

4

UNOFFICIAL COPY

9 1 3 1 4 6 5 7

91314657

TRUST AGREEMENT

by and between

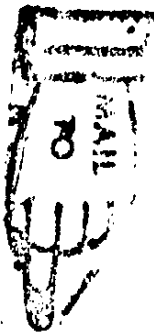
THE FIRST NATIONAL BANK OF CHICAGO,
as Trustee

and

ROSS, HARRIS & COLE

Dated as of May 1, 1991

Relating to
Certificates of Participation
(City of Chicago, Illinois)



PREPARED BY AND RETURN
CHARLES R HUG
CARLSON AND HUG
135 SOUTH LASALLE ST,
SUITE 1400
CHICAGO, ILL. 60603

DEPT-01 RECORDING
T#2222 TRAM 3862 06/27/91 13:19:09 \$65.00
#5498 # 3 *-91-314657
COOK COUNTY RECORDER

91314657

Handwritten signature: [Signature]

474 9-5959215

Property of Cook County Clerk's Office

UNOFFICIAL COPY

11/15/2011 10:11:11 AM

Property of Cook County Clerk's Office

11/15/2011 10:11:11 AM

UNOFFICIAL COPY

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I	
DEFINITIONS; RULES OF CONSTRUCTION; CONTENTS OF CERTIFICATES AND OPINIONS	
101. Definitions	2
102. Rules of Construction	4
103. Content of Certificates and Opinions.	4
ARTICLE II	
RECITALS AND REPRESENTATIONS	
201. Installment Purchase Agreement.	6
202. Payments.	6
203. Assignment.	6
204. Conditions Precedent Satisfied.	6
ARTICLE III	
CERTIFICATES; TERMS AND PROVISIONS	
301. Preparation of Certificates	7
302. Form; Denominations; Medium of Payment; Dating	7
303. Presentation of Certificates.	7
304. Payment of Principal and Interest with Respect to Certificates.	7
305. Legends	8
306. Execution	8
307. Transfer of Certificates.	8
308. Exchange of Certificates.	8
309. Transfer Charge	8
310. Certificate Register.	8
311. Negotiability, Transfer and Registry.	9
312. Temporary Certificates.	9
313. Certificates Mutilated, Lost, Destroyed or Stolen	9
314. Paying Agent.	10
315. Evidence of Signatures of Certificate Owners and Ownership of Certificates.	10
316. Prepayment.	11
317. Notice of Prepayment.	12
318. Effect of Prepayment.	13
319. Disposition of Certificates by Trustee.	13
320. Selection of Certificates for Prepayment.	14
321. Global Book-Entry System.	14

92114657

ARTICLE IV

ESTABLISHMENT AND ADMINISTRATION OF FUNDS AND ACCOUNTS

401. Trust Fund 16

402. Establishment and Application of Property Acquisition Account 16

403. Establishment and Application of Payment Account. 17

404. Establishment and Application of Prepayment Account 18

405. Establishment and Application of Damage and Condemnation Account. 18

406. Establishment and Application of Rebate Account 19

407. Deposit and Investment of Moneys in Funds. 19

ARTICLE V

COVENANTS; DEFAULT AND LIMITATION OF LIABILITY

501. The Seller to Perform Installment Purchase Agreement. 20

502. Notice of Non-Payment. 20

503. Action on Default. 20

504. No Obligation by the Buyer to Owners 22

505. No Obligation with Respect to Performance by Trustee. 22

506. No Liability to Owners for Payment 22

507. No Responsibility for Sufficiency. 22

508. Indemnification to Trustee and Insurer 22

509. Further Assurances 23

510. Action in Event of Nonappropriation. 23

511. Application of Moneys. 24

512. Rights and Remedies of Owners. 25

513. Right of Owners to Direct Proceedings. 25

514. Payments Under the Policy. 25

515. Rights of the Insurer. 26

ARTICLE VI

THE TRUSTEE

601. Appointment of Trustee. 29

602. Acceptance of Appointment 29

603. Trustee; Duties, Removal and Resignation 29

604. Compensation of the Trustee. 30

605. Protection to the Trustee. 30

606. Standard of Care 31

91314657

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

ARTICLE VII: 3 1 1 6 5 7

AMENDMENT; DEFEASANCE; ADMINISTRATIVE PROVISIONS

701. Amendment	32
702. Defeasance	33
703. Recording and Filing	33
704. Trustee to Keep Records	33
705. Amendment to Installment Purchase Agreement.	33
706. Notices	33
707. Illinois Law	34
708. Severability	34
709. Binding on Successors	34
710. Headings	35
711. Execution in Counterparts	35
712. Agreement Represents Complete Agreement; Amendments	35
713. Remedies Not Exclusive; No Waiver of Default	35
Execution	36
Exhibit A: Specimen form of Certificate of Participation	37
Exhibit B: Legal Description	44

Property of Cook County Clerk's Office

91314657

UNOFFICIAL COPY

TRUST AGREEMENT

THIS TRUST AGREEMENT, made and entered into as of May 1, 1991 (the "Agreement"), by and between THE FIRST NATIONAL BANK OF CHICAGO, a national banking association, as Trustee (the "Trustee"), and ROSS, HARRIS & COLE, a general partnership duly organized and existing under the laws of the State of Illinois ("the Seller");

W I T N E S S E T H:

WHEREAS, the City of Chicago, Illinois has entered into an Installment Purchase Agreement dated as of May 1, 1991 with the Seller for the installment purchase of certain land, buildings and related property; and

WHEREAS, the Seller desires to arrange for the application of the proceeds of the sale of the Certificates (as hereinafter defined) to the acquisition of such property by the Seller; and

WHEREAS, in order to accomplish such objectives, the Seller proposes to enter into this Trust Agreement with the Trustee.

In consideration of the mutual covenants herein contained and for other valuable consideration, the parties hereto do hereby agree as follows:

91314657

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

ARTICLE I

DEFINITIONS; RULES OF CONSTRUCTION; CONTENTS OF CERTIFICATES AND OPINIONS

101. Definitions. Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Agreement and of any agreement supplemental hereto and of any certificate, opinion or other document herein mentioned, have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined.

Agreement. The term "Agreement" means this Trust Agreement, as originally executed or as it may from time to time be amended as provided for herein.

All Unpaid Principal Installments. The term "All Unpaid Principal Installments" means, as of any date, an amount which is invested on such date in non-callable Government Obligations maturing on such dates and bearing interest at such rates as will provide, without further investment or reinvestment of either the principal amount thereof or the interest earnings thereon, sufficient amounts for the payment at their respective maturities when due of all Unpaid Payments.

Arbitrage Regulation Agreement. The term "Arbitrage Regulation Agreement" means that certain Arbitrage Regulation Agreement dated as of May 1, 1991 by and between the Buyer and the Trustee.

Business Day. The term "Business Day" means any day except Saturday, Sunday or any day on which banks located in the cities in which the principal corporate trust offices of the Trustee are located, and in the City of New York, New York, are required or authorized to remain closed.

Buyer. The term "Buyer" means the City of Chicago, Illinois, a home rule unit of government under Section 6 of Article VII of the 1970 Constitution of the State of Illinois.

Certificates. The term "Certificates" means the certificates of participation executed and delivered by the Trustee at the direction of the Seller pursuant to this Agreement.

Certificate of the Seller. The term "Certificate of the Seller" means a certificate signed by the general partners of the Seller. If and to the extent required by the provisions of Section 103, each Certificate of the Seller shall include the statements provided for in Section 103.

UNOFFICIAL COPY

9 1 3 1 4 6 5 7

Certificate Register. The term "Certificate Register" means the books of the Trustee referred to in Section 310 of this Agreement.

Closing Date. The term "Closing Date" means the date of delivery of the Certificates against payment therefor by the Owner.

Code. The term "Code" means the Internal Revenue Code of 1986, as amended.

Government Obligations. The term "Government Obligations" means the direct obligations of, or obligations the principal and interest on which are unconditionally guaranteed by, the United States of America for full and timely payment.

Installment Purchase Agreement. The term "Installment Purchase Agreement" means that certain Installment Purchase Agreement dated as of May 1, 1991 by and between the Seller and the Buyer.

Insurance Trustee. The term "Insurance Trustee" means the United States Trust Company of New York, or any successor Insurance Trustee as may be designated by the Insurer.

Insurer. The term "Insurer" means Asset Guaranty Reinsurance Company, a stock insurance company incorporated under the laws of the State of New York.

Insurer Default. The term "Insurer Default" means any event in which the Insurer has failed to pay a duly presented claim under the Policy; provided that an Insurer Default shall be no longer continuing if the Insurer has thereafter paid the claim in full.

Mortgage. The term "Mortgage" means that certain Mortgage dated the Closing Date from the Buyer to the Seller and recorded as Document No. *91314656*

Outstanding. The term "Outstanding" when used with reference to the Certificates and as of any particular date means all Certificates theretofore delivered except: (a) any Certificate cancelled by the Trustee at or before said date and (b) any Certificate in lieu of or in substitution for which another Certificate shall have been delivered pursuant to this Agreement.

Owner. The term "Owner" or "Certificate Owner" or "Owner of Certificates" or any similar term, when used with respect to the Certificates, means any person who shall be the registered owner of any Outstanding Certificate.

Payments. The term "Payments" means the installment payments payable by the Buyer pursuant to the Installment Purchase Agreement in the amounts and at the times set forth in the Installment Purchase Agreement.

91314657

UNOFFICIAL COPY

9 1 3 1 4 6 5 7
Payment Dates. The term "Payment Dates" means January 15 and July 15 of each year, commencing with January 15, 1992 to and including July 15, 2011.

Permitted Investments. The term "Permitted Investments" means, to the extent permitted by applicable law, bonds or interest-bearing notes or obligations of the United States, or those for which the full faith and credit of the United States are pledged for the payment of principal and interest.

Policy. The term "Policy" means the Financial Guaranty Insurance Policy dated the Closing Date, issued by the Insurer.

Principal Office. The term "Principal Office," when used with respect to the Trustee, means the principal office of the Trustee at which the Trustee conducts its corporate trust business initially situated at One First National Plaza, Suite 0126, Chicago, Illinois 60670.

Property. The term "Property" means the property described in Exhibit A to the Installment Purchase Agreement and Exhibit B hereto.

Revenues. The term "Revenues" means all installment Payments due and payable to the Seller pursuant to the Installment Purchase Agreement, derived by the Seller from the ownership, use or operation of the Property.

Seller. The term "Seller" means Ross, Harris & Cole, a general partnership created and existing under and by virtue of the laws of the State of Illinois.

State. The term "State" means the State of Illinois.

Trustee. The term "Trustee" means The First National Bank of Chicago, a national banking association organized and existing pursuant to the laws of the United States and any successor Trustee hereunder.

102. Rules of Construction. Words of the masculine gender shall be deemed and construed to include the feminine and neuter genders. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons.

The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement.

103. Content of Certificates and Opinions. Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Agreement, including each Certificate of the Seller, shall include (a) a statement

91314657

UNOFFICIAL COPY

9 1 3 1 4 6 5 7

that the person or persons making or giving such certificate or opinion have read such covenant or condition and the definitions herein relating thereto; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (c) a statement that, in the opinion of the signers, they have made or have caused to be made such examination or investigation as is necessary to enable them to express an informed opinion as to whether or not such covenant or condition has been complied with; and (d) a statement as to whether, in the opinion of the signers, such condition or covenant has been complied with.

Any such certificate or opinion made or given by the Seller may be based, insofar as it relates to legal or accounting matters, upon a certificate or opinion of or representations by counsel or accountants, unless such officer knows, or in the exercise of reasonable care should have known, that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion may be based, as aforesaid, are erroneous. Any such certificate or opinion made or given by counsel or accountants may be based, insofar as it relates to factual matters, upon information with respect to which is in the possession of the Seller, upon the certificate or opinion of or representations by an officer or officers of the Seller, unless such counsel, accountant or consultant knows, or in the exercise of reasonable care should have known, that the certificate or opinion or representations with respect to the matters upon which his opinion may be based as aforesaid are erroneous.

County Clerk's Office

91314657

UNOFFICIAL COPY

Property of Cook County Clerk's Office

2025/01/20

UNOFFICIAL COPY

ARTICLE II

9 1 3 1 4 6 5 7

RECITALS AND REPRESENTATIONS

201. Installment Purchase Agreement. Seller and the Buyer have entered into the Installment Purchase Agreement, whereby Seller has agreed to sell the Property to the Buyer and the Buyer has agreed to purchase said Property from Seller.

202. Payments. Under the Installment Purchase Agreement, the Buyer is obligated to pay to the Seller or its assigns Payments for the acquisition of the Property.

203. Assignment. The Seller hereby assigns and transfers all right, title and interest of the Seller in and under the Installment Purchase Agreement and the Mortgage to the Trustee; and in consideration of such assignment, the Trustee hereby agrees to receive, hold, invest and disburse moneys deposited with or otherwise paid to it pursuant to the Installment Purchase Agreement, the Mortgage and this Agreement in accordance with the terms of and for the purposes set forth in this Agreement and to execute and deliver the Certificates, each evidencing an undivided interest in certain of the Payments. The Trustee is acting in its capacity as a trustee and all such moneys received, held and invested by the Trustee shall constitute the trust estate and shall be held by the Trustee for the benefit of the Certificate Owner.

204. Conditions Precedent Satisfied. Each of the parties has authority to enter into this Agreement and has taken all actions necessary to authorize its execution by the officers and partners signing it.

91314657

CERTIFICATES; TERMS AND PROVISIONS

301. Preparation of Certificates.

(a) The Trustee is hereby authorized by the Seller to execute all and deliver to the Owner, Certificates in an aggregate principal amount of Twenty-Four Million Seven Hundred Thousand Dollars (\$24,700,000) representing undivided ownership interests in the Payments to be paid by the Buyer under the Installment Purchase Agreement, the form of said Certificates shall be substantially in the form set forth in Exhibit A hereto attached.

(b) The Trustee shall not at any time while the Certificates are outstanding issue additional certificates payable from the Payments and secured by a lien and charge upon the Payments equal to the lien and charge securing the Outstanding Certificates issued hereunder, except as provided in Section 313.

302. Form; Denominations; Medium of Payment; Dating.

The Certificates shall be delivered in fully registered form and shall be dated June 1, 1991 shall be in denominations of \$100,000 each or any integral multiple thereof which form and form of assignment to appear thereon shall be substantially in the form set forth in Exhibit A hereto attached and by this reference herein incorporated. No Certificate shall have more than one maturity date. The Certificates shall be payable in lawful money of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

303. Presentation of Certificates.

Payments on any Certificate shall be made to the person appearing on the Certificate Register as the registered holder thereof as of the close of business on the 1st day of the month of such Payment, such payments to be paid by check or draft of the Trustee mailed to the registered holder at its address as it appears on such Certificate Register, except that the final payment of any Certificate shall be made only upon presentation and surrender of such Certificate to the Trustee.

304. Payment of Principal and Interest with Respect to Certificates.

(a) The Certificates shall mature on July 15, 2011 and shall bear interest at the rate of seven and three-fourths percent (7.75%) per annum. Principal with respect to the Certificates at maturity or prepayment thereof, whichever is earlier, shall represent a portion of the Payments coming due on or prior to the maturity or prepayment date.

(b) Interest with respect to the Certificates shall be paid on January 15, 1992 and on each January 15 and July 15 thereafter to and including the date of maturity or prepayment,

91314657

UNOFFICIAL COPY

7 1 3 1 4 5 5 7

whichever is earlier. Interest payable on any maturity or prepayment date shall represent a portion of Payments coming due on or prior to such maturity or prepayment date, attributed to the Certificates at the rate or rates set forth in paragraph (a) above. Interest shall be calculated on the basis of a 30-day month and a 360-day year and shall be payable from the Payment Date next preceding and shall be paid from June 1, 1991.

305. Legends. The Certificates may have such legends as the Seller may deem appropriate and as are not inconsistent with the provisions of this Agreement or as may be required to comply with any law or with any rule or regulation made pursuant thereto.

306. Execution. The Certificates shall be executed in the name of, and by, the Trustee, as trustee under this Agreement, by the manual or facsimile signature of an authorized officer of the Trustee.

307. Transfer of Certificates. Any Certificate may, in accordance with the terms of this Trust Agreement, be transferred, upon the books of the Trustee required to be kept pursuant to the provisions of Section 310, by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Certificate for cancellation, accompanied by a written instrument of transfer in a form approved by the Trustee, duly executed. Whenever any Certificate shall be surrendered for transfer, the Trustee shall execute and deliver a new Certificate or Certificates, for a like aggregate amount and maturity. No transfers of Certificates shall be required to be made during the 15 days preceding each Payment Date or after the giving of any notice of prepayment.

308. Exchange of Certificates. Certificates may be exchanged at the principal office of the Trustee for a new Certificate or Certificates of the same maturity representing a like amount. The Trustee shall require the payment by the owner requesting such exchange of any tax, fee or other governmental charge required to be paid with respect to such exchange. No exchange of Certificates shall be required to be made during the 15 days next preceding each Payment Date or after the giving of any notice of prepayment.

309. Transfer Charge. The Owner shall be responsible to pay any applicable charge for subsequent exchanges and/or transfers.

310. Certificate Register. The Trustee will keep or cause to be kept at its Principal Office a Certificate Register containing the name and address of each registered holder of the Certificates and, if Certificates are transferred pursuant to the terms of this Agreement, of the successor registered holder of such Certificate. The Certificate Register shall at all times be open to inspection by the Buyer; and, upon presentation of such

91314657

UNOFFICIAL COPY

7 1 3 1 4 6 5 7

Certificate for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, transfer or cause to be transferred, on said books, Certificates as hereinbefore provided.

311. Negotiability, Transfer and Registry. All of the Certificates issued pursuant to this Agreement shall be negotiable as provided by law subject to the provisions for registration and transfer contained in this Article and in the Certificates.

312. Temporary Certificates. The definitive Certificates may be printed or typewritten. Pending preparation of the definitive Certificates, any Certificates delivered under this Agreement may be initially delivered in temporary form exchangeable for definitive Certificates when ready for delivery. The temporary Certificates may be printed, lithographed or typewritten and may contain such reference to any of the provisions of this Agreement as may be appropriate. Every temporary Certificate shall be executed by the Trustee and be delivered by the Trustee upon the same conditions and in substantially the same manner as definitive fully registered Certificates. If the Trustee delivers temporary Certificates, it shall execute and furnish at the expense of the Seller definitive Certificates without delay and, thereupon, the temporary Certificates shall be surrendered for cancellation at the Principal Office of the Trustee and the Trustee shall deliver in exchange for such temporary Certificates an equal aggregate principal amount of definitive fully registered Certificates of the same maturity and interest rate or rates. Until so exchanged, the temporary Certificates shall be entitled to the same benefits under this Agreement as definitive Certificates delivered pursuant hereto.

313. Certificates Mutilated, Lost, Destroyed or Stolen. If any Certificate shall become mutilated, the Trustee shall execute and deliver a new Certificate of like tenor and maturity in exchange and substitution for the Certificate so mutilated, but only upon surrender to the Trustee of the Certificate so mutilated. Every mutilated Certificate so surrendered to the Trustee shall be canceled by it and destroyed. If any Certificate shall be lost, destroyed or stolen, evidence of such loss, destruction or theft will be submitted to the Trustee, and, if such evidence is satisfactory to the Trustee and if indemnity satisfactory to the Trustee shall be timely given, the Trustee, at the expense of the Certificate Owner, shall execute and deliver a new Certificate of like tenor and maturity and numbered as the Trustee shall determine in lieu of and in substitution for the Certificate so lost, destroyed or stolen. The Trustee may require payment of an appropriate fee from the Certificate Owner for each new Certificate delivered under this Section and of the expenses which may be incurred by the Trustee in carrying out the duties under this Section 313. Any Certificate issued under the provisions of this Section in lieu of any Certificate alleged to be lost, destroyed or stolen shall be equally and proportionately

91314657

UNOFFICIAL COPY

entitled to the benefits of this Agreement with all other Certificates secured by this Agreement. The Trustee shall not be required to treat both the original Certificate and any replacement Certificate as being Outstanding for the purpose of determining the principal amount of Certificates which may be issued hereunder or for the purpose of determining any percentage of Certificates Outstanding hereunder, but both the original and replacement Certificate shall be treated as one and the same. Notwithstanding any other provision of this Section 313, in lieu of delivering a new Certificate for a Certificate which has been mutilated, lost, destroyed or stolen and which has matured, the Trustee may make payment of such Certificate.

314. Paying Agent. The Trustee is hereby appointed paying agent for the Certificates.

315. Evidence of Signatures of Certificate Owners and Ownership of Certificates. Any request, direction, consent or other instrument in writing required or permitted by this Agreement to be signed or executed by Certificate Owners may be in any number of concurrent instruments of similar tenor, and may be signed or executed by such Certificate Owners in person or by their attorneys or agents appointed by an instrument in writing for that purpose. Proof of the execution of any such instrument appointing any such attorney or agent, and of the holding and ownership of Certificates shall be sufficient for any purpose of this Agreement (except as otherwise herein provided), if made in the following manner:

(a) The fact and date of the execution by any Certificate Owner or his attorney or agent of any such instrument and of any instrument appointing any such attorney or agent, may be proved by a certificate, which need not be acknowledged or verified, of an officer of any bank or trust company located within the United States of America, or of any notary public, or other officer authorized to take acknowledgements of deeds to be recorded in such jurisdictions that the person signing such instrument acknowledged before him the execution thereof. Where any such instrument is executed by an officer of a corporation or association or a member of a partnership on behalf of such corporation, association or partnership, such certificate shall also constitute sufficient proof of his authority.

(b) The ownership of registered Certificates shall be proved by the Certificate Register held by the Trustee under the provision of this Agreement.

Nothing contained in this Article shall be construed as limiting the Trustee to such proof, it being intended that the Trustee may accept any other evidence of the matters herein stated which may seem sufficient to the Trustee. Any request or consent of the Owner of any Certificate shall bind every future Owner of the same Certificate in respect of anything done or suffered to be done by the Seller or the Trustee in pursuance of such request or consent.

91314657

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

316. Prepayment. (a) The Certificates are subject to extraordinary prepayment, to the extent of available funds, prior to maturity, in whole, at any time from the proceeds of any disposition of the Property if the Installment Purchase Agreement has been terminated in the event of a nonappropriation under Section 7.4 of the Installment Purchase Agreement and in an amount equal to All Unpaid Principal Installments (such All Unpaid Principal Installments as defined in Section 101 hereof, with the Government Obligations referred to in said definition assumed to bear interest at a rate equal to the greater of (i) seven percent (7%) per annum or (ii) the weighted average interest rate borne by the outstanding Certificates) if the Installment Purchase Agreement has been terminated in the event of the occurrence of certain events relating to damage or destruction under Section 10.1 of the Installment Purchase Agreement or if the Trustee receives proceeds under any title insurance policy. If Certificates are to be prepaid in whole but insufficient funds are available therefor, the available funds shall be applied in the manner set forth in Section 511 hereof prorata to payment of the Certificates.

