

MAIL TO
NEAR NORTH
200 N LA SALLE
CHI 1166601

UNOFFICIAL COPY

2 8 0 7 92 987532

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (herein called "Mortgage"), dated as of December 28, 1992, entered into by American National Bank and Trust Company of Chicago, not personally but as Trustee ("Trustee") under Trust Agreement dated April 18, 1957 and known as Trust No. 12599 ("Trust No. 12599"), and Belden Centre Limited Partnership, an Illinois limited partnership ("Beneficiary") ("Trust No. 12599 and Beneficiary are sometimes collectively referred to herein as "Mortgagor"), having an address set forth in the Note (hereinafter defined) to AEW No. 33 Corporation, a Massachusetts corporation ("Mortgagee"), having an address c/o Aldrich, Eastman & Waltch, 225 Franklin Street, Boston, Massachusetts 02110, Attention: Legal Department.

T4444 TRAN 1469 12/31/92 09:59:00
66712 + C * - 92 - 987532
COOK COUNTY RECORDER

W I T N E S S E T H :

WHEREAS, Mortgagee, as lender thereunder, has sent to Mortgagor, as borrower thereunder, that certain commitment letter, dated and accepted June 7, 1990, as amended by those certain letter agreements from Aldrich, Eastman & Waltch, Inc. (now known as Aldrich, Eastman & Waltch, L.P.), on behalf of Mortgagee to Beneficiary, dated February 27, 1991, April 10, 1991, May 6, 1991 and August 31, 1991 and as further amended by those certain letter agreements from Mortgagee to Beneficiary dated September 30, 1991, November 13, 1991, December 2, 1991, December 13, 1991, December 24, 1991 and December 28, 1992 (herein, as it may be amended, supplemented or modified, the "Loan Agreement") providing for the Mortgagor's performance of certain covenants, satisfaction of certain conditions and making of certain representations and warranties and for loans and advances to be made from time to time by the Mortgagee to the Mortgagor pursuant to the terms and conditions set out therein, in amounts not to exceed, in the aggregate, NINE MILLION TWO HUNDRED THOUSAND DOLLARS (\$9,200,000) (herein, the "Loan"); and

WHEREAS, pursuant to the Loan Agreement, the Mortgagor has executed and delivered a certain Promissory Note (herein, as it may be amended, supplemented, modified, extended, renewed or restated, the "Note") of even date, in the stated principal amount of NINE MILLION TWO HUNDRED THOUSAND DOLLARS (\$9,200,000), payable to the order of Mortgagee, bearing interest (including Additional Interest and Shared Appreciation Interest defined and calculated as set forth in the Note) and payable in the manner set forth therein (with the ultimate maturity date of the Note being the calendar date ten (10) years after the date hereof, or such earlier date as may be effective pursuant to the terms and conditions of the Note); and

WHEREAS, as a condition to the incurring of said indebtedness, and in order to secure payment thereof, Mortgagor agreed to execute and deliver to Mortgagee this Mortgage as well as that certain

4
WB

E113030

N910905

92987532

11/3/92

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

2019 07 5 3 2

Collateral Assignment of Leases, Rents, Contracts and Approvals (herein, as it may be amended, supplemented or modified, the "Collateral Assignment"), of even date; and

WHEREAS, Mortgagor desires to secure to Mortgagee full and punctual payment of the Loan, and the performance of the covenants contained herein, in the Loan Agreement and in the Note and as well as any and all renewals, extensions or modifications of said Note, or any part thereof, with interest thereon; and also to secure the reimbursement to Mortgagee, its successor or successors, and any purchaser or purchasers, grantee or grantees under any sale or sales under the provisions of this Mortgage for all money which may be advanced as herein provided for, and for any and all reasonable costs and expenses (including reasonable attorneys' fees and all interest thereon) incurred or paid on account of any default by Mortgagor or any litigation at law or in equity which may arise in respect to this Mortgage, regardless of whether Mortgagor exercises its statutory right of reinstatement, or to the indebtedness or the Premises herein described, or in obtaining possession of the Premises after any sale which may be made as hereinafter provided for (all of the foregoing herein called the "Obligations"); provided, however, that the maximum amount included within the Obligations on account of principal shall not exceed the sum of any amount equal to four times the amount of the Loan plus the total amount of advances made by the Mortgagee to protect the Premises and security interest and lien created hereby.

NOW, THEREFORE, in consideration of the covenants and agreements herein made, Mortgagor enters into the covenants and agreements contained herein, and to secure the performance of the Obligations, MORTGAGOR HEREBY MORTGAGES, CONVEYS, GRANTS, BARGAINS, SELLS, TRANSFERS AND ASSIGNS TO THE MORTGAGEE AND ITS SUCCESSORS AND ASSIGNS FOREVER, AND GRANTS TO THE MORTGAGEE A CONTINUING SECURITY INTEREST IN AND TO, any and all right, title and interest of Mortgagor in and to the following property, rights and interests (such property, rights and interests being hereinafter collectively referred to as the "Premises"):

(a) the land in Chicago, Illinois, as described in Exhibit A attached hereto, together with all and singular the tenements, rights, easements, hereditments, rights of way, privileges, liberties, appendages and appurtenances now or hereafter belonging or in any way appertaining to such land (the "Land");

(b) all buildings, structures, replacements, fixtures and other improvements now or hereafter owned by the Mortgagor and now or hereafter situated on the Land, together with all equipment, appliances, machinery, fixtures and other articles of any kind whatsoever found on, affixed to or attached to the Land (the "Improvements"); and

92987532

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

2987532

(c) all Leases, Rents (each as defined in the Collateral Assignment), and other appurtenant rights associated with the ownership of the Land and the Improvements (all such Leases, Rents, issues and profits and rights together with the Land and the Improvements are sometimes collectively referred to herein as the "Real Property"); together with all equipment (as defined in the Uniform Commercial Code) now or hereafter located on or intended to be used in connection with the Real Property; all insurance proceeds including interest payable in connection with any damage or loss to the Real Property, all eminent domain awards made with respect to the Real Property, all licenses and permits for the development, construction, use or occupancy of the Real Property, all trade names and logos associated exclusively with the use or occupancy of the Real Property, all book and records relating to Mortgagor's operation of the Real Property, all contracts, agreements and warranties, including rights to return of deposits, prepaid premiums or other payments, relating to the construction, use or occupancy of the Real Property; and all other personal property now or hereafter owned by Mortgagor arising from, or now or hereafter relating to, located at, installed in, affixed to, placed upon or used in connection with the Real Property, including without limitation, all inventory, furniture, fixtures, equipment, and other goods, documents, instruments, general intangibles, chattel paper, accounts and contract rights (each as defined in the Uniform Commercial Code), and the proceeds therefrom (collectively the "Personal Property").

DEFINITIONS

As used herein the following terms shall have the meanings set forth below:

Alteration - as defined in the section captioned "Alterations".

Approved First Mortgage - as defined in the Loan Agreement.

Casualty - as defined in the section captioned "Damage or Destruction".

Condemnation - as defined in the section captioned "Condemnation".

Event of Default - as defined in the section captioned "Events of Default".

First Lender - as defined in the Loan Agreement.

Hazardous Materials - (i) any "hazardous substances", as defined by the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §9601 et seq.; the Illinois

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

1 2 9 8 7 5 3 2

Environmental Protection Act ("Illinois Environmental Act"), Ill. Rev. Stat. ch 111-1/2, §1001 et seq.; (ii) any "hazardous wastes", as defined by the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6902 et seq.; (iii) any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials, or substances within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, all as amended or hereafter amended; (iv) more than 100 gallons of crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute); (v) any radioactive material, including any source, special nuclear or by-product material as defined at 42 U.S.C. §2012 et seq., as amended or hereafter amended; and (vi) asbestos in any form or condition.

Impositions - as defined in the section captioned "Taxes and Assessments; Compliance with Law".

Legal Requirements as defined in the section captioned "Taxes and Assessments; Compliance with Law".

Loan Agreement - as defined in the Recitals.

Loan Documents - the Note, the Loan Agreement, this Mortgage, the Collateral Assignment, the Security Instruments (as defined in the Note), the Guaranty (as defined in the Note), the Security Assignment and all the other documents executed in connection with the Loan.

Net Casualty Proceeds - as defined in the section captioned "Damage or Destruction".

Net Condemnation Proceeds - as defined in the section captioned "Condemnation".

Permitted Exceptions - the exclusion and exceptions to title set forth in Exhibit B attached hereto.

Security Assignment - that certain Security Assignment of Beneficial Interest in Land Trust of even date herewith between Beneficiary (as Assignor) and Mortgagee (as Assignee) and received by Trust No. 12599.

Restoration - as defined in the section captioned "Condemnation".

Restoration Cost - as defined in the section captioned "Condemnation".

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

02997532

Uniform Commercial Code - the Uniform Commercial Code as enacted in The State of Illinois.

Mortgagor covenants with and represents and warrants to Mortgagee as follows:

SECTION 1 PERFORMANCE OF OBLIGATIONS

Mortgagor shall pay and perform, timely and in the manner required in the appropriate documents or instruments, all of the obligations.

SECTION 2 TITLE; COMPLIANCE WITH SENIOR OBLIGATIONS

2.1 Trust No. 12599 represents and Beneficiary specially warrants that Trust No. 12599 has good clear record and marketable title to the Premises, subject only to the Permitted Exceptions.

2.2 Mortgagor will promptly and fully pay all indebtedness secured by any Approved First Mortgage creating a senior lien on the whole or any part of the Premises and perform all of the Mortgagor's agreements contained therein within the periods provided for such performance, thereby preventing an event of default from occurring thereunder. If Mortgagor fails to pay any installment of principal or interest or any other amount required by an Approved First Mortgage within two days of the beginning of any applicable cure period after the same becomes due and payable, or fails to perform any covenant or obligation of an Approved First Mortgage within seven days of the beginning of any applicable cure period, Mortgagee may pay or perform the same (all in accordance with the Loan Agreement), and the amounts expended by Mortgagee shall be payable on demand, and Mortgagor on demand will repay the amounts so paid with interest at the rate of fifteen percent (15%) per annum. Notwithstanding the foregoing, however, Mortgagee shall have no obligation whatsoever to pay any of the indebtedness secured by, or perform any of the covenants or obligations imposed by, any Approved First Mortgage. Mortgagor will not amend or modify any Approved First Mortgage or any obligations secured thereby without the prior consent of Mortgagee. Mortgagor agrees to provide Mortgagee, upon request, with evidence satisfactory to Mortgagee of the payment of all sums due under any Approved First Mortgage (which evidence may include a photocopy of the cancelled check), and to provide Mortgagee with copies of all notices given or received by Mortgagor thereunder, promptly upon delivery or receipt as the case may be. Any default or other failure to comply fully with any provision under any Approved First Mortgage, after giving effect to any applicable notice or cure periods, shall constitute an Event of Default hereunder. Mortgagor hereby transfers and assigns to Mortgagee any and all proceeds, in excess of the amounts required to satisfy the indebtedness secured by any Approved First Mortgage which may be or become payable by reason of foreclosure under such mortgage; provided, however, Mortgagee

92987532

UNOFFICIAL COPY

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the County of Cook, Illinois, this _____ day of _____, 20____.

Clerk of Cook County, Illinois

Property of Cook County Clerk's Office

agrees that if there is any proceeds in excess of the amounts required to satisfy the indebtedness secured hereby, such excess shall be paid to Mortgagor. Mortgagor further authorizes, directs and instructs that any and all such proceeds be paid directly to Mortgagee and not to Mortgagor, to be applied by Mortgagee against the Obligations in accordance with the Note, and Mortgagor hereby releases and relinquishes any and all right, title, interest and claim in and to that extent. (The term "foreclosure" as used in this paragraph shall mean and include, without limitation, foreclosure of all or any part of the Premises by exercise of any power of sale, judicial foreclosure, conveyance in lieu of foreclosure or other means.) Mortgagor shall promptly forward to Mortgagee copies of all notices, requests, demands, tender and other communications received with respect to any Approved First Mortgage.

SECTION 3A. TAXES, ASSESSMENTS AND INSURANCE PREMIUMS; COMPLIANCE WITH LAW

3(A).1 Subject to the provisions of Section 12 ("Permitted Contests"), Mortgagor shall pay, or cause to be paid, on or before the last day on which they may be paid without penalty or interest all (i) taxes and other charges due on the Premises or any part thereof, including, without limitation, all real estate, sales, personal property, rental, occupancy, use, gross receipts, excise and similar taxes which are, at any time during the term hereof, imposed or levied upon or assessed against the Premises and (ii) all assessments, water rates, sewer rates and other charges now or hereafter levied or assessed against the Premises (collectively the "Impositions"). In addition, Mortgagor shall pay, or cause to be paid, on or before the last day on which they may be paid without impacting the coverage afforded thereby all insurance premiums required to maintain in full force and effect the insurance required under Section 9 hereof. In the event that any amount levied or assessed against the Premises or any part thereof becomes due and payable during the term of this Mortgage and may legally be paid in installments, Mortgagor shall have the option to pay such amount or permit the same to be paid in installments. If at any time Mortgagee does not require the escrow payments provided for in the following subsection, Mortgagor shall deliver to Mortgagee, upon request, receipted bills, cancelled checks or other evidence reasonably satisfactory to Mortgagee evidencing the payment of such taxes, charges, assessments and premiums prior to the date any fine, penalty, interest or cost may be added thereto or imposed by law for the nonpayment thereof and/or prior to the date that any insurance coverage may lapse because of non-payment of any premiums.

3(A).2 If requested by Mortgagee, and provided such payments are not then being made to the holder of an Approved First Mortgage, Mortgagor shall pay to Mortgagee monthly, on the first day of each month, a sum reasonably determined by Mortgagee to be

92267532

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

equal to one-twelfth of the annual aggregate amount of the Impositions and one-twelfth of the annual aggregate amount of the insurance premiums required to maintain in full force and effect the insurance required under Section 9 hereof sufficient to provide in the aggregate a fund adequate to pay each Imposition on the date it becomes due and payable or each insurance premium on the date identified in the second sentence of Section 3(A).1 and, in addition, shall pay to Mortgagee on demand any balance necessary to pay in full each Imposition on the date it becomes due and payable or each insurance premium on the date identified in the second sentence of Section 3(A).1. Such sums shall be held, subject to Mortgagee's security interest, in an interest bearing account with a financial institution satisfactory to Mortgagee, with any interest earned thereon payable to Mortgagor (as long as Mortgagor is not in default under the Loan). So long as no Event of Default has occurred, Mortgagee will apply the escrowed funds to the payment of the Impositions or insurance premiums as they become due or release the funds to Mortgagor for such payment. After an Event of Default has occurred, the funds may be applied by Mortgagee to the payment of the Impositions or insurance premiums or any other obligation of Mortgagor hereunder. During any period when Mortgagor is obligated to make monthly payments to Mortgagee pursuant to this Section 3(A).2, Mortgagor shall furnish to Mortgagee all original bills or invoices relating to any Imposition or insurance premiums promptly upon issuance.

3(A).3 Subject to the provisions of the section captioned "Permitted Contests", Mortgagor shall comply in all respects with, and shall cause the Premises and the use of the Premises to comply in all respects with all laws, ordinances and regulations, and other governmental rules now or hereafter in force and applicable to the condition, use or occupancy of the Premises (collectively, the "Legal Requirements"). Mortgagor shall not initiate or acquiesce in any change in any zoning or other law or regulation affecting the Premises without the prior consent of Mortgagee. Mortgagor shall obtain and shall keep and maintain in force, free from any violations all licenses, permits and other governmental permissions and all renewals thereof necessary for the lawful operation of the Premises and any operation therein of beverage and food services, including, without limitation, any sale of alcoholic beverages therein, and Mortgagor shall not assign, transfer, remove or permit to be assigned, transferred or removed from the Premises any of such licenses, permits and other governmental permissions or the effect or benefit thereof without Mortgagee's prior consent; provided, however, that notwithstanding anything herein to the contrary, Mortgagor shall not be responsible for any retail tenant's maintenance of its licenses, permits or other governmental permissions. Mortgagor covenants and agrees to preserve its rights in and not to diminish in any respect nor alter during the existence of this Mortgage, the parking facilities on any part of the Premises and the parking rights appurtