ALONG SAID NORTHERLY LINE OF ALGONQUIN ROAD 89.04 FEET TO THE MOST WESTERLY CORNER OF PROPERTY CONDEMNED FOR ROAD PURPOSES; ACCORDING TO CASE NO. 71L11410; THENCE NORTH 57 DEGREES 00 MINUTES 18 SECONDS EAST ALONG THE NORTHWESTERLY

91219327

UNOFFICIAL COPY

CHICAGO TITLE INSURANCE COMPANY 2 7

PAGE 3

-SCHEDULE A CONTINUED-

72 83 853

LINE OF SAID LAND CONDEMNED FOR ROAD PURPOSES; 38.99 FEET TO A LINE 50.0 FEET, MEASURED AT RIGHT ANGLES, WESTERLY OF AND PARALLEL WITH THE CENTER LINE OF SAID PLUM GROVE ROAD; THENCE NORTH 00 DEGREES 51 MINUTES 17 SECONDS EAST ALONG SAID LAST DESCRIBED PARALLEL LINE, BEING ALSO THE WEST LINE OF LAND CONDEMNED FOR ROAD PURPOSES ACCORDING TO CASE NO. 71L11410, 659.03 FEET; THENCE NORTH 69 DEGREES 32 MINUTES 9 SECONDS WEST, 855.44 FEET TO A POINT FOR A PLACE OF BEGINNING; THENCE CONTINUING NORTH 69 DEGREES 32 MINUTES 09 SECONDS WEST, 10.0 FEET; THENCE NORTH 20 DEGREES 27 MINUTES 51 SECONDS EAST 250.0 FEET; THENCE SOUTH 69 DEGREES 32 MINUTES 09 SECONDS EAST 10.0 FEET; THENCE SOUTH 20 DEGREES 27 MINUTES 51 SECONDS WEST 250.0 FEET TO THE PLACE OF BEGINNING IN COOK COUNTY, ILLINOIS, AS CREATED BY RESERVATION IN THE DEED FROM SHELL OIL COMPANY TO FRANK F. STAPE BUILDERS, INC., A CORPORATION OF ILLINOIS, RECORDED JUNE 21, 1979 AS DOCUMENT 25016003, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR STORM SEWERS OVER AND ACROSS THAT PART OF THE NORTH WEST 1/4 OF SECTION 34, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST NORTHERLY CORNER OF LOT 1 IN SCHAUMBURG ATRIUM CENTER, BEING A SUBDIVISION OF PART OF SECTION 34, AFORESAID, ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT 26942068; THENCE SOUTH 69 DEGREES 32 MINUTES 09 SECONDS EAST, ALONG THE NORTHEASTERLY LINE OF SAID LOT 1, A DISTANCE OF 200 FEET TO THE PLACE OF BEGINNING; THENCE CONTINUING SOUTH 69 DEGREES 32 MINUTES 09 SECONDS EAST, ALONG SAID NORTHEASTERLY LOT LINE, A DISTANCE OF 10 FEET; THENCE NORTH 20 DEGREES 27 MINUTES 51 SECONDS EAST, AT RIGHT ANGLES TO SAID LOT LINE, A DISTANCE OF 76.55 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 10 SECONDS WEST, A DISTANCE OF 137 FEET; THENCE SOUTH 89 DEGREES 59 MINUTES 50 SECONDS WEST, AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 10 FEET; THENCE SOUTH 00 DEGREES, 00 MINUTES 10 SECONDS EAST, AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 135.20 FEET TO A POINT ON A LINE DRAWN AT RIGHT ANGLES TO THE NORTHEASTERLY LINE OF LOT 1, AFORESAID, THROUGH THE PLACE OF BEGINNING; THENCE SOUTH 20 DEGREES 27 MINUTES 51 SECONDS WEST, A DISTANCE OF 74.74 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS, AS CREATED BY EASEMENT AGREEMENT DATED JUNE 30, 1984 AND RECORDED AUGUST '23, 1984 AS DOCUMENT NUMBER 27227041 MADE BY AND BETWEEN LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 21, 1980 AND KNOWN AS TRUST NUMBER 102989 AND MOUNT PROSPECT STATE BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 29, 1983 AND KNOWN AS TRUST NUMBER 1336.

91219327

CHICAGO TITLE INSURANCE COMPANY 2 7

PAGE 4

72 83 853

-SCHEDULE B CONTINUED FROM COMMITMENT JACKET (FORM NO. 2606).

3. COMPREHENSIVE ENDORSEMENT 1 HAS BEEN APPROVED FOR THE LOAN POLICY.
4. FOR TAX AND SPECIAL ASSESSMENT EXCEPTIONS SEE ATTACHED PAGE(S) CONCLUDING WITH 'END'.
5. NOTE FOR INFORMATION :
THE COVERAGE AFFORDED BY THIS COMMITMENT AND ANY POLICY ISSUED PURSUANT HERETO SHALL NOT COMMENCE PRIOR TO THE DATE ON WHICH ALL CHARGES PROPERLY BILLED BY THE COMPANY HAVE BEEN FULLY PAID.
6. FIRST MORTGAGE AND SECURITY AGREEMENT DATED SEPTEMBER 24, 1985 AND RECORDED SEPTEMBER 30, 1985 AS DOCUMENT 85210936, MADE BY MT. PROSPECT STATE BANK, AN ILLINOIS BANKING CORPORATION, AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 29, 1983 AND KNOWN AS TRUST NUMBER 1336, TO THE TRAVELERS INSURANCE, A CONNECTICUT CORPORATION, TO SECURE A NOTE FOR \$13,600,000.00

EXTENSION AGREEMENT DATED AUGUST 30, 1989 AND RECORDED NOVEMBER 15, 1989 AS DOCUMENT 89544916.
7. TERMS, POWERS, PROVISIONS AND LIMITATIONS OF THE TRUST UNDER WHICH TITLE TO SAID LAND IS HELD.
8. TERMS, PROVISIONS, CONDITIONS AND LIMITATIONS CONTAINED IN DECLARATION OF PROTECTIVE COVENANTS RECORDED JUNE 21, 1979 AS DOCUMENT 25016002 MADE BY SHELL OIL COMPANY, TO REPAIR, MAINTAIN AND OPERATE THE RETENTION PONDS, STORM SEWER FACILITIES AND APPURTENANCES, AND ANY AND ALL CONNECTIONS, APPLIANCES AND OTHER STRUCTURES AND APPURTENANCES THERETO.
9. EASEMENT CREATED BY SHELL OIL COMPANY ON JULY 23, 1979 AS DOCUMENT 25103812 RECORDED AUGUST 16, 1979, AND AS SHOWN ON THE PLAT OF SURVEY MADE BY FRANK J. DUDA, JR., REGISTERED ILLINOIS LAND SURVEYOR, ORDER NUMBER 2810 DATED DECEMBER 3, 1990, IN FAVOR OF LAND TO THE EAST OF THE LAND FOR THE PURPOSE OF CONSTRUCTING, RECONSTRUCTING, REPAIRING, INSPECTING, MAINTAINING AND OPERATING A STORM SEWER DRAINAGE LINE OVER, ACROSS AND THROUGH THE FOLLOWING DESCRIBED LAND:

91219327

UNOFFICIAL COPY

CHICAGO TITLE INSURANCE COMPANY 7

PAGE 5

72 83 853

-SCHEDULE B CONTINUED-

THAT PART OF SECTION 34, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTER LINE OF PLUM GROVE (ALSO KNOWN AS OLD PLUM GROVE ROAD) WITH THE NORTHERLY LINE OF ALGONQUIN ROAD ACCORDING TO DOCUMENT NO. 11195798; THENCE NORTH 86 DEGREES 50 MINUTES 41 SECONDS WEST ALONG SAID NORTHERLY LINE OF ALGONQUIN ROAD 89.04 FEET TO THE MOST WESTERLY CORNER OF PROPERTY CONDEMNED FOR ROAD PURPOSES ACCORDING TO CASE NO. 71L11410; THENCE NORTH 57 DEGREES 30 MINUTES 18 SECONDS EAST ALONG THE NORTHWESTERLY LINE OF SAID LAND CONDEMNED FOR ROAD PURPOSES, 38.99 FEET TO A LINE 50.0 FEET MEASURED AT RIGHT ANGLES, WESTERLY OF AND PARALLEL WITH THE CENTER LINE OF SAID PLUM GROVE ROAD; THENCE NORTH 00 DEGREES 51 MINUTES 17 SECONDS EAST ALONG SAID LAST DESCRIBED PARALLEL LINE, BEING ALSO THE WEST LINE OF LAND CONDEMNED FOR ROAD PURPOSES ACCORDING TO CASE NO. 71L11410, 659.03 FEET; THENCE NORTH 69 DEGREES 32 MINUTES 09 SECONDS WEST, 605.0 FEET TO A POINT FOR A PLACE OF BEGINNING; THENCE CONTINUING NORTH 69 DEGREES 32 MINUTES 09 SECONDS WEST, 260.44 FEET; THENCE SOUTH 10 DEGREES 27 MINUTES 51 SECONDS WEST, 10.00 FEET; THENCE SOUTH 69 DEGREES 32 MINUTES 09 SECONDS EAST, 259.97 FEET; THENCE NORTH 23 DEGREES 09 MINUTES 19 SECONDS EAST, 10.00 FEET TO THE PLACE OF BEGINNING IN COOK COUNTY, ILLINOIS.

10. TERMS, PROVISIONS CONDITIONS AND RESTRICTIONS CONTAINED IN THE DECLARATION OF RESTRICTIVE COVENANTS, RECORDED AUGUST 16, 1979 AS DOCUMENT 25103810, MADE BY SHELL OIL COMPANY.
11. TERMS, PROVISIONS AND CONDITIONS RELATING TO THE EASEMENT DESCRIBED AS PARCELS 2 AND 3.
12. RIGHTS OF ADJOINING OWNERS TO THE CONCURRENT USE OF THE EASEMENT.

(AFFECTS PARCELS 2 AND 3).
13. A 10 FOOT WATER MAIN EASEMENT OVER THE SOUTH LINES OF LOTS 3 AND 4, AS DISCLOSED BY THE PLAT OF SCHAUMBURG ATRIUM CENTER SUBDIVISION RECORDED JANUARY 24, 1984 AS DOCUMENT 26942068 AND AS SHOWN ON THE PLAT OF SURVEY MADE BY FRANK J. DUDA, JR., REGISTERED ILLINOIS LAND SURVEYOR, ORDER NUMBER 2810 DATED

91219327

UNOFFICIAL COPY

CHICAGO TITLE INSURANCE COMPANY 2 7

PAGE 6

72 83 853

-SCHEDULE B CONTINUED-

DECEMBER 3, 1990.

14. A 10 FOOT STORM SEWER EASEMENT OVER THE NORTH EAST CORNER OF LOT 2, AS DISCLOSED BY THE PLAT OF SCHAUMBURG ATRIUM CENTER RECORDED JANUARY 24, 1984 AS DOCUMENT 26942068, CREATED BY EASEMENT RECORDED AUGUST 16, 1979 AS DOCUMENT NUMBER 25103812 AND AS SHOWN ON THE PLAT OF SURVEY MADE BY FRANK J. DUDA, JR., REGISTERED ILLINOIS LAND SURVEYOR, ORDER NUMBER 2810 DATED DECEMBER 3, 1990.
15. THE OWNER OF THE TRACT OF LAND HEREIN DESCRIBED HEREBY DECLARES AND GRANTS A MUTUAL, RECIPROCAL, NONEXCLUSIVE INGRESS AND EGRESS EASEMENT OVER AND ACROSS THE PARKING AREA, SIDEWALKS AND DRIVEWAYS OF EACH OF LOTS 1 THROUGH 4, INCLUSIVE, OF THE SAID TRACT OF LAND FOR THE PASSAGE OF VEHICLES AND PEDESTRIANS FOR THE BENEFIT OF THE OWNER OF THE TRACT OF LAND AND ITS SUCCESSORS AND ASSIGNS, AS DISCLOSED BY PLAT OF SCHAUMBURG ATRIUM CENTER SUBDIVISION RECORDED JANUARY 24, 1984 AS DOCUMENT 26942068.
16. A PERPETUAL EASEMENT IS HEREBY RESERVED FOR AND GRANTED TO NORTH WEST SUBURBAN MUNICIPAL JOINT ACTION WATER AGENCY, A MUNICIPAL CORPORATION, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS WITHIN THE STRIPS OF GROUND AS SHOWN BY DASHED LINES ON THE PLAT, THE WIDTHS OF WHICH ARE SHOWN ON THE PLAT AND MARKED NORTH WEST SUBURBAN MUNICIPAL JOINT ACTION WATER AGENCY WATER MAIN EASEMENT, TO INSTALL, LAY, CONSTRUCT, RECONSTRUCT, OPERATE, MAINTAIN, OPERATE, REPAIR, REPLACE, MOVE AND REMOVE MASTER PIPELINES, VALVES, WATER MAINS, OR OTHER DISTRIBUTION EQUIPMENT AND APPARATUS THERETO AND DEVICES FOR CONTROLLING ELECTRICAL USE IN CONJUNCTION WITH SUCH PIPELINES, AS DISCLOSED BY PLAT OF SCHAUMBURG ATRIUM CENTER SUBDIVISION RECORDED JANUARY 24, 1984 AS DOCUMENT 26942068 AND AS SHOWN ON THE PLAT OF SURVEY MADE BY FRANK J. DUDA, JR., REGISTERED ILLINOIS LAND SURVEYOR, ORDER NUMBER 2810 DATED DECEMBER 3, 1990.
17. EASEMENT AGREEMENT OVER THE FOLLOWING DESCRIBED PROPERTY; THE MOST NORTHEASTERLY 10 FEET OF LOTS 1 AND 4 IN SCHAUMBURG ATRIUM CENTER, BEING A SUBDIVISION OF PART OF SECTION 34, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT 26942068, MADE BY MOUNT PROSPECT STATE BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 29, 1983 AND KNOWN AS TRUST NUMBER 1336, AND LA SALLE

91219327

UNOFFICIAL COPY**CHICAGO TITLE INSURANCE COMPANY 2 7**

PAGE 7

72 83 853

-SCHEDULE B CONTINUED-

NATIONAL BANK, A NATIONAL BANKING ASSOCIATION, AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 21, 1980 AND KNOWN AS TRUST NUMBER 102989, FOR A NONEXCLUSIVE PERPETUAL EASEMENT, RIGHT, PRIVILEGE AND AUTHORITY TO CONSTRUCT, RECONSTRUCT, REPAIR, INSPECT, MAINTAIN AND OPERATE A CERTAIN 8 INCH SANITARY SEWER, AND ALL CONNECTIONS, APPLIANCES AND OTHER STRUCTURES AND APPURTENANCES NECESSARY TO THE OPERATING THEREOF, RECORDED AUGUST 23, 1984 AS DOCUMENT 27227040 AND AS SHOWN ON THE PLAT OF SURVEY MADE BY FRANK J. DUDA, JR., REGISTERED ILLINOIS LAND SURVEYOR, ORDER NUMBER 2810 DATED DECEMBER 3, 1990.

18. EASEMENT OVER THE NORTH 10 FEET AND WEST 10 FEET OF LOT 1; AND THE WEST 10 FEET OF LOT 4 OF THE LAND FOR THE PURPOSE OF INSTALLING AND MAINTAINING ALL EQUIPMENT NECESSARY TO SERVE THE SUBDIVISION AND OTHER LAND WITH TELEPHONE AND ELECTRICAL SERVICE, TOGETHER WITH THE RIGHT TO OVERHANG AERIAL SERVICE WIRES AND THE RIGHT OF ACCESS TO SUCH WIRES, AS CREATED BY GRANT TO THE ILLINOIS BELL TELEPHONE COMPANY AND THE COMMONWEALTH EDISON COMPANY AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS AND AS SHOWN ON THE PLAT OF SUBDIVISION RECORDED JANUARY 24, 1984 AS DOCUMENT 26942068 AND AS SHOWN ON THE PLAT OF SURVEY MADE BY FRANK J. DUDA, JR., REGISTERED ILLINOIS LAND SURVEYOR, ORDER NUMBER 2810 DATED DECEMBER 3, 1990.
19. EASEMENT OVER THE NORTH 10 FEET AND WEST 10 FEET OF LOT 1; AND THE WEST 10 FEET OF LOT 4 OF THE LAND FOR THE PURPOSE OF INSTALLING AND MAINTAINING ALL EQUIPMENT NECESSARY TO SERVE THE SUBDIVISION AND OTHER LAND WITH GAS SERVICE, TOGETHER WITH RIGHT OF ACCESS TO SAID EQUIPMENT AS CREATED BY GRANT TO NORTHERN ILLINOIS GAS COMPANY AND ITS RESPECTIVE SUCCESSORS AND ASSIGNS AND AS SHOWN ON THE PLAT OF SUBDIVISION RECORDED JANUARY 24, 1984 AS DOCUMENT 26942068 AND AS SHOWN ON THE PLAT OF SURVEY MADE BY FRANK J. DUDA, JR., REGISTERED ILLINOIS LAND SURVEYOR, ORDER NUMBER 2810 DATED DECEMBER 3, 1990.
20. EASEMENT TO CABLENET OF ILLINOIS INCORPORATED AND THE VILLAGE OF SCHAUMBURG, OVER THE NORTH 10 FEET AND WEST 10 FEET OF LOT 1; AND THE WEST 10 FEET OF LOT 4, AS CREATED BY PLAT OF SUBDIVISION RECORDED JANUARY 24, 1984 AS DOCUMENT 26942068 AND AS SHOWN ON THE PLAT OF SURVEY MADE BY FRANK J. DUDA, JR., REGISTERED ILLINOIS LAND SURVEYOR, ORDER NUMBER 2810 DATED DECEMBER 3, 1990.

91219327

UNOFFICIAL COPY
CHICAGO TITLE INSURANCE COMPANY 7

PAGE 8

72 83 853

-SCHEDULE B CONTINUED-

21. COLLATERAL ASSIGNMENT OF LEASES AND RENTS DATED SEPTEMBER 24, 1985 AND RECORDED SEPTEMBER 30, 1985 AS DOCUMENT 85210937, MADE BY MT. PROSPECT STATE BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 29, 1983 AND KNOWN AS TRUST NUMBER 1336, AND SCHAUMBURG ATRIUM CENTER, TO THE TRAVELERS INSURANCE COMPANY.
22. SECURITY INTEREST OF THE TRAVELERS INSURANCE COMPANY, SECURED PARTY, IN CERTAIN DESCRIBED CHATTELS ON THE LAND, AS DISCLOSED BY FINANCING STATEMENT EXECUTED BY MT. PROSPECT STATE BANK, AS TRUSTEE UNDER TRUST NUMBER 1336, DEBTOR, AND FILED ON OCTOBER 2, 1985 AS NO. 85030514.
23. SECURITY INTEREST OF THE TRAVELERS INSURANCE COMPANY, SECURED PARTY, IN CERTAIN DESCRIBED CHATTELS ON THE LAND, AS DISCLOSED BY FINANCING STATEMENT EXECUTED BY SCHAUMBURG ATRIUM CENTER, AN ILLINOIS GENERAL PARTNERSHIP, DEBTOR, AND FILED ON OCTOBER 2, 1985 AS NO. 85030515.
- CONTINUATION DATED AUGUST 6, 1990 AND RECORDED AUGUST 16, 1990 AS DOCUMENT 90U17637.
24. OFFICE LEASE AGREEMENT DATED SEPTEMBER 28, 1984 BY MT. PROSPECT STATE BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 29, 1983 AND KNOWN AS TRUST NUMBER 1336, AS LESSOR, DEMISING A PORTION OF THE LAND TO AVERY INTERNATIONAL CORPORATION, AS LESSEE, FOR A TERM OF 132 MONTHS COMMENCING DECEMBER 1, 1984 AND ENDING NOVEMBER 30, 1995 AND THE RIGHTS OF ALL PERSONS CLAIMING BY, THROUGH, OR UNDER SAID LESSEE.
25. LIEN IN FAVOR OF THE VILLAGE OF SCHAUMBURG TO WHICH THE LAND WILL BECOME SUBJECT IN THE EVENT THAT A DEED OF CONVEYANCE THEREOF IS RECORDED WITHOUT HAVING AFFIXED THERETO THE REVENUE STAMPS REQUIRED BY ORDINANCE FILED JUNE 23, 1987.
26. THIS COMMITMENT IS BASED ON THE ASSUMPTION THAT A MORTGAGE WILL BE EXECUTED BY MOUNT PROSPECT STATE BANK, A CORPORATION OF ILLINOIS, AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 29, 1983 AND KNOWN AS TRUST NUMBER 1336 AND OUR COMMITMENT IS SUBJECT

91219327

UNOFFICIAL COPY

CHICAGO TITLE INSURANCE COMPANY 7

PAGE 9

72 83 853

-SCHEDULE B CONTINUED-

THERETO.

27. NOTE FOR INFORMATION (ENDORSEMENT REQUESTS):

ALL ENDORSEMENT REQUESTS SHOULD BE MADE PRIOR TO CLOSING TO ALLOW AMPLE TIME FOR THE COMPANY TO EXAMINE ANY DOCUMENTATION NEEDED.

(THIS NOTE WILL BE WAIVED FOR POLICY).

28. RESTRICTIONS ENDORSEMENT 1 HAS BEEN APPROVED FOR THE COMMITMENT POLICY WITH RESPECT TO COVENANTS AND RESTRICTIONS REFERRED TO IN EXCEPTION(S) NO. (S) 8 AND 10.

29. RIGHTS OF THE FOLLOWING TENANTS UNDER EXISTING UNRECORDED LEASES:

(A) STUART JOHNSON AND ASSOCIATES

(B) MACMILLAN, INC.

(C) WHITE CONSOLIDATED INDUSTRIES

(D) AIGNER

(E) MID STATES FINANCIAL

(F) MERIDIAN CONSULTING COMPANY

(G) MERRILL LYNCH FINANCIAL

(H) CODEX CORPORATION

(I) INTERNAL REVENUE SERVICE.

30. SHORT FORM ASSIGNMENT OF PROCEEDS AND SECURITY AGREEMENT DATED FEBRUARY 28, 1991 AND RECORDED MARCH 5, 1991 AS DOCUMENT 91097192 MADE BY AND BETWEEN ROBERT F. KERN AND MELLON BANK, N. A., A NATIONAL BANKING ASSOCIATION.

CHICAGO TITLE INSURANCE COMPANY

Lawrence K. Vaughan
AUTHORIZED SIGNATORY.

91219327

UNOFFICIAL COPY
CHICAGO TITLE INSURANCE COMPANY 2 7

ENDORSEMENT

ATTACHED TO AND FORMING A PART OF
TITLE INSURANCE COMMITMENT 7283853

LOCATION ENDORSEMENT 6

THE COMPANY HEREBY INSURES THE INSURED AGAINST LOSS OR DAMAGE WHICH THE INSURED SHALL SUSTAIN BY REASON OF ANY INACCURACY IN THE FOLLOWING ASSURANCE:

SAID LAND IS CONTIGUOUS TO A PHYSICALLY OPEN STREET KNOWN AS ALGONQUIN ROAD.

THIS ENDORSEMENT IS MADE A PART OF THE POLICY OR COMMITMENT AND IS SUBJECT TO ALL THE TERMS AND PROVISIONS THEREOF AND OF ANY PRIOR ENDORSEMENTS THERETO. EXCEPT TO THE EXTENT EXPRESSLY STATED, IT NEITHER MODIFIES ANY OF THE TERMS AND PROVISIONS OF THE POLICY OR COMMITMENT AND PRIOR ENDORSEMENTS, IF ANY, NOR DOES IT EXTEND THE EFFECTIVE DATE OF THE POLICY OR COMMITMENT AND PRIOR ENDORSEMENTS OR INCREASE THE FACE AMOUNT THEREOF.

Proprietary Cook County Clerk's Office

91219327

CHICAGO TITLE INSURANCE COMPANY 7

ENDORSEMENT

ATTACHED TO AND FORMING A PART OF
TITLE INSURANCE COMMITMENT 7283853

LOCATION ENDORSEMENT 5

THE COMPANY HEREBY INSURES THE INSURED AGAINST LOSS OR DAMAGE WHICH THE INSURED SHALL SUSTAIN BY REASON OF ANY INACCURACIES IN THE FOLLOWING ASSURANCES:

THE PLAT OF SURVEY MADE BY FRANK J. DUDA, REGISTERED ILLINOIS LAND SURVEYOR, NO. 2810, DATED DECEMBER 3, 1990, ACCURATELY DEPICTS THE LOCATION OF THE EXTERIOR BOUNDARIES OF SAID LAND, SHOWS THE PROPER DIMENSIONS OF SAID BOUNDARIES, AND CORRECTLY REFLECTS THE ABSENCE OF ANY ENCROACHMENTS OR EASEMENTS NOT OTHERWISE EXPRESSLY SET FORTH IN SCHEDULE B.

THIS ENDORSEMENT IS MADE A PART OF THE POLICY OR COMMITMENT AND IS SUBJECT TO ALL THE TERMS AND PROVISIONS THEREOF AND OF ANY PRIOR ENDORSEMENTS THEREON. EXCEPT TO THE EXTENT EXPRESSLY STATED, IT NEITHER MODIFIES ANY OF THE TERMS AND PROVISIONS OF THE POLICY OR COMMITMENT AND PRIOR ENDORSEMENTS, IF ANY, NOR DOES IT EXTEND THE EFFECTIVE DATE OF THE POLICY OR COMMITMENT AND PRIOR ENDORSEMENTS OR INCREASE THE FACE AMOUNT THEREOF.

County Clerk's Office

91219327

UNOFFICIAL COPY
CHICAGO TITLE INSURANCE COMPANY

ENDORSEMENT

ATTACHED TO AND FORMING A PART OF
TITLE INSURANCE COMMITMENT 7283853

ALTA ENDORSEMENT - FORM 2

THE COMPANY INSURES THE OWNER OF THE INDEBTEDNESS SECURED BY THE
INSURED MORTGAGE AGAINST LOSS OR DAMAGE SUSTAINED BY REASON OF:

ANY FINAL JUDGEMENT OF A COURT OF COMPETENT JURISDICTION THAT
EITHER THE LIEN OF THE INSURED MORTGAGE HAS BEEN TERMINATED OR THE
TITLE OF THE INSURED WHO HAS ACQUIRED ALL OR ANY PART OF THE
ESTATE OR INTEREST IN THE LAND DESCRIBED IN SCHEDULE A BY
FORECLOSURE, TRUSTEE'S SALE, CONVEYANCE IN LIEU OF FORECLOSURE, OR
OTHER LEGAL MANNER WHICH DISCHARGES THE LIEN OF THE INSURED
MORTGAGE, HAS BEEN DEFEATED BY A VALID EXERCISE OF THE RIGHT OF
RECISSION CONFERRED BY THE FEDERAL TRUTH IN LENDING ACT AND THAT
THE RIGHT OR RIGHTS OF RESCISSION EXISTED BECAUSE NEITHER THE
CREDIT TRANSACTION EVIDENCED BY THE INSURED MORTGAGE NOR THE RIGHT
OF RESCISSION THEREOF WAS EXEMPTED OR EXCEPTED BY THE PROVISIONS
OF REGULATION (12CFR226).

THIS ENDORSEMENT IS MADE A PART OF THE POLICY AND IS SUBJECT TO
ALL OF THE TERMS AND PROVISIONS THEREOF AND OF ANY PRIOR
ENDORSEMENTS THERETO. EXCEPT TO THE EXTENT EXPRESSLY STATED, IT
NEITHER MODIFIES ANY OF THE TERMS AND PROVISIONS OF THE POLICY AND
ANY PRIOR ENDORSEMENTS, NOR DOES IT EXTEND THE EFFECTIVE DATE OF
THE POLICY AND ANY PRIOR ENDORSEMENTS, NOR DOES IT INCREASE THE
FACE AMOUNT THEREOF.

91219327

UNOFFICIAL COPY

CHICAGO TITLE INSURANCE COMPANY 2 7

ENDORSEMENT

ATTACHED TO AND FORMING A PART OF
TITLE INSURANCE COMMITMENT 7283853

PERMANENT INDEX NUMBER ENDORSEMENT 1A

THE COMPANY HEREBY INSURES THE INSURED AGAINST LOSS OR DAMAGE WHICH THE INSURED SHALL SUSTAIN BY REASON OF ANY INACCURACIES IN THE FOLLOWING ASSURANCES:

1. AT DATE OF POLICY, THE LAND INSURED HEREIN AND DESCRIBED IN SCHEDULE A, TAKEN AS A TRACT, CONSTITUTES FOUR PARCELS FOR REAL ESTATE TAX PURPOSES, EACH OF WHICH PARCELS IS SEPARATE AND APART FROM ANY OTHER LAND.

2. AT DATE OF POLICY, THE LAND INSURED HEREIN AND DESCRIBED IN SCHEDULE A, IS ASSESSED FOR REAL ESTATE PURPOSES UNDER THE FOLLOWING PERMANENT INDEX NUMBERS, AND EACH OF SAID PERMANENT INDEX NUMBERS AFFECTS ONLY A PORTION OF THE LAND INSURED HEREIN AND NO OTHER LAND:

02-34-102-053-0000, AFFECTS LOT 1 AND NO OTHER PROPERTY
02-34-102-054-0000, AFFECTS LOT 2 AND NO OTHER PROPERTY
02-34-102-055-0000, AFFECTS LOT 3 AND NO OTHER PROPERTY
02-34-102-056-0000, AFFECTS LOT 4 AND NO OTHER PROPERTY.

THIS ENDORSEMENT IS MADE A PART OF THE COMMITMENT OR POLICY. IT IS SUBJECT TO ALL THE TERMS OF THE COMMITMENT OR POLICY AND PRIOR ENDORSEMENTS. EXCEPT AS EXPRESSLY STATED ON THIS ENDORSEMENT, THE TERMS, DATES AND AMOUNT OF THE COMMITMENT OR POLICY AND PRIOR ENDORSEMENTS ARE NOT CHANGED.

91219327

UNOFFICIAL COPY

CHICAGO TITLE INSURANCE COMPANY

ENDORSEMENT

ATTACHED TO AND FORMING A PART OF
TITLE INSURANCE COMMITMENT 7283853

ZONING ALTA ENDORSEMENT - FORM 3.1

(A) THE COMPANY HEREBY INSURES THAT, AS OF DATE OF POLICY:

(1) ACCORDING TO APPLICABLE ZONING ORDINANCES AND AMENDMENTS THERETO, THE LAND IS CLASSIFIED ZONE B-2 GENERAL BUSINESS DISTRICT.

(2) THE FOLLOWING USE OR USES ARE ALLOWED UNDER SAID CLASSIFICATION SUBJECT TO COMPLIANCE WITH ANY CONDITIONS, RESTRICTIONS OR REQUIREMENTS CONTAINED IN SAID ZONING ORDINANCES AND AMENDMENTS THERETO, INCLUDING BUT NOT LIMITED TO THE SECURING OF NECESSARY CONSENTS OR AUTHORIZATIONS AS A PREREQUISITE TO SUCH USE OR USES:

OFFICES - BUSINESS AND PROFESSIONAL.

THERE SHALL BE NO LIABILITY UNDER THIS ENDORSEMENT BASED ON THE INVALIDITY OF SAID ORDINANCES AND AMENDMENTS THERETO UNTIL AFTER A FINAL DECREE OF A COURT OF COMPETENT JURISDICTION ADJUDICATING SUCH INVALIDITY, THE EFFECT OF WHICH IS TO PROHIBIT SUCH USE OR USES.

(B) THE COMPANY HEREBY FURTHER INSURES AGAINST LOSS OR DAMAGE ARISING FROM A FINAL DECREE OF A COURT OF COMPETENT JURISDICTION

(1) PROHIBITING THE USE OF THE LAND, WITH ANY STRUCTURE PRESENTLY LOCATED THEREON, AS SPECIFIED IN PARAGRAPH (2) ABOVE, OR,

(2) REQUIRING THE REMOVAL OR ALTERATION OF SAID STRUCTURE

ON THE BASIS THAT AS OF DATE OF POLICY SAID ORDINANCES AND AMENDMENTS THERETO HAVE BEEN VIOLATED WITH RESPECT TO ANY OF THE FOLLOWING MATTERS:

(I) AREA, WIDTH OR DEPTH OF THE LAND AS A BUILDING SITE FOR SAID STRUCTURE.

(II) FLOOR SPACE AREA OF SAID STRUCTURE.

91219327

UNOFFICIAL COPY
CHICAGO TITLE INSURANCE COMPANY

PAGE 2

-ENDORSEMENT CONTINUED-

7283853

(III) SETBACK OF SAID STRUCTURE FROM THE PROPERTY LINES OF THE LAND.

(IV) HEIGHT OF SAID STRUCTURE.

(V) NUMBER OF PARKING SPACES.

LOSS OR DAMAGE AS TO THE MATTERS INSURED AGAINST BY THIS ENDORSEMENT SHALL NOT INCLUDE LOSS OR DAMAGE SUSTAINED OR INCURRED BY REASON OF THE REFUSAL OF ANY PERSON TO PURCHASE, LEASE OR LEND MONEY ON THE ESTATE OR INTEREST COVERED HEREBY IN THE LAND DESCRIBED IN SCHEDULE A.

THIS ENDORSEMENT IS MADE A PART OF THE POLICY AND IS SUBJECT TO ALL THE TERMS AND PROVISIONS THEREOF AND ANY PRIOR ENDORSEMENTS THERETO. EXCEPT TO THE EXTENT EXPRESSLY STATED, IT NEITHER MODIFIES ANY OF THE TERMS AND PROVISIONS OF THE POLICY AND PRIOR ENDORSEMENTS, IF ANY, NOR DOES IT EXTEND THE EFFECTIVE DATE OF THE POLICY AND PRIOR ENDORSEMENTS OR INCREASE THE FACE AMOUNT THEREOF.

Cook County Clerk's Office

91219327

CHICAGO TITLE INSURANCE COMPANY

ENDORSEMENT

ATTACHED TO AND FORMING A PART OF
TITLE INSURANCE COMMITMENT 7283853

SPECIAL ENDORSEMENT

THE COMPANY HEREBY INSURES THE INSURED AGAINST LOSS OR DAMAGE THE
INSURED SHALL SUSTAIN BY REASON OF ANY INACCURACIES IN THE
FOLLOWING ASSURANCES:

THAT THE EASEMENT DESCRIBED IN SCHEDULE A HEREOF AS PARCEL 2, IS
CONTIGUOUS TO THE TRACT OF LAND DESCRIBED IN SCHEDULE A HEREIN AS
PARCEL 1.

THAT THE EASEMENT DESCRIBED ON SCHEDULE A HEREIN AS PARCEL 3 IS
CONTIGUOUS TO THE TRACT OF LAND DESCRIBED IN SCHEDULE A HEREIN AS
PARCEL 1.

THIS ENDORSEMENT IS MADE A PART OF THE POLICY AND IS SUBJECT TO
ALL THE TERMS AND PROVISIONS THEREOF AND OF ANY PRIOR ENDORSEMENTS
THERETO. EXCEPT TO THE EXTENT EXPRESSLY STATED, IT NEITHER
MODIFIES ANY OF THE TERMS AND PROVISIONS OF THE POLICY AND PRIOR
ENDORSEMENTS, IF ANY, NOR DOES IT EXTEND THE EFFECTIVE DATE OF THE
POLICY AND PRIOR ENDORSEMENTS, OR INCREASE THE FACE AMOUNT THEROF.

County Clerk's Office

91219327

CHICAGO TITLE INSURANCE COMPANY

ENDORSEMENT

ATTACHED TO AND FORMING A PART OF
TITLE INSURANCE COMMITMENT 7283853

SPECIAL ENDORSEMENT

THE COMPANY HEREBY INSURES THE INSURED AGAINST LOSS OR DAMAGE WHICH THE INSURED SHALL SUSTAIN BY REASON OF THE ENTRY OF OF ANY COURT ORDER OR JUDGMENT WHICH CONSTITUTES FINAL DETERMINATION AND ADJUDGES:

(A) THAT THE LIEN OF THE MORTGAGE REFERRED TO IN SCHEDULE A IS INVALID OR UNENFORCEABLE AS TO THE PRINCIPAL AND INTEREST DUE ON THE NOTE SECURED THEREBY, SAID INTEREST BEING COMPUTED IN ACCORDANCE WITH PROVISIONS OF SUCH MORTGAGE AND NOTE, ON THE GROUND THAT THE LOAN EVIDENCED IN THE NOTE SECURED THEREBY IS USURIOUS IN WHOLE OR IN PART.

(B) THAT ANY PART OF THE PRINCIPAL AND INTEREST, SAID INTEREST HAVING BEEN COMPUTED IN ACCORDANCE WITH THE PROVISIONS OF SUCH MORTGAGE AND NOTE WHICH HAS BEEN PAID TO THE INSURED MUST BE REPAYED, AS WELL AS ANY ADDITIONAL SUMS WHICH MUST BE PAID TO THE PERSON ENTITLED TO SUCH REPAYMENT ON THE GROUND THAT THE AMOUNT OF INTEREST SO PAID OR CONTRACTED FOR VIOLATED THE USURY LAWS OF THE STATE OF ILLINOIS.

THE INSURANCE AGAINST USURY RISKS AFFORDED BY THIS ENDORSEMENT AND ITS EFFECT ON THE TITLE INSURANCE UNDER THE POLICY TO WHICH IT IS ATTACHED SHALL SURVIVE THE SATISFACTION OF THE MORTGAGE OR TRUST DEED, THE LIEN OF WHICH IS THUS INSURED.

THIS ENDORSEMENT IS MADE A PART OF THE POLICY AND IS SUBJECT TO ALL THE TERMS AND PROVISIONS THEREOF AND OF ANY PRIOR ENDORSEMENTS THERETO. EXCEPT TO THE EXTENT EXPRESSLY STATED, IT NEITHER MODIFIES ANY OF THE TERMS AND PROVISIONS OF THE POLICY AND PRIOR ENDORSEMENTS, IF ANY, NOR DOES IT EXTEND THE EFFECTIVE DATE OF THE POLICY AND PRIOR ENDORSEMENTS OR INCREASE THE FACE AMOUNT THEREOF.

91219327

CHICAGO TITLE INSURANCE COMPANY 7

ENDORSEMENT

ATTACHED TO AND FORMING A PART OF
TITLE INSURANCE COMMITMENT 7283853

COMPREHENSIVE ENDORSEMENT 1

THE COMPANY HEREBY INSURES THE INSURED AGAINST LOSS OR DAMAGE
WHICH THE INSURED SHALL SUSTAIN BY REASON OF:

ANY INACCURACIES IN THE FOLLOWING ASSURANCES:

(A) THAT THERE ARE NO COVENANTS, CONDITIONS OR RESTRICTIONS UNDER
WHICH THE LIEN OF THE MORTGAGE REFERRED TO IN SCHEDULE A CAN BE
DIVESTED OR SUBORDINATED OR ITS VALIDITY, PRIORITY OR
ENFORCEABILITY OTHERWISE IMPAIRED;

(B) THAT, UNLESS OTHERWISE EXPRESSLY SET FORTH OR INDICATED TO THE
CONTRARY IN SCHEDULE B:

(1) THERE ARE NO PRESENT VIOLATIONS ON SAID LAND OF ANY
ENFORCEABLE COVENANTS, CONDITIONS OR RESTRICTIONS OR PLAT
BUILDING LINES;

(2) ANY INSTRUMENT REFERRED TO IN SCHEDULE B AS SPECIFICALLY
CONTAINING "COVENANTS AND RESTRICTIONS" AFFECTING SAID LAND
DOES NOT, IN ADDITION, ESTABLISH AN EASEMENT THEREON OR
PROVIDE FOR EITHER A LIEN FOR LIQUIDATED DAMAGES, A LEVY OF
A PRIVATE CHARGE OR ASSESSMENT, AN OPTION TO PURCHASE, OR
THE PRIOR APPROVAL OF A FUTURE PURCHASER OR OCCUPANT;

(3) THERE ARE NO ENCROACHMENTS OF EXISTING IMPROVEMENTS
LOCATED ON SAID LAND ONTO ADJOINING LAND, NOR ANY
ENCROACHMENTS ONTO SAID LAND OF EXISTING IMPROVEMENTS
LOCATED ON ADJOINING LAND;

(4) THERE ARE NO ENCROACHMENTS OF EXISTING IMPROVEMENTS
LOCATED ON SAID LAND ONTO THAT PORTION OF SAID LAND SUBJECT
TO ANY EASEMENT SHOWN IN SCHEDULE B.

ANY FUTURE VIOLATIONS ON SAID LAND OF ANY COVENANTS, CONDITIONS OR
RESTRICTIONS OCCURRING PRIOR TO THE ACQUISITION OF TITLE TO SAID
LAND BY THE INSURED, PROVIDED SUCH VIOLATIONS RESULT IN LOSS OF
THE LIEN OF THE MORTGAGE REFERRED TO IN SCHEDULE A OR IMPAIR THE
VALIDITY, PRIORITY OR ENFORCEABILITY OF SUCH LIEN, OR RESULT IN

91219327

UNOFFICIAL COPY
CHICAGO TITLE INSURANCE COMPANY 7

PAGE 2

-ENDORSEMENT CONTINUED-

7283853

LOSS OF THE TITLE TO SAID ESTATE OR INTEREST IF THE INSURED SHALL ACQUIRE TITLE IN SATISFACTION OF THE INDEBTEDNESS SECURED BY SUCH MORTGAGE.

THE ENTRY OF ANY COURT ORDER OR JUDGMENT WHICH CONSTITUTES A FINAL DETERMINATION AND DENIES THE RIGHT TO MAINTAIN ANY EXISTING IMPROVEMENTS ON SAID LAND BECAUSE OF ANY VIOLATION OF ANY COVENANTS, CONDITIONS OR RESTRICTIONS OR PLAT BUILDING LINES OR BECAUSE OF ANY ENCROACHMENT THEREOF OVER ONTO ADJOINING LAND.

WHEREVER IN THIS ENDORSEMENT ANY OR ALL THE WORDS "COVENANTS, CONDITIONS OR RESTRICTIONS" APPEAR, THEY SHALL NOT BE DEEMED TO REFER TO OR TO INCLUDE THE TERMS, COVENANTS, CONDITIONS OR LIMITATIONS CONTAINED IN ANY LEASE, INSTRUMENT CREATING AN EASEMENT OR DECLARATION OF CONDOMINIUM REFERRED TO IN SCHEDULE A.

THIS ENDORSEMENT IS MADE A PART OF THE POLICY AND IS SUBJECT TO ALL THE TERMS AND PROVISIONS THEREOF AND OF ANY PRIOR ENDORSEMENTS THERETO. EXCEPT TO THE EXTENT EXPRESSLY STATED, IT NEITHER MODIFIES ANY OF THE TERMS AND PROVISIONS OF THE POLICY AND PRIOR ENDORSEMENTS, IF ANY, NOR DOES IT EXTEND THE EFFECTIVE DATE OF THE POLICY AND PRIOR ENDORSEMENTS OR INCREASE THE FACE AMOUNT THEREOF.

County Clerk's Office

91219327

CHICAGO TITLE INSURANCE COMPANY

ENDORSEMENT

ATTACHED TO AND FORMING A PART OF
TITLE INSURANCE COMMITMENT 7283853

RESTRICTIONS ENDORSEMENT 1

THE COMPANY HEREBY INSURES THE INSURED AGAINST LOSS OR DAMAGE
WHICH THE INSURED SHALL SUSTAIN BY REASON OF:

(A) ANY INACCURACIES IN THE FOLLOWING ASSURANCES:

(1) THERE ARE NO PRESENT VIOLATIONS ON SAID LAND OF THE
COVENANTS OR RESTRICTIONS REFERRED TO IN EXCEPTION NOS. 8
AND 10 IN SCHEDULE B OR OF ANY PLAT BUILDING LINES.

(2) A PRESENT OR FUTURE VIOLATION ON THE LAND OF SAID
COVENANTS OR RESTRICTIONS OR PLAT BUILDING LINES, IF ANY,
WILL NOT GIVE RISE TO A RIGHT OF RE-ENTRY OR RESULT IN A
FORFEITURE OR REVERSION OF TITLE.

(B) THE EXERCISE OR ATTEMPT TO EXERCISE ANY RIGHT OF RE-ENTRY OR
FORFEITURE OR REVERSION OR OTHER RIGHT OF TERMINATION OF TITLE
BASED ON A VIOLATION OF ANY OF SAID COVENANTS OR RESTRICTIONS OR
PLAT BUILDING LINES.

THIS ENDORSEMENT IS MADE A PART OF THE POLICY OR COMMITMENT AND IS
SUBJECT TO ALL THE TERMS AND PROVISIONS THEREOF AND OF ANY PRIOR
ENDORSEMENTS THERETO. EXCEPT TO THE EXTENT EXPRESSLY STATED, IT
NEITHER MODIFIES ANY OF THE TERMS AND PROVISIONS OF THE POLICY OR
COMMITMENT AND PRIOR ENDORSEMENTS, IF ANY NOR DOES IT EXTEND THE
EFFECTIVE DATE OF THE POLICY OR COMMITMENT AND PRIOR ENDORSEMENTS
OR INCREASE THE FACE AMOUNT THEREOF.

Property of Clerk's Office

91219327

CHICAGO TITLE INSURANCE COMPANY

7 1 2 1 3 3 2 7

PERM TAX NO 1 OF 4

PERM TAX NO
02-34-102-053-0000

VOLUME
150

1990 FIRST ESTIMATED INST.
\$57423.49

/JBS 049/ L 1

NOTE: THIS TAX NUMBER AFFECTS ONLY A PART OF PIQ
ASSEESSEE: SCHAUMBURG ATRIUM CENT
145 E ALGONQUIN ROAD
ARLINGTON HT IL 60005

1 TAXES FOR THE YEARS 1990 & 1991

1A NOTE: 1990 FINAL INSTALLMENT NOT DELINQUENT BEFORE AUG 2, 1991

1A NOTE: 1991 TAXES NOT DELINQUENT BEFORE MAR 2, 1992

2A NOTE: THE AMOUNT OF THE 1990 FIRST ESTIMATED INSTALLMENT HAS BEEN
DEPOSITED WITH THE COUNTY COLLECTOR

UNOFFICIAL COPY

CHICAGO TITLE INSURANCE COMPANY
(CONTINUE)

PERM TAX NO 2 OF 4

PERM TAX NO
02-34-102-054-0000

VOLUME
150

1990 FIRST ESTIMATED INST.
\$66371.94

/JBS 049/ L 2

NOTE: THIS TAX NUMBER AFFECTS ONLY A PART OF PIQ
ASSEESSEE: SCHLUMBURG ATRIUM CENT
145 E ALGONQUIN RD
ARLINGTON HTS IL 60005

1 TAXES FOR THE YEARS 1990 & 1991

1A NOTE: 1990 FINAL INSTALLMENT NOT DELINQUENT BEFORE AUG 2, 1991
1A NOTE: 1991 TAXES NOT DELINQUENT BEFORE MAR 2, 1992

2A NOTE: THE AMOUNT OF THE 1990 FIRST ESTIMATED INSTALLMENT HAS BEEN
DEPOSITED WITH THE COUNTY COLLECTOR.

CHICAGO TITLE INSURANCE COMPANY
(CONTINUE)

PERM TAX NO 3 OF 4

PERM TAX NO
02-34-102-055-0000

VOLUME
150

1990 FIRST ESTIMATED INST.
\$66515.23

/JBS 049/ L 3

NOTE: THIS TAX NUMBER AFFECTS ONLY A PART OF PIQ
ASSEESSEE: SCHMIDT ATRIUM CENT
145 E ALGONQUIN RD
ARLINGTON HT IL 60005

1 TAXES FOR THE YEARS 1990 & 1991

1A NOTE: 1990 FINAL INSTALLMENT NOT DELINQUENT BEFORE AUG 2, 1991

1A NOTE: 1991 TAXES NOT DELINQUENT BEFORE MAR 2, 1992

2A NOTE: THE AMOUNT OF THE 1990 FIRST ESTIMATED INSTALLMENT HAS BEEN
DEPOSITED WITH THE COUNTY COLLECTOR

UNOFFICIAL COPY
CHICAGO TITLE INSURANCE COMPANY 2 7
(CONTINUE)

PERM TAX NO 4 OF 4

PERM TAX NO	VOLUME	1990 FIRST ESTIMATED INST.
02-34-102-056-0000	150	\$59011.44

/JBS 049/ L 4

NOTE: THIS TAX NUMBER AFFECTS ONLY A PART OF PIQ
ASSEESSEE: SCHRAUMBURG ATRIUM CENT
145 E ALGONQUIN
ARLINGTON HT IL 60005

1 TAXES FOR THE YEARS 1990 & 1991

1A NOTE: 1990 FINAL INSTALLMENT NOT DELINQUENT BEFORE AUG 2, 1991
1A NOTE: 1991 TAXES NOT DELINQUENT BEFORE MAR 2, 1992

2A NOTE: THE AMOUNT OF THE 1990 FIRST ESTIMATED INSTALLMENT HAS BEEN
DEPOSITED WITH THE COUNTY COLLECTOR

UNOFFICIAL COPY

SCHEDULE B 9 1 2 1 9 3 2 7

Schedule B of the policy or policies to be issued will be subject to exceptions as to the following matters unless the same are disposed of to the satisfaction of the Company:

1. Defects, liens, encumbrances, adverse claims or other matters, if any created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
- 2A. Any owner's policy (other than an ALTA Residential Title Policy) will be subject to the following General Exceptions:
 - (1) Rights or claims of parties in possession not shown by the public records;
 - (2) Encroachments, overlaps, boundary line disputes, and any matters which would be disclosed by an accurate survey and inspection of the premises;
 - (3) Easements, or claims of easements, not shown by the public records;
 - (4) Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records;
 - (5) Taxes or special assessments which are not shown as existing liens by the public records.

Owner's policies covering certain types of property may be issued free of one or more of these exceptions, as provided below on this Schedule B.

The ALTA Residential Title Policy will be subject to certain nonrecord exceptions referred to in Schedule B in the absence of the production of the data and other essential matters set forth in Schedule B.

- 2B. The G or H form loan policy will be subject to the foregoing general exceptions (4) and (5), and the H form will also be subject to: Consequences of the failure of the lender to pay out properly the whole or any part of the loan secured by the trust deed or mortgage covered by this Commitment, as affecting:
 - (a) the validity of the lien of said trust deed or mortgage; and
 - (b) the priority of the lien over any other right, claim, lien or encumbrance which has or may become superior to the lien of said trust deed or mortgage before the disbursement of the entire proceeds of the loan.
- 2C. An ALTA loan policy will be subject to the following exceptions: (a) and (b), in the absence of the production of the data and other essential matters in our Form 3135:
 - (a) Any lien or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records;
 - (b) Consequences of the failure of the lender to pay out properly the whole or any part of the loan secured by the mortgage described in Schedule A, as affecting: (i) the validity of the lien of said mortgage; and (ii) the priority of the lien over any other right, claim, lien or encumbrance which has or may become superior to the lien of said mortgage before the disbursement of the entire proceeds of the loan.
- 2D. Any owner's policy will contain the encumbrance, if any, shown in Schedule A.

91219327