91314657

No extraordinary prepayment of the Certificates will be effective without the prior written consent of the Insurer and no consent or direction of the Insurer to prepay Certificates will be effective if it would result in less than the full outstanding principal amount of the Certificates being paid in full, from proceeds of the Property or the Policy or otherwise.

(b) The Certificates are subject to mandatory sinking fund prepayment in part by lot at the redemption price of par, plus accrued interest to the date of prepayment, from Payments in amounts to prepay on the dates specified below the respective principal amounts of such Certificates, specified for each such date, as hereinafter set forth:

PROHIBITED
Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

91314657

<u>Date</u>	<u>Principal Amount</u>
January 15, 1992	\$ 100,000
July 15, 1992	200,000
January 15, 1993	200,000
July 15, 1993	300,000
January 15, 1994	400,000
July 15, 1994	400,000
January 15, 1995	400,000
July 15, 1995	300,000
January 15, 1996	400,000
July 15, 1996	400,000
January 15, 1997	300,000
July 15, 1997	500,000
January 15, 1998	400,000
July 15, 1998	400,000
January 15, 1999	500,000
July 15, 1999	500,000
January 15, 2000	400,000
July 15, 2000	600,000
January 15, 2001	500,000
July 15, 2001	500,000
January 15, 2002	600,000
July 15, 2002	600,000
January 15, 2003	600,000
July 15, 2003	700,000
January 15, 2004	700,000
July 15, 2004	600,000
January 15, 2005	800,000
July 15, 2005	700,000
January 15, 2006	800,000
July 15, 2006	800,000
January 15, 2007	900,000
July 15, 2007	800,000
January 15, 2008	900,000
July 15, 2008	1,000,000
January 15, 2009	1,000,000
July 15, 2009	1,000,000
January 15, 2010	1,000,000
July 15, 2010	1,100,000
January 15, 2011	1,200,000
July 15, 2011	1,200,000 (Maturity)

The Trustee shall select the Certificates to be prepaid not more than fifteen (15) days before notice of prepayment is given pursuant to the provisions of Section 320 hereof.

317. Notice of Prepayment. When prepayment is authorized pursuant to Section 316 hereof, the Trustee shall give to the Certificate Owners notice of the prepayment of the Certificates. Such notice shall specify: (a) that the Certificates are to be prepaid and whether the prepayment is in whole or in part, (b) the date of prepayment, (c) that the Certificates are to be presented for prepayment and (d) the place

UNOFFICIAL COPY

9 1 3 1 4 6 5 7
or places where the prepayment will be made. Such notice shall further state that on the specified prepayment date there shall become due and payable upon each Certificate to be prepaid, the principal thereof together with interest accrued to said prepayment date, and that from and after such prepayment date interest thereon shall cease to accrue and be payable.

Notice of such prepayment shall be given by mailing first class postage prepaid copies thereof not more than sixty (60) days nor less than thirty (30) days prior to such date of prepayment to the Owners of the Certificates. Such mailings shall not be a condition precedent to such prepayment and failure so to mail any such notice shall not affect the validity of the proceedings for the prepayment of the Certificates.

91314657
318. Effect of Prepayment. Notice having been given as aforesaid, and the moneys for the prepayment, including interest to the date of prepayment, having been set aside in the Prepayment Account, the Certificates to be prepaid shall become due and payable on said date, and, upon presentation and surrender thereof at the office or offices specified in said notice, said Certificates shall be paid at the unpaid principal amount thereof, plus any unpaid and accrued interest to said date.

If, on said date of prepayment, moneys for the prepayment of all the Certificates, together with interest to said date, shall be held by the Trustee so as to be available therefor on such date of prepayment, and, if notice of prepayment thereof shall have been given as aforesaid, then, from and after said date of prepayment, interest on the Certificates to be prepaid shall cease to accrue and become payable. All moneys held by or on behalf of the Trustee for the prepayment of particular Certificates shall be held in trust for the account of the Owners of the Certificates.

Any money held by the Trustee in trust for the payment of the Certificates and remaining unclaimed for six years after the principal of all of the Certificates has become due and payable (whether at maturity or upon call for prepayment), if such money was so held on such date, or six years after the date of deposit of such money if deposited after said date when all of the Certificates become due and payable, shall, upon written instructions from the Seller to the Trustee, be repaid to the Seller.

319. Disposition of Certificates by Trustee. Upon the transfer and replacement of any Certificate or the payment in full of the principal amount of and interest on any Certificate by the Trustee, the Trustee may destroy such Certificates as have been so transferred and replaced or such Certificates as have been paid in full and provide the Seller with a written notification specifying the number, maturity date and principal amount of such destroyed Certificates.

UNOFFICIAL COPY

320. Selection of Certificates for Prepayment. If Certificates are to be prepaid in whole but insufficient funds are available therefor, the available funds shall be applied pro rata in the manner set forth in Section 511 hereof. Except as otherwise provided in this Agreement and at all times to satisfy the mandatory sinking fund payments as set forth in Section 316(b) hereof, the Trustee shall select Certificates for prepayment within a maturity by lot in such manner as the Trustee shall determine; provided, however, that the portion of any Certificate to be prepaid shall be in the principal amount of \$100,000 or any integral multiple thereof.

321. Global Book-Entry System. The Certificates shall be initially issued in the form of a separate single fully registered Certificate for each of the maturities of the Certificates determined as described in Section 304(a) hereof. Upon initial issuance, the ownership of each such Certificate shall be registered in the Certificate Register in the name of Cede & Co., or any successor thereto ("Cede"), as nominee of The Depository Trust Company, New York, New York, and its successors and assigns ("DTC"). All of the outstanding Certificates shall be registered in the Certificate Register in the name of Cede, as nominee of DTC, except as hereinafter provided. The Trustee shall execute and deliver such letters to or agreements with DTC as shall be necessary to effectuate such book-entry system (any such letter or agreement being referred to herein as the "Representation Letter"), which Representation Letter may provide for the payment of principal of or interest on the Certificates by wire transfer.

With respect to Certificates registered in the Certificate Register in the name of Cede, as nominee of DTC, the Trustee shall have no responsibility or obligation to any broker-dealer, bank or other financial institution for which DTC holds Certificates from time to time as securities depository (each such broker-dealer, bank or other financial institution being referred to herein as a "DTC Participant"), or to any person on behalf of whom such a DTC Participant holds an interest in the Certificates. Without limiting the immediately preceding sentence, the Trustee shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede or any DTC Participant with respect to any ownership interest in the Certificates, (ii) the delivery to any DTC Participant or any other person, other than a registered owner of a Certificate as shown in the Certificate Register, of any notice with respect to the Certificates, including any notice of prepayment, or (iii) the payment to any DTC Participant or any other person, other than a registered owner of a Certificate as shown in the Certificate Register, of any amount with respect to the principal of or interest on the Certificates. The Trustee may treat and consider the person in whose name each Certificate is registered in the Certificate Register as the holder and absolute owner of such Certificate for the purpose of payment of principal and interest with respect to such Certificate, for the purpose of giving notices of prepayment and other matters with respect to

UNOFFICIAL COPY

0 1 3 1 9 6 5 7

91314657

such Certificate, for the purpose of registering transfers with respect to such Certificate, and for all other purposes whatsoever. The Certificate Registrar shall pay all principal of and interest on the Certificates only to or upon the order of the respective registered owners of the Certificates, as shown in the Certificate Register, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the Trustee's obligations with respect to payment of the principal of and interest on the Certificates to the extent of the sum or sums so paid. No person other than a registered owner of a Certificate as shown in the Certificate Register, shall receive a Certificate evidencing the obligation of the Trustee to make payments of principal and interest with respect to any Certificate. Upon delivery by DTC to the Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede, and subject to the provisions hereof with respect to the payment of interest to the registered owners of Certificates at the close of business on the 1st day of the month of the applicable Payment Date, the name "Cede" in this Agreement shall refer to such new nominee of DTC.

In the event that (i) the Trustee determines that DTC is incapable of discharging its responsibilities described herein and in the Representation Letter, (ii) the agreement between the Trustee and DTC evidenced by the Representation Letter shall be terminated for any reason or (iii) the Trustee determines that it is in the best interests of the beneficial owners of the Certificates that they be able to obtain Certificates, the Trustee shall notify DTC and DTC Participants of the availability through DTC of Certificates and the Certificates shall no longer be restricted to being registered in the Certificate Register in the name of Cede, as nominee of DTC. At that time, the Trustee may determine that the Certificates shall be registered in the name of and deposited with such other depository operating a universal book-entry system, as may be acceptable to the Trustee, or such depository's agent or designee, and if the Trustee does not select such alternate universal book-entry system, then the Certificates may be registered in whatever name or names registered owners of Certificates transferring or exchanging Certificates shall designate, in accordance with the provisions of Section 307 hereof.

Notwithstanding any other provision of this Agreement to the contrary, so long as any Certificate is registered in the name of Cede, as nominee of DTC, all payments with respect to Payments on such Certificate and all notices with respect to such Certificate shall be made and given, respectively, in the manner provided in the Representation Letter.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

ARTICLE IV 1 1 6 5 7

ESTABLISHMENT AND ADMINISTRATION OF FUNDS AND ACCOUNTS

91314657

401. Trust Fund. There is hereby established with the Trustee a special trust fund to be designated the "City of Chicago, Illinois Trust Fund-1991" referred to herein as the "Trust Fund." The Trustee shall keep the Trust Fund separate and apart from all other funds and moneys held by it. Within the Trust Fund, there are hereby established the Property Acquisition Account, more particularly described in Section 402 hereof, the Payment Account more particularly described in Section 403 hereof, the Prepayment Account more particularly described in Section 404 hereof, the Damage and Condemnation Account more particularly described in Section 405 hereof and the Rebate Account more particularly described in Section 406 hereof. On the Closing Date the Trustee, as assignee of the Seller under this Agreement, agrees to receive from the Owner and deposit in the Property Acquisition Account of the Trust Fund the sum of \$24,297,355 and to deposit the accrued interest from June 1, 1991 to the Closing Date in the amount of \$127,616.67 into the Payment Account.

402. Establishment and Application of Property Acquisition Account.

(a) Within the Trust Fund, there is hereby established a special account to be designated as the "Property Acquisition Account" referred to herein as the "Property Account". The Trustee shall administer the Property Account as provided in this Section 402.

(b) The Property described in the Installment Purchase Agreement will be purchased by the Seller.

(c) The Trustee is authorized and directed to make a disbursement from the Property Account in the amount of \$23,095,155.37 to the Buyer for the benefit of the Seller on the Closing Date in consideration of its undertaking to acquire and improve the Property.

(d) The Trustee is authorized and directed to make a disbursement from the Property Account in the amount of \$824,430 on the Closing Date to pay for the issuance costs relating to the Certificates.

(e) The Trustee is authorized and directed to make a disbursement from the Property Account of the balance remaining after the disbursements in (c) and (d) above on the Closing Date to the Seller.

(f) No amounts shall be withdrawn or transferred from or paid out of the Property Account except as provided in this Article IV.

UNOFFICIAL COPY

9 1 3 1 4 6 5 7

403. Establishment and Application of Payment Account.

(a) Within the Trust Fund, there is hereby established a separate account to be designated as the "Payment Account". Such account shall be maintained by the Trustee until the Payments are paid in full pursuant to the terms of the Installment Purchase Agreement and the payment of the principal of and interest on the Outstanding Certificates has been duly made or provided for. Upon the final maturity of all of the Certificates, any amount remaining on deposit in the Payment Account, after payment of all fees and expenses of the Trustee, in excess of the principal of and interest on the Outstanding Certificates shall be paid to the Buyer. Accrued interest paid by the Owner upon the Closing Date and all Payments and all other moneys derived from the sale or other disposition of the Property and such other amounts (other than proceeds of insurance or condemnation) as may be paid to the Trustee as assignee of the Seller pursuant to the Installment Purchase Agreement and as may be paid to the Trustee pursuant to this Agreement shall be immediately deposited by the Trustee in the Payment Account.

(b) The Trustee shall on each Payment Date pay to the Owner an amount equal to the amounts of principal and interest payments, including mandatory sinking fund payments, due with respect to the Certificates on such Payment Date.

(c) Within the Payment Account there is hereby established a separate subaccount to be designated as the "Reserve Subaccount." Moneys shall be deposited therein as provided in Section 403(d) hereof. Said moneys shall be used only for payment of any extraordinary costs of the Trustee. The Trustee shall withdraw moneys therefrom pursuant to a requisition stating the extraordinary cost.

(d) All investment income on moneys in the Payment Account shall be deposited into the Payment Account. The Trustee shall withdraw such interest from the Payment Account on each January 20 and July 20 commencing January 20, 1992 first to pay its annual fees and expenses which are payable in the amount of \$5,500 on each January 20 and July 20, secondly to establish and maintain a reserve of \$25,000 for any extraordinary costs of the Trustee which reserve shall be initially established by deposits of \$8,500 on January 20, 1992, \$8,500 on July 20, 1992 and \$8,000 on January 20, 1993, thirdly to make any required deposit into the Rebate Fund pursuant to the written instructions of the Buyer pursuant to Section 2.2(g) of the Arbitrage Regulation Agreement and to pay for any and all expenses relating to the calculation of the rebate obligation pursuant to Section 2.2(g) of the Arbitrage Regulation Agreement and fourthly, provided that no Event of Default has occurred and is continuing hereunder, to the Buyer.

91314657

UNOFFICIAL COPY

Property of Cook County Clerk's Office

(e) No amounts shall be withdrawn or transferred from or paid out of the Payment Account except as provided in this Article IV.

404. Establishment and Application of Prepayment Account. Within the Trust Fund, there is hereby established a separate account to be designated as the "Prepayment Account." Moneys to be used for prepayment pursuant to Section 316(a) hereof shall be deposited by the Trustee in the Prepayment Account. Said moneys shall be set aside in the Prepayment Account solely for the purpose of prepaying the Certificates in advance of their maturity and shall be applied on or after the payment date designated pursuant to Section 316(a) hereof to the payment of the Certificates to be prepaid upon presentation and surrender of such Certificates. Any excess funds in the Prepayment Account, after payment of all fees and expenses of the Trustee, shall thereafter be paid to the Buyer.

405. Establishment and Application of Damage and Condemnation Account

(a) Within the Trust Fund, there is hereby established a separate account to be designated as the "Damage and Condemnation Account" or "Damage Account". Such account shall be maintained by the Trustee until the payments are paid in full pursuant to the terms of the Installment Purchase Agreement and the payment of principal of and interest on the Outstanding Certificates has been duly made or provided for. Upon the final maturity of all of the Certificates, any amount remaining on deposit in the Damage Account, after payment of all fees and expenses of the Trustee, in excess of the principal of and interest on the Outstanding Certificates shall be paid to the Buyer. Proceeds of insurance or condemnation as may be paid to the Trustee as assignee of the Seller pursuant to the terms of the Installment Purchase Agreement and pursuant to this Agreement shall be immediately deposited by the Trustee in the Damage Account. In the event the Buyer prepays pursuant to Section 10.1 of the Installment Purchase Agreement, the insurance proceeds shall be transferred to the Prepayment Account and applied to the prepayment of the Certificates.

(b) The Trustee may at any time, pursuant to a requisition of the Buyer, withdraw from the Damage Account and pay the amount specified in said requisition, provided that the Buyer shall state therein that such amount relates to costs incurred in the repair or replacement of the Property.

(c) No amounts shall be withdrawn or transferred from or paid out of the Damage Account except as provided in this Article IV.

91314657

PROPOSED OFFICIAL COPY Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

42

UNOFFICIAL COPY

406. Establishment and Application of Rebate Account.

(a) Within the Trust Fund, there is hereby established a separate account to be designated as the "Rebate Account." Any provision hereof to the contrary notwithstanding, amounts credited to the Rebate Account shall be free and clear of any lien hereunder. The Trustee shall keep the Rebate Account separate and apart from all other funds and moneys held by it and shall administer such fund as provided in the Arbitrage Regulation Agreement.

(b) The Buyer shall contract with others to perform the computations required by the Arbitrage Regulation Agreement and shall be entitled to rely on such computations made by others. Any amounts to be deposited in the Rebate Account shall be as required pursuant to the written instruction of the Buyer pursuant to Section 403(d) hereof from investment income. In any event, the Trustee shall obtain and keep such records of the computations made pursuant to the Arbitrage Regulation Agreement as are required under Section 148(f) of the Code and such records shall be available for inspection at all reasonable times by the Buyer.

407. Deposit and Investment of Moneys in Funds.

(a) All moneys held by the Trustee in any of the funds or accounts or subaccounts established pursuant to this Agreement shall be deposited or invested in Permitted Investments by the Trustee to the extent practicable, except that funds to be held by the Trustee for less than three days need not be invested. The Trustee shall invest such moneys in Permitted Investments maturing not later than the date on which such moneys will be required for uses and purposes specified in this Agreement.

(b) All interest or income on investments of any fund, account or subaccount shall be deposited into the same fund, account or subaccount.

(c) The Trustee shall act only as agent in making or disposing of any investment. Except as to its gross negligence or wilful misconduct, the Trustee shall not be liable for any loss resulting from the making or disposition of any investment pursuant to this Section, nor the failure of any investment to be repaid, in whole or in part or in a timely manner, and any such losses shall be charged to the account with respect to which such investment was made.

91314657

UNOFFICIAL COPY

Property of Cook County Clerk's Office

COVENANTS; DEFAULT AND LIMITATION OF LIABILITY

501. The Seller to Perform Installment Purchase Agreement. The Seller covenants and agrees with the Trustee for the benefit of the Owners of the Certificates to perform all obligations and duties imposed on it under the Installment Purchase Agreement.

502. Notice of Non-Payment. In the event of delinquency in the payment of any Payment due from the Buyer pursuant to the Installment Purchase Agreement, the Trustee shall immediately give written notice of the delinquency and the amount thereof to the Buyer and the Insurer. The notice to the Buyer shall meet the requirements of Section 13.1(a) of the Installment Purchase Agreement.

503. Action on Default. Each of the following events, as it relates to a Certificate, shall constitute and is referred to in this Agreement as an Event of Default:

(a) a failure to pay the principal of, premium, if any, or interest on the applicable Certificates when the same shall become due and payable at maturity, upon prepayment or otherwise.

(b) an Event of Default has occurred in the Installment Purchase Agreement.

In the case of an Event of Default, the Trustee shall, within five (5) days after such event, give written notice thereof by first class, postage prepaid mail to the Owners of all Certificates then Outstanding at their respective addresses shown on the Certificate Register.

Upon the occurrence and continuance of any Event of Default described in clause (a) or (b) above the Trustee may, and at the written request of the Owners of not less than 25% in principal amount of applicable Certificates Outstanding, the Trustee shall, declare the applicable Certificates to be immediately due and payable and immediately upon such declaration prepay the applicable Certificates.

Upon the occurrence of an Event of Default, the Trustee shall immediately, with the prior written consent of the Insurer, pursue one or more of the remedies under this Agreement or the Installment Purchase Agreement, including but not limited to, filing an action for mandamus or other suit and taking whatever actions are reasonably necessary to sell the Property, either at public or private sale for the highest price commercially reasonably obtainable, and apply the proceeds of such sale to the prepayment of the applicable Certificates as soon as reasonably practicable. In the event the Trustee sells the Property in a private sale, it shall use its best efforts to obtain at least five (5) fair market value bids but the failure to receive such

91314657

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

6 5 7
bids shall not affect the validity of any sale. The Trustee hereby agrees to use its best efforts to sell the Property within thirty (30) days of such Event of Default (provided, however, that the other remedies available are not sufficient to cure the Event of Default) or the acquisition of title by the Trustee or the consent of the Insurer to such sale, as the case may be. From the proceeds of such sale the Trustee shall be entitled to reimbursement of its expenses in connection therewith and reasonable fees for arranging such sale based upon standards in the market place in which sales of similar property occur.

Notwithstanding any of the foregoing provisions, (a) none of the remedies specified above or available under the Installment Purchase Agreement or the Mortgage shall be exercised by the Trustee or the Owners of the Certificates without the prior written consent of the Insurer, (b) no acceleration of the principal payments of the Certificates shall be effective without the prior written consent of the Insurer, and (c) the Insurer shall have the same rights to the pursuit of such remedies as are granted in this Agreement, the Installment Purchase Agreement and the Mortgage to the Trustee and the Owners of the Certificates.

In the event that the Insurer shall make any payments of principal of, or interest on, any of the Certificates pursuant to the provisions of the Policy, and the Certificates are declared immediately due and payable pursuant to the terms of this Agreement, the Insurer may, at any time and at its sole option, pay to the Owners of the Certificates all or a portion of amounts due under the Certificates prior to the stated maturity dates thereof.

The Trustee may in its discretion, with the prior written consent of the Insurer, waive any Event of Default under this Agreement and its consequences and rescind any declaration of maturity of principal, and shall do so upon written request of the Owners of (1) a majority in aggregate principal amount of all Certificates outstanding in respect of which default in the payment of principal and/or interest exists, or (2) a majority in aggregate principal amount of all Certificates then outstanding and the prior written consent of the Insurer in the case of any other default; provided, however, that there shall not be waived (a) any Event of Default in the payment when due of the principal of any Certificates at the date of maturity specified therein or upon proceedings for the mandatory sinking fund prepayment thereof, or (2) any default in the payment when due of the interest on any Certificates, unless prior to such waiver or rescission, all arrears of interest and all arrears of payments of principal (other than as a result of acceleration), with interest on all such arrears (to the extent permitted by law) at the highest rate of interest borne by any Certificate then outstanding, and all expenses of the Trustee in connection with such default shall have been paid or provided for. In case of any such waiver or rescission, or in case any proceedings taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely to the Trustee,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

then and in every such case, the Trustee, and such Owners of the Certificates shall be restored to their former positions and rights under this Agreement respectively, but no such waiver or rescission shall extend to any subsequent or other default or impair any right consequent therein. No waiver of any Event of Default whether by the Trustee or the Owners of the Certificates, shall extend to or affect any subsequent or any other then existing Event of Default or shall impair any rights or remedies consequent thereon.

91314657

504. No Obligation by the Buyer to Owners. Except for the payment of Payments when due in accordance with the Installment Purchase Agreement and the performance of the other covenants and agreements of the Buyer contained in said Installment Purchase Agreement, the Buyer shall have no obligation or liability to any of the other parties or to the Owners of the Certificates with respect to this Agreement or the terms, execution, delivery or transfer of the Certificates, or the distribution of Payments to the Owners by the Trustee.

505. No Obligation with Respect to Performance by Trustee. Neither the Buyer nor the Seller shall have any obligation or liability to any of the other parties or to the Owners of the Certificates with respect to the performance by the Trustee of any duty imposed upon it under this Agreement.

506. No Liability to Owners for Payment. Except as specifically provided in this Agreement, the Seller shall not have any obligation or liability to the Owners of the Certificates with respect to the payment of the Payments by the Buyer when due, or with respect to the performance by the Buyer of any other covenant made by it in the Installment Purchase Agreement. Notwithstanding any other provision of this Agreement, the Trustee shall not have any obligation or liability to the Owners of the Certificates with respect to the payment of the Payments by the Buyer when due, or with respect to the performance by the Buyer of any other covenant made by it in the Installment Purchase Agreement.

507. No Responsibility for Sufficiency. The Trustee shall not be responsible for the sufficiency of the Installment Purchase Agreement or of the assignment made to it of rights to receive moneys pursuant to said agreements, or the value of or title to the Property. The Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it under the terms of and in accordance with this Agreement except for gross negligence or wilful misconduct.

508. Indemnification to Trustee and Insurer. The Seller shall and hereby agrees to indemnify and save the Trustee and the Insurer, together or individually, harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of any breach or default on the part of the Seller in the performance of any of its obligations or the failure of any warranty or representation made by the Seller

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

under this Agreement and the Installment Purchase Agreement, any act of negligence of the Seller or of any of its agents or employees with respect to the Property, or any act of negligence of the Seller or any officer, agent, employee or invitee of the Seller with respect to the Property. Indemnification for any tort mentioned in this Section shall be limited to the extent and in the amounts provided for by applicable law. The Seller agrees, as between itself and the Trustee, and as between itself and the Insurer, and not for the benefit of the holder of any Certificate or anyone else, to indemnify and save the Trustee and the Insurer harmless from and against reasonable loss, cost, charge, expense, judgment or liability incurred by the Trustee and/or the Insurer, acting in good faith and without gross negligence hereunder, in treating the registered owner thereof as such, as provided in Section 310 and Section 311, respectively. No indemnification will be made under this Section or elsewhere in this Agreement for willful misconduct, gross negligence, or breach of duty under this Agreement by the Trustee and/or the Insurer, its respective officers, agents, employees, successors or assigns.

In no event shall the Trustee be liable for special, indirect or consequential damages, loss of profits or loss of business, even if informed of the possibility of such damages by a party hereto or a third party, and regardless of the form of action.

509. Further Assurances. The Seller and the Trustee shall make, execute and deliver any and all such further documents, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Agreement and for the better assuring and confirming unto the Trustee and the Owners of the Certificates of their rights and benefits provided in this Agreement and the Installment Purchase Agreement.

510. Action in Event of Nonappropriation. In the event of the occurrence of nonappropriation pursuant to Section 7.4 of the Installment Purchase Agreement, the Trustee, with the prior written consent of the Insurer, shall take whatever actions are reasonably necessary to sell the Property, either at public or private sale for the highest price commercially reasonably obtainable. In the event the Trustee sells the Property in a private sale, it shall use its best efforts to obtain at least five (5) fair market value bids but the failure to receive said bids shall not affect the validity of any sale. The Trustee shall apply the proceeds of such disposition as set forth in Section 316 hereof or as otherwise set forth in this Agreement. The Trustee hereby agrees to promptly obtain title to the Property and to use its best efforts to sell the Property within thirty (30) days of the surrender of the Property by the Buyer, acquisition of title by the Trustee or the consent of the Insurer to such sale. From the proceeds of such sale the Trustee shall be entitled to reimbursement for its expenses in connection therewith and reasonable fees for arranging such sale based upon

UNOFFICIAL COPY

9 1 3 1 4 6 5 7

standards in the market place in which sales of similar property occur.

511. Application of Moneys. All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article V shall, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the fees, expenses, liabilities and advances incurred or made by the Trustee, be deposited in the Payment Account and all moneys so deposited shall be transferred as and when required to be applied as follows:

(a) Unless the principal of all the Certificates shall have become due and payable, all such moneys shall be applied:

First, to the payment of the persons entitled thereto of all interest then due on the Certificates, in the order of the due dates of such interest and, if the amount available shall not be sufficient to pay in full said amount, then to the payment pro rata, according to the amounts due to the persons entitled thereto, without any discrimination or privilege;

Second, to the payment to the persons entitled thereto of the unpaid principal of any of the Certificates which shall have become due (other than Certificates matured or called for prepayment for the payment of which moneys are held pursuant to the provisions of this Agreement), in the order of their due dates, with interest on the overdue principal of such Certificates from the respective dates upon which they became due at the respective rates borne by such Certificates and, if the amount available shall not be sufficient to pay in full Certificates due on any particular date, together with such interest, then to the payment pro rata, according to the amount of principal due on such date, to the persons entitled thereto without any discrimination or privilege;

(b) If the principal of all the Certificates shall have become due, all such moneys shall be applied to the payment of the principal and interest then due and unpaid upon the Certificates, without preference or priority of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, or of any Certificate over any other Certificate, pro rata, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or privilege.

Whenever moneys are to be applied pursuant to the provisions of this Section 511, such moneys shall be applied at such times and from time to time as the Trustee shall determine, having due regard for the amount of such moneys available for application and the likelihood of additional moneys becoming

91314657

UNOFFICIAL COPY

Property of Cook County Clerk's Office

available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be a Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest with respect to the amounts of principal to be paid on such dates, and for which moneys are available, shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any moneys and of the fixing of such date, and shall not be required to make payment to the Owner of any unpaid Certificate until such Certificate shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

512. Rights and Remedies of Owners. No Owner of any Certificate shall have any right to institute any suit, action or proceeding for the enforcement of this Agreement, for the execution of any trust hereof or any other remedy hereunder, unless (i) an event of default has occurred; (ii) the Owners of twenty-five (25) percent in aggregate principal amount of Certificates then Outstanding shall have made, with the prior written consent of the Insurer, written request to the Trustee and shall have offered the Trustee reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (iii) such Owners have offered the Trustee indemnification in a manner satisfactory to it for any liability and expense it might incur in carrying out the aforementioned request; and (iv) the Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its, his or their own name or names. Such request and offer of indemnity are hereby declared in every case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this Agreement, and to the initiation of any action or cause of action for the enforcement of this Agreement; provided, that the Trustee may not, as a condition precedent to the execution of the powers and trusts hereunder, request indemnification for liability arising out of the Trustee's negligent or willful action, misconduct or failure to act; it being understood and intended that no one or more of the Owners of the Certificates shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Agreement or to enforce any right hereunder except in the manner herein provided and that proceedings shall be instituted, had and maintained in the manner herein provided and for the ratable benefit of the Owners of all Certificates then Outstanding. Nothing in this Agreement shall, however, affect or impair the right of any Certificate Owner to enforce the payment of the principal and interest with respect to any Certificate at and after the maturity thereof, or the obligation of the Trustee to pay the principal and interest with respect to each of the Certificates executed and delivered hereunder to the respective Owners thereof at the time and place, and from the source and in the manner, provided in this Agreement.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

91314657

513. Right of Owners to Direct Proceedings. Anything in this Agreement to the contrary notwithstanding, the Insurer or the Owners of a majority in aggregate principal amount of the Certificates then Outstanding, with the prior written consent of the Insurer, shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Agreement or for the appointment of a receiver or any other proceedings hereunder; provided, that such direction shall not be otherwise than in accordance with the provisions of law and of this Agreement.

514. Payments Under the Policy. If on any date that payments are due the Trustee has not received the full Payments, the Trustee shall promptly give notice by registered mail, postage prepaid, to the Buyer. If on January 5th or July 5th (or if such date is not a Business Day, then on the next succeeding Business Day) of any year, the Trustee has not received sufficient money to pay all principal of and interest on the Certificates due on the next succeeding Payment Date, the Trustee shall promptly give telephonic notice or notice by facsimile thereof to the Insurance Trustee, such notice to be confirmed promptly in writing by registered or certified mail, specifying the amount of the deficiency. Such notice shall include the following: the identity of the issuer, maturity date, original principal amount and CUSIP number of the obligation, and a description of the payment default (including the amount thereof and the date on which payment was due). If the deficiency is made up in whole or in part by the Buyer prior to or on the next Payment Date, the Trustee shall so notify the Insurance Trustee. In addition, if the Trustee receives notice that any Owner of a Certificate has been required to disgorge payments of principal of or interest on the Certificates to others pursuant to a final judgment by a court of competent jurisdiction that such payment constitutes a voidable preference to such Owner within the meaning of any applicable bankruptcy law, then the Trustee shall promptly give telephonic notice or notice by facsimile thereof to the Insurance Trustee, such notice to be confirmed promptly in writing by registered or certified mail.

The Trustee is irrevocably designated, appointed, directed and authorized to act as an attorney-in-fact for the Owners of the Certificates as follows:

- (i) If and to the extent there is a deficiency in amounts required to pay interest on the Certificates of any Owner and to the extent the Trustee has received payment from the Insurance Trustee, the Trustee shall (A) execute and deliver to the Insurance Trustee, in form satisfactory to the Insurer, (I) an instrument appointing the Insurer as agent for such Owners in any legal proceeding related to the payment of such interest and (II) an assignment to the Insurer of the claims for interest to which such deficiency relates

UNOFFICIAL COPY

9 1 3 1 4 6 5 7

and that are paid by the Insurer, (B) receive as designee of the respective Owners in accordance with the tenor of the Policy payment from the Insurer with respect to the claims for interest so assigned and (C) disburse the same to such respective Owners; and

(ii) if and to the extent of a deficiency in amounts required to pay principal of the Certificates of any Owner and to the extent the Trustee has received payment from the Insurance Trustee, the Trustee shall (A) execute and deliver to the Insurance Trustee in form satisfactory to the Insurer, (I) an instrument appointing the Insurer as agent for such Owner in any legal proceeding relating to the payment of such principal, (II) an assignment to the Insurer of any of the Certificates surrendered to the Insurance Trustee of so much of the principal amount thereof as has not previously been paid or for which moneys are not held by the Trustee and available for such payment (but such assignment shall be delivered only if payment from the Insurer, directly or through the Insurance Trustee, is received by the Trustee), and (III) if the Insurer wishes to hold the Certificate, the Certificate, (B) receive as designee of the respective Owners in accordance with the tenor of the Policy payment therefor from the Insurance Trustee and (C) disburse the same to such Owners.

Payments with respect to claims for interest on and principal of Certificates disbursed by the Trustee from proceeds of the Policy shall not be considered to discharge the obligation of the Buyer with respect to any Installment Payment then due and unpaid under the Installment Purchase Agreement, and the Insurer shall become the owner of such unpaid Certificate and claims for interest in accordance with the tenor of the assignment made to it under the provisions of this Agreement or otherwise.

Irrespective of whether any such assignment is executed and delivered, the Seller and the Trustee hereby agree for the benefit of the Insurer that

(i) to the extent the Insurer makes payments, directly or indirectly (as by paying through the Trustee), on account of principal of or interest on the Certificates, the Insurer will be subrogated to the rights of such Owners to receive the amount of such principal and interest from the Buyer, with interest thereon as provided and solely from the sources stated in this Agreement and the Certificates, and

(ii) to the extent the Trustee subsequently receives payments from the Buyer it will accordingly pay to the Insurance Trustee the amount of such

91314657

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

principal and interest, with interest thereon as provided in this Agreement and the Certificates, but only from the sources and in the manner provided in this Agreement for the payment of principal of and interest on the Certificates to Owners, and will otherwise treat the Insurer as the owner of such rights to the amount of such principal and interest.

515. Rights of the Insurer. Anything contained in this Agreement or in the Certificates to the contrary notwithstanding, the existence of all rights given to the Insurer under this Agreement with respect to the giving of consents or approvals or the direction of proceedings (including those relating to acceleration or prepayment) or the exercise of remedies are expressly conditioned upon the absence of an Insurer Default.

91314657

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

ARTICLE VI

THE TRUSTEE

91314657

601. Appointment of Trustee. In consideration of the recitals hereinabove set forth and for other valuable consideration, the Seller hereby agrees to appoint the Trustee to receive, hold, invest and disburse the moneys to be paid to it pursuant to the Installment Purchase Agreement and this Agreement for credit to the various funds and accounts established by this Agreement; to prepare, execute, deliver and deal with the Certificates; and apply and disburse the Payments received from the Buyer to the Owners of Certificates; and to perform certain other functions; all as herein provided and subject to the terms and conditions of this Agreement.

602. Acceptance of Appointment. In consideration of the compensation herein provided for, the Trustee accepts the appointment above referred to subject to the terms and conditions of this Agreement.

603. Trustee; Duties, Removal and Resignation. By executing and deliver this Agreement, the Trustee accepts the duties and obligations of the Trustee provided in this Agreement, but only upon the terms and conditions set forth in this Agreement.

The holders of a majority in aggregate principal amount of all Certificates Outstanding with the prior written consent of the Insurer may by written request, remove the Trustee initially a party to this Agreement, and any successor thereto and may appoint a successor Trustee, but any such successor shall be a bank or trust company having a combined capital (exclusive of borrowed capital) and surplus of at least Fifty Million Dollars (\$50,000,000) and subject to supervision or examination by federal or state authority. If such bank or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purposes of this Section the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

The Trustee may at any time resign by giving written notice to the Buyer and by giving to the Certificate Owners notice by certified mail postage prepaid return receipt requested. However, no such resignation shall be effective until a successor Trustee has accepted appointment thereof. The Trustee may appoint a successor Trustee by an instrument in writing sent by certified mail postage prepaid return receipt requested to the Buyer and to the Certificate Owners; provided, however, that in the event that the Trustee does not appoint a successor Trustee within thirty (30) days following the giving of such notice of resignation, the resigning Trustee may petition

UNOFFICIAL COPY

Property of Cook County Clerk's Office

the appropriate court having jurisdiction to appoint a successor Trustee.

91314657

604. Compensation of the Trustee. The Trustee shall receive an annual fee of \$11,000 for its fees and expenses other than extraordinary expenses as provided in Section 403(d) hereof. In addition, the Trustee shall receive payment for extraordinary expenses only from the interest income in the Payment Account only to the extent and as provided in Section 403(c) hereof. Fees and expenses of the Trustee arising in connection with Events of Default under the Installment Purchase Agreement, prepayments and other non-recurring responsibilities incurred by the Trustee while carrying out the duties hereunder will also be paid to the Trustee from the interest income only to the extent and as provided in Section 403(c) and 503 hereof.

605. Protection to the Trustee. The Trustee shall be protected and shall incur no liability in acting or proceeding in good faith without negligence upon any resolution, notice, telegram, request, consent, waiver, certificate, statement, affidavit, voucher, bond, requisition or other paper or document which it shall in good faith believe to be genuine and to have been passed or pursuant to any of the provisions of this Agreement, and the Trustee shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements. The Trustee shall not be bound to recognize any person as an Owner of any Certificate or to take any action at his request unless such Certificate shall be deposited with the Trustee or satisfactory evidence of the ownership of such Certificate shall be furnished to the Trustee. The Trustee may consult with counsel, who may be counsel to the Seller or the Buyer, with regard to legal questions and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith in accordance therewith.

Whenever in the administration of its duties under this Agreement, the Trustee shall deem it necessary to or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) shall be deemed to be conclusively proved and established by the certificate of an authorized representative of the Buyer and such certificate shall be full warranty to the Trustee for any action taken or suffered under the provisions of this Agreement upon the faith thereof, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

Trustee's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

The Trustee (including the Trustee in its commercial capacity) may buy, sell, own, hold and deal in any of the Certificates (including being involved in the original underwriting of the Certificates) provided pursuant to this Agreement, and may join in any action which any Owner may be entitled to take with like effect as if the Trustee were not a party to this Agreement. The Trustee, either as principal or agent, may also engage in or be interested in any financial or other transaction with the Buyer or the Seller and may act as depository, trustee, or agent for any committee or body of Owners of Certificates or other obligations of the Buyer as freely as if it were not Trustee hereunder.

The recitals, statements and representations in this Agreement or in the Certificates shall not be taken and construed as made by and on the part of the Trustee, and the Trustee does not assume, and shall not have, any responsibility or obligation for the correctness of any thereof.

The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, or receivers, and shall be entitled to advice of counsel concerning all matters of trust and its duties hereunder, and the Trustee shall not be answerable for the default or misconduct of any such attorney, agent or receiver selected by it with reasonable care. The Trustee shall not be answerable for the exercise of any discretion or power under this Agreement or for anything whatever in connection with the funds and accounts established hereunder, except only for its own willful misconduct or gross negligence.

606. Standard of Care. The Trustee shall be liable only for its gross negligence or willful misconduct. The Trustee, prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are set forth specifically in this Agreement. In case an Event of Default has occurred (which has not been cured), the Trustee shall exercise such of the rights and powers vested in it by this Agreement and use the same degree of care and skill in their exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 | 3 | 4 | 6 | 5 | 7

ARTICLE VII

AMENDMENT; DEFEASANCE; ADMINISTRATIVE PROVISIONS

701. Amendment. (a) Except for the amendments pursuant to Section 701(b) hereof, this Agreement may be amended in writing by agreement between the parties with the prior written consent of the Insurer, but no such amendment shall become effective as to the Owners of the Certificates then Outstanding until approved by two-thirds in aggregate dollar amount of such Owners; provided that no such amendment shall impair the right of any Owner to receive his proportionate share of any Payment in accordance with his Certificate.

(b) This Agreement and the rights and obligations of the Seller, of the Trustee and of the Owners of the Certificates may also be modified or amended from time to time and at any time by an agreement or agreements supplemental hereto, which agreements the Seller and the Trustee may enter into with the prior written consent of the Insurer but without the consent of any Owners of the Certificates but only to the extent permitted by law and only for any one or more of the following purposes:

(1) to add to the covenants and agreements of the Seller and the Trustee other covenants and agreements thereafter to be observed, to pledge or assign additional security for the Certificates (or any portion thereof), or to surrender any right or power herein reserved to or conferred upon the Buyer provided, that no such covenant, agreement, pledge, assignment or surrender shall materially adversely affect the interests of the Owners of the Certificates as determined by the Trustee and evidenced by an opinion of counsel at the expense of the Seller or the Owners of the Certificates;

(2) to make such provisions for the purpose of curing any ambiguity, inconsistency or omission, or of curing or correcting any defective provision, contained in this Agreement, or in regard to matters or questions arising under this Agreement, as the Seller and the Trustee may deem necessary or desirable and not inconsistent with this Agreement, and which shall not materially adversely affect the interests of the Owners of the Certificates as determined by the Trustee and evidenced by an opinion of counsel at the expense of the Seller or the Owners of the Certificates; or

(3) to modify, amend or supplement this Agreement in such manner as to permit the qualification hereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, and to add such other terms, conditions and provisions as may be permitted by said act or similar federal statute, and which shall not materially adversely affect the interests of the Owners of

91314657

UNOFFICIAL COPY

9 1 3 1 4 6 5 7

the Certificates as determined by the Trustee and evidenced by an opinion of counsel at the expense of the Seller or the Owners of the Certificates.

(c) The Trustee may in its discretion, but shall not be obligated to, enter into any such amendments authorized by subsections (a) or (b) of this Section which materially adversely affects the Trustee's own rights, duties or immunities under this Agreement or otherwise.

91314657

702. Defeasance. If and when the Certificates delivered pursuant hereto shall become due and payable in accordance with their terms, and the whole amount of the principal, and the interest so due and payable upon all of the Certificates shall be paid, or provision shall have been made for the payment of All Unpaid Principal Installments as provided in the Installment Purchase Agreement and herein, and all administrative expenses shall have been paid or provided for, then and in that case, the right, title and interest of the Trustee and the Seller under this Agreement and the Mortgage shall thereupon cease, terminate and become void, and the Trustee shall assign and transfer to or upon the order of the Buyer all property (in excess of the amounts required for the foregoing) then held by the Trustee (including the Installment Purchase Agreement and all payments under this Agreement) and shall execute such documents as may be reasonably required by the Seller in this regard.

703. Recording and Filing. The Seller shall cause the recording of the Mortgage and this Agreement, or a financing statement concerning the Property described therein, and the filing of such financing statements (or continuation statements in connection therewith), or of any supplemental instruments or documents of further assurance, as may be required by law in order to perfect the security interests created by this Agreement.

704. Trustee to Keep Records. The Trustee shall keep a copy of this Agreement and books and records of all moneys received and disbursed under this Agreement, which shall be available for inspection by the Buyer, the Seller and the Owners at any time during regular business hours.

705. Amendment to Installment Purchase Agreement. The Trustee covenants that it will not enter into any amendment of the Installment Purchase Agreement without obtaining the prior written consent of the Insurer.

706. Notices. All written notices to be given under this Agreement shall be given by mail to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other parties in writing from time to time.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 1 5 1 7 6 5 7

If to the Buyer: City of Chicago
City Comptroller
Room 501
City Hall
Chicago, Illinois 60602

with a copy to: City of Chicago
Corporation Counsel
Room 511
City Hall
Chicago, Illinois 60602

If to the Seller: Ross, Harris & Cole
1512 North Fremont
Chicago, Illinois 60622

If to the Trustee: The First National Bank
of Chicago
One First National Plaza
Suite 0126
Chicago, Illinois 60670
Attention: Corporate Trust
Division

If to the Insurance
Trustee: The United States Trust
Company of New York
114 West 47th Street
New York, New York 10036
Attention: Corporate Trust
Department

Additionally, any written notice given under this Agreement shall also be given to the Insurer at the following address, or at such other address as the Insurer may provide to the other parties hereto in writing from time to time:

Asset Guaranty Reinsurance Company
360 Madison Avenue
New York, New York 10017
Attention: Vice President and Manager of
Municipal Risk

707. Illinois Law. This Agreement shall be construed and governed in accordance with the laws of the State of Illinois.

708. Severability. Any provision of this Agreement found to be prohibited by law shall be ineffective only to the extent of such prohibition, and shall not invalidate the remainder of this Agreement.

709. Binding on Successors. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

91314657

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

11/11/11

UNOFFICIAL COPY

710. Headings. Headings preceding the text of the several Articles and Sections hereof, and the table of contents, are solely for convenience of reference and shall not constitute a part of this Agreement or affect its meaning, construction or effect.

711. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

712. Agreement Represents Complete Agreement; Amendments. This Agreement represents the entire contract between the parties. This Agreement may not be effectively amended, changed, modified, altered or terminated except by the written agreement of the Seller and the Trustee, with the consent of the Insurer, made in accordance with the provisions of this Agreement.

713. Remedies Not Exclusive; No Waiver of Default. No remedy herein conferred upon or reserved to the Trustee or to the Owners of the Certificates is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise. No delay or omission of the Trustee or of any Owner of the Certificates to exercise any right or power arising upon the occurrence of any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to the Trustee or to the Owners of the Certificates may be exercised from time to time and as often as may be deemed expedient.

91314657

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties have executed and attested this Agreement by their officers thereunto duly authorized as of the date and year first written above.

THE FIRST NATIONAL BANK
OF CHICAGO, as Trustee

(SEAL)

By _____
Its _____

ATTEST:

By _____

ROSS, HARRIS & COLE

By _____
Its General Partner

By _____
Its General Partner

Property of Cook County Clerk's Office

91314657

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 1 3 1 1 0 5 7

IN WITNESS WHEREOF, the parties have executed and attested this Agreement by their officers thereunto duly authorized as of the date and year first written above.

THE FIRST NATIONAL BANK
OF CHICAGO, as Trustee

(SEAL)

By Faye Wright
Its ASSISTANT VICE PRESIDENT

ATTEST:

By [Signature]
Assistant Vice President

ROSS, HARRIS & COLE

By _____
Its General Partner

By _____
Its General Partner

Property of Cook County Clerk's Office

91314657

UNOFFICIAL COPY

9 1 3 1 4 6 5 7

EXHIBIT A

(Form of Fully Registered Certificate of Participation)

CERTIFICATE OF PARTICIPATION

Evidencing an Undivided Interest of the Owner Hereof in
Payments to be Made

by
the CITY OF CHICAGO, ILLINOIS

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Dated as of</u>	<u>CUSIP</u>
7.75%	July 15, 2011	June 1, 1991	167524AD9

REGISTERED OWNER: CEDE & CO.

PRINCIPAL SUM: Twenty-Four Million Seven Hundred Thousand
and no/100 Dollars (\$24,700,000)

THIS IS TO CERTIFY THAT the registered owner named above of this Certificate of Participation (herein called the "Certificate") is the owner of an undivided interest in the right to receive certain Payments (the "Payments") under and defined in that certain Installment Purchase Agreement dated as of May 1, 1991, and riders, certificates, schedules, exhibits and other documents relating thereto (the "Installment Purchase Agreement"), by and between Ross, Harris & Cole ("Seller") and the City of Chicago, Illinois, (the "Buyer"), the Payments to be made thereunder having been assigned from the Seller to The First National Bank of Chicago, as trustee (the "Trustee") having a principal office at which it conducts corporate trust business in Chicago, Illinois (said principal office being herein referred to as the "Principal Office") pursuant to the Trust Agreement dated as of May 1, 1991 (the "Trust Agreement"). The terms capitalized herein have the same meanings as in the Trust Agreement.

The registered owner of this Certificate is entitled to receive, subject to the terms of the Installment Purchase Agreement and the Trust Agreement on the Maturity Date set forth above (the "Maturity Date"), the principal sum stated above representing a portion of the Payments payable under the Installment Purchase Agreement, and to receive from the date hereof as interest a portion of the Payments payable under the Installment Purchase Agreement at the Interest Rate stated above coming due on January 15, 1992, and semiannually thereafter on January 15 and July 15 in each year to the Maturity Date or the date of prepayment, whichever is earlier. Said amounts are payable in lawful money of the United States of America, which at the time of payment is legal tender for the payment of public and private debts. The principal and premium, if any, with respect to all Certificates shall be payable at the Principal Office of the Trustee. Interest payable with respect to all Certificates

UNOFFICIAL COPY

9 1 3 1 6 5 7

shall be paid by check or draft of the Trustee mailed to the registered holder at its address as it appears on the Certificate Register as of the close of business on the first day of the month of such payment.

This Certificate has been executed by the Trustee pursuant to the terms of the Trust Agreement. Copies of the Trust Agreement are on file at the Principal Office of the Trustee, and reference to the Trust Agreement and any and all amendments thereto is made for a description of the pledges and covenants securing the Certificates, the nature, extent and manner of enforcement of such pledges, the rights and remedies of the registered owners of the Certificates with respect thereto and the other terms and conditions upon which the Certificates are delivered thereunder. The Trust Agreement and the rights and obligations of the owners of the Certificates, the Trustee and the Seller may be modified or amended from time to time and at any time in the manner, to the extent, and upon the terms provided in the Trust Agreement.

This Certificate shall be transferable only upon the Certificate Register, which shall be kept for that purpose at the Principal Office of the Trustee, upon surrender hereof together with a written instrument of transfer satisfactory to the Trustee duly executed by the registered owner or his duly authorized attorney. Upon the registration of the transfer, and the surrender of this Certificate, the Trustee shall provide in the name of the transferee, a new fully registered Certificate or Certificates, of the same aggregate principal amount and maturity as the surrendered Certificate. No transfers of Certificates shall be required to be made during the 15 days preceding each Payment Date or the giving of any notice of redemption. The Trustee may treat the registered owner hereof as the absolute owner hereof for all purposes, and the Trustee shall not be affected by any notice to the contrary.

Notwithstanding the foregoing paragraph, the Certificates are registered in the name of CEDE & CO. as nominee of The Depository Trust Company ("DTC"), which shall be considered to be the holder for all purposes of the Trust Agreement, including, without limitation, receipt of notices and exercise of rights of holders. There shall be a single Certificate for each maturity, and all Certificates shall be immobilized in the custody of DTC with the beneficial owners having no right to receive Certificates in the form of physical securities or certificates. Ownership of beneficial interests in the Certificates shall be shown by book entry on the system maintained and operated by DTC and its participants, and transfers of ownership of beneficial interests shall be made only by DTC and its participants and by book entry, the Buyer having no responsibility therefor. DTC is expected to maintain records of the positions of participants in the Certificates, and the participants and persons acting through participants are expected to maintain records of the purchasers of beneficial interests in the Certificates. In the event DTC determines to discontinue

91314657

UNOFFICIAL COPY

9 1 3 1 6 5 7

providing its services with respect to the Certificates or the Trustee determines that continuation of the system of the book entry transfers through DTC is not in the best interests of the beneficial owners, Certificates as provided in the prior paragraph may be available.

The Certificates will be executed and delivered by the Trustee at the direction of the Seller in the form of fully registered Certificates without coupons in denominations of \$100,000 each or any integral multiple thereof.

The Certificates are subject to mandatory prepayment, to the extent of available funds, prior to maturity, at par, with accrued interest and without premium, at any time, in whole from the proceeds of the Property in the event of nonappropriation under Section 7.4 of the Installment Purchase Agreement and in an amount equal to All Unpaid Principal Installments (as defined in Section 101 of the Trust Agreement, with the Government Obligations referred to in said definition assumed to bear interest at a rate equal to the greater of (i) seven percent (7%) per annum or (ii) the weighted average interest rate per annum borne by outstanding Certificates) if the Installment Purchase Agreement has been terminated in the event of the occurrence of certain events relating to damage or destruction under Section 10.1 of the Installment Purchase Agreement or if the Trustee receives proceeds under any title insurance policy.

The Certificates are subject to mandatory sinking fund prepayment in part by lot at the redemption price of par, plus accrued interest to the date of prepayment, from Payments in amounts to prepay on the dates specified below the respective principal amounts of such Certificates, specified for each such date, as hereinafter set forth:

<u>Date</u>	<u>Aggregate Principal Amount</u>
January 15, 1992	\$ 100,000
July 15, 1992	200,000
January 15, 1993	200,000
July 15, 1993	300,000
January 15, 1994	400,000
July 15, 1994	400,000
January 15, 1995	400,000
July 15, 1995	300,000
January 15, 1996	400,000
July 15, 1996	400,000
January 15, 1997	300,000
July 15, 1997	500,000
January 15, 1998	400,000
July 15, 1998	400,000
January 15, 1999	500,000
July 15, 1999	500,000
January 15, 2000	400,000

91314657

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 3 1 4 6 5 7

July 15, 2000	600,000
January 15, 2001	500,000
July 15, 2001	500,000
January 15, 2002	600,000
July 15, 2002	600,000
January 15, 2003	600,000
July 15, 2003	700,000
January 15, 2004	700,000
July 15, 2004	600,000
January 15, 2005	800,000
July 15, 2005	700,000
January 15, 2006	800,000
July 15, 2006	800,000
January 15, 2007	900,000
July 15, 2007	800,000
January 15, 2008	900,000
July 15, 2008	1,000,000
January 15, 2009	1,000,000
July 15, 2009	1,000,000
January 15, 2010	1,000,000
July 15, 2010	1,100,000
January 15, 2011	1,200,000
July 15, 2011	1,200,000 (Maturity)

The Trustee shall select the Certificates to be prepaid not more than fifteen (15) days before notice of prepayment is given pursuant to the provisions of Section 320 hereof.

If less than all Outstanding Certificates are to be prepaid, the Trustee shall select Certificates (or portions thereof) for prepayment as provided in Section 320 of the Trust Agreement. The Trustee shall select for prepayment Certificates (or portions thereof) within a maturity by lot in such manner as the Trustee shall determine; provided, however, that the portion of any Certificate to be prepaid shall be in the principal amount of \$100,000 or any integral multiple thereof.

Upon the surrender of any Certificate prepaid in part only, the Trustee shall execute and deliver to the Owner thereof, without charge to the Owner, a new Certificate or Certificates of authorized denominations equal in aggregate principal amount to the unprepaid portion of the Certificate surrendered and of the same interest rate and the same maturity.

If this Certificate is called for prepayment, interest with respect to the portion to be prepaid shall cease to accrue from and after the date fixed for prepayment provided that funds sufficient for such prepayment are on deposit with the Trustee on such date.

When prepayment is authorized or required pursuant to the terms of the Trust Agreement, the Trustee shall give to the Owners notice of the prepayment of the Certificates. Notice of such prepayment shall be given by mailing copies thereof to the owners of the Certificates, first class postage prepaid, not more

91314057

UNOFFICIAL COPY

Property of Cook County Clerk's Office

Page 1 of 1

UNOFFICIAL COPY

9 1 3 1 4 6 5 7
than sixty (60) days nor less than thirty (30) days prior to said date of prepayment. Such mailings shall not be a condition precedent to such prepayment and failure so to mail any such notice shall not affect the validity of the proceedings for the prepayment of the Certificates.

91314657
If an Event of Default, as defined in the Trust Agreement, shall occur, the principal of this Certificate and all other Certificates secured by the Trust Agreement then Outstanding shall or may be declared due and payable in the manner and with the effect provided by the Trust Agreement. The Certificates are payable from the Payments and enjoy the benefits of the Mortgage and the moneys held in the funds and accounts established pursuant to the Trust Agreement, subject to the provisions of the Trust Agreement permitting the application thereof for or to the purposes and on the terms and conditions set forth in the Trust Agreement. The obligation of the Buyer to make Payments constitutes a current expense of the Buyer, terminable at the sole option of the Buyer if funds are not appropriated by the Buyer to make Payments in subsequent years, as more particularly described in the Installment Purchase Agreement, and does not constitute a debt of the Buyer, or any political subdivision of the State of Illinois, within the meaning of any constitutional or statutory limitation or a liability of or a lien or charge upon the funds or property of the Buyer beyond any fiscal year for which the Buyer has appropriated moneys to make Payments.

The Trustee has no obligation or liability to the Certificate Owners for the payment of interest or principal pertaining to the Certificates; the Trustee's sole obligations are to execute and deliver the Certificates and to administer the various funds and accounts established in the Trust Agreement for the purposes therein set forth and to exercise on behalf of the Certificate Owners the remedies provided in the Trust Agreement under the terms and conditions therein set forth.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all laws, conditions and things required by the Constitution and laws of the State of Illinois and by the Trust Agreement to exist, to have happened and to have been performed precedent to and in the delivery of this Certificate, exist, have happened and have been performed in due time, form and manner as required by law.

IN WITNESS WHEREOF, this Certificate has been executed by the manual signature of an authorized officer of the Trustee all as of the date set forth above.

THE FIRST NATIONAL BANK
OF CHICAGO, as Trustee

By _____
Authorized Signatory

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 1 3 1 1 6 5 7

STATEMENT OF INSURANCE

Asset Guaranty Reinsurance Company ("AGR"), a New York corporation, has issued its Policy (the "Policy") insuring the payment of principal of and interest on this Certificate on the "due date," as defined in the Policy. Reference is made to the Policy for the complete provisions thereof. All payments required to be made under the Policy shall be made in accordance with the provisions thereof. The owner of this Certificate acknowledges and consents to the subrogation and transfer rights of AGR as more fully set forth in the Policy.

91314857

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 1 5 1 4 6 5 7

(Form of Assignment)

ASSIGNMENT

For value received _____
the undersigned do(es) hereby sell, assign and transfer unto
_____ the within-mentioned
registered Certificate and hereby irrevocably constitute(s) and
appoint(s) _____ attorney, to transfer the
same on the Certificate register of the Trustee with full power
of substitution in the premises.

Dated: _____

Note: The signature(s) on this
Assignment must correspond
with the name(s) as written
on the face of the within
registered Certificate in
every particular without
alteration or enlargement
or any change whatsoever.

91314657

Property of Cook County Clerk's Office

EXHIBIT B
UNOFFICIAL COPY
PARCEL 1 9 1 5 5 7

91314657

THAT PART OF BLOCK 1 IN ILLINOIS STEEL COMPANY'S NORTH WORKS ADDITION TO CHICAGO, ALSO ALL THAT PART OF VACATED MCHENRY STREET TOGETHER WITH ALL THAT PART OF VACATED REDFIELD STREET TOGETHER WITH THAT PART OF THE 14.4 FOOT VACATED ALLEY PER DOCUMENT NO. 6845871 RECORDED JUNE 4, 1920, ALSO LOTS 27 AND 51 IN CHICAGO LAND COMPANY'S SUBDIVISION OF BLOCKS 17, 18 AND 20 IN SHEFFIELD'S ADDITION TO CHICAGO, IN THE SOUTH 1/2 OF SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF WEST WILLOW STREET WITH THE WESTERLY LINE OF BLOCK 1 AFORESAID; THENCE NORTH 62 DEGREES 31 MINUTES 52 SECONDS EAST, ALONG SAID NORTHERLY LINE, 46.45 FEET TO THE HEREINAFTER DESIGNATED POINT OF BEGINNING OF THE FOLLOWING DESCRIBED TRACT; THENCE CONTINUING NORTH 62 DEGREES 31 MINUTES 52 SECONDS EAST, ALONG SAID NORTHERLY LINE, 0.06 FEET TO THE POINT OF INTERSECTION WITH THE NORTHWESTERLY EXTENSION OF THE SOUTHWESTERLY LINE OF SAID LOT 27; THENCE SOUTH 27 DEGREES 51 MINUTES 09 SECONDS EAST, ALONG SAID NORTHWESTERLY EXTENSION AND THE SOUTHWESTERLY LINES OF LOTS 27 AND 51 AFORESAID, 290.41 FEET TO THE SOUTHWESTERLY CORNER OF SAID LOT 51; THENCE NORTH 62 DEGREES 34 MINUTES 23 SECONDS EAST, ALONG THE SOUTHERLY LINE OF SAID LOT 51 AND ITS NORTHEASTERLY EXTENSION, BEING ALSO THE NORTHERLY LINE OF WEST WABANSIA AVENUE, 121.12 FEET TO THE POINT OF INTERSECTION WITH THE NORTHEASTERLY LINE OF NORTH THROOP STREET, BEING ALSO THE SOUTHWESTERLY LINE OF BLOCK 1 AFORESAID; THENCE SOUTH 27 DEGREES 50 MINUTES 59 SECONDS EAST, ALONG SAID NORTHEASTERLY LINE, 637.25 FEET TO THE BEND POINT IN THE EASTERLY LINE OF SAID NORTH THROOP STREET; THENCE SOUTH 0 DEGREES 16 MINUTES 13 SECONDS EAST, ALONG THE EAST LINE OF NORTH THROOP STREET, BEING ALSO THE WEST LINE OF BLOCK 1 AFORESAID, 5.40 FEET TO A POINT 290.10 FEET NORTH OF THE SOUTH WEST CORNER OF BLOCK 1 AFORESAID; THENCE NORTH 62 DEGREES 38 MINUTES 53 SECONDS EAST 437.59 FEET; THENCE NORTH 27 DEGREES 24 MINUTES 30 SECONDS WEST, 9.65 FEET; THENCE NORTH 62 DEGREES 35 MINUTES 30 SECONDS EAST, 13.68 FEET; THENCE NORTH 27 DEGREES 25 MINUTES 53 SECONDS WEST, 110.00 FEET; THENCE NORTH 18 DEGREES 19 MINUTES 37 SECONDS EAST, 324.33 FEET TO A POINT ON THE WESTERLY DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER; THENCE NORTHERLY AND WESTERLY ALONG SAID DOCK LINE, TO A POINT ON A LINE 80.00 FEET NORTHWESTERLY OF AND PARALLEL WITH THE NORTHERLY LINE OF WEST WILLOW STREET AND ITS NORTHEASTERLY EXTENSION AFORESAID; THENCE SOUTH 62 DEGREES 31 MINUTES 52 SECONDS WEST, ALONG SAID PARALLEL LINE, 559.00 FEET TO A POINT ON A LINE 46.45 FEET NORTHEASTERLY OF AND PARALLEL WITH THE WESTERLY LINE OF SAID BLOCK 1; THENCE SOUTH 27 DEGREES 50 MINUTES 59 SECONDS EAST, ALONG THE AFORESAID PARALLEL LINE, 80.00 FEET TO THE HEREINABOVE DESIGNATED POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS

PARCEL 2:

SUB-PARCEL 2"A":

THE NORTHERLY 1/2 OF LOT 43 IN SUB-BLOCK 3 OF BLOCK 18 IN THE SUBDIVISION OF BLOCKS 17, 18, 20, 21 (EXCEPT LOTS 1, 5, AND 12 IN SAID BLOCK 21) AND BLOCKS 23, 28, 29, 30, 31, 32 (EXCEPT LOTS 1, 2, 3, 6 AND 7) AND BLOCKS 33, 38, 39, 40 AND 41 OF SHEFFIELD'S ADDITION TO CHICAGO, IN SECTIONS 29, 31, 32 AND 33, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

SUB-PARCEL 2"B":

THE SOUTHERLY 1/2 OF LOT 43 AND ALL OF LOTS 44, 45, 46, 47, 48, 49, 50, 53, 54, 55 AND 56 IN SUB-BLOCK 3 OF BLOCK 18 IN THE SUBDIVISION OF BLOCKS 17, 18, 20, 21 (EXCEPT LOTS 1, 5, AND 12 IN SAID BLOCK 21) AND

UNOFFICIAL COPY

BLOCKS 21, 20, 29, 30, 31, 32 (EXCEPT LOTS 1, 2, 3, 6 AND 7) AND
BLOCKS 33, 38, 39, 40 AND 41 OF SHEFFIELD'S ADDITION TO CHICAGO IN
SECTIONS 29, 31, 32 AND 33, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE
THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

SUB-PARCEL 2"C":

ALL OF THE NORTHWESTERLY - SOUTHEASTERLY 16 FOOT VACATED ALLEY
TOGETHER WITH ALL OF THE NORTHEASTERLY - SOUTHWESTERLY 16 FOOT VACATED
ALLEY LYING NORTHWESTERLY OF THE NORTHWESTERLY LINES OF LOTS 51 TO 56,
BOTH INCLUSIVE, LYING SOUTHEASTERLY OF THE SOUTHEASTERLY LINE OF LOTS
49 AND 50, LYING SOUTHWESTERLY OF THE SOUTHWESTERLY LINE OF LOTS 44,
45, 48 AND 49 AND LYING NORTHEASTERLY OF THE NORTHEASTERLY LINE OF
LOTS 43, 46, 47 AND 50 (EXCEPTING THEREFROM THAT PART OF THE
SOUTHEASTERLY 1/2 OF SAID 16 FOOT ALLEY LYING NORTHERLY OF AND
ADJOINING LOT 51) IN SUB-BLOCK 3 OF BLOCK 18 IN THE SUBDIVISION OF
BLOCKS 17, 18, 20, 21 (EXCEPT LOTS 1, 5, AND 12 IN SAID BLOCK 21) AND
BLOCKS 23, 28, 29, 30, 31, 32 (EXCEPT LOTS 1, 2, 3, 6 AND 7) AND
BLOCKS 33, 38, 39, 40 AND 41 OF SHEFFIELD'S ADDITION TO CHICAGO IN
SECTIONS 29, 31, 32 AND 33, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE
THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

SUB-PARCEL 2"D":

LOTS 1 AND 2 IN SUB-BLOCK 3 OF BLOCK 18 IN THE SUBDIVISION OF BLOCKS
17, 18, 20, 21 (EXCEPT LOTS 1, 5, AND 12 IN SAID BLOCK 21) AND BLOCKS
23, 28, 29, 30, 31, 32 (EXCEPT LOTS 1, 2, 3, 6 AND 7) AND BLOCKS 33,
38, 39, 40 AND 41 OF SHEFFIELD'S ADDITION TO CHICAGO IN SECTIONS 29,
31, 32 AND 33, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL
MERIDIAN, IN COOK COUNTY, ILLINOIS

SUB-PARCEL 2"E":

LOTS 3, 4, 5 AND 6 IN SUB-BLOCK 3 IN BLOCK 18 IN SHEFFIELD'S ADDITION
TO CHICAGO IN SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE
THIRD PRINCIPAL MERIDIAN, EXCEPTING THEREFROM THAT PART OF SAID LOTS 3
AND 4 DESCRIBED AS FOLLOWS:
A STRIP OF LAND 20 FEET IN WIDTH BEING 10 FEET ON EACH SIDE OF THE
FOLLOWING DESCRIBED CENTER LINE: COMMENCING AT A POINT ON THE
NORTHERLY LINE OF SAID LOTS 3 AND 4, 51.32 FEET WEST OF THE NORTH EAST
CORNER OF SAID LOT 3; THENCE EASTERLY ALONG A CURVED LINE CONVEX TO
THE NORTH AND HAVING A RADIUS OF 343.56 FEET A DISTANCE OF 33.98 FEET
TO A POINT ON THE EAST STREET LINE OF LOT 3, 16.39 FEET SOUTH OF THE
NORTH EAST CORNER THEREOF BEING THE TERMINUS OF THE CENTER LINE HEREIN
DESCRIBED IN COOK COUNTY, ILLINOIS

SUB-PARCEL 2"F":

A STRIP OF LAND 20 FEET IN WIDTH BEING 10 ON EACH SIDE OF THE
FOLLOWING DESCRIBED CENTER LINE: COMMENCING AT A POINT ON THE
NORTHERLY LINE OF LOTS 3 AND 4, 51.32 FEET WEST OF THE NORTH EAST
CORNER OF SAID LOT 3; THENCE EASTERLY ALONG A CURVED LINE CONVEX TO
THE NORTH AND HAVING A RADIUS OF 343.56 FEET A DISTANCE OF 33.98 FEET
TO A POINT ON THE EAST STREET LINE OF LOT 3, 16.39 FEET SOUTH OF THE
NORTH EAST CORNER THEREOF BEING THE TERMINUS OF THE CENTER LINE HEREIN
DESCRIBED IN SUB-BLOCK 3 IN SHEFFIELD'S ADDITION TO CHICAGO IN SECTION
32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN,
IN COOK COUNTY, ILLINOIS

P.I.N. 14-32-310-003

14-32-311-007

14-32-317-014

Address: 1685 North Throop Street,
Chicago, Illinois

91314057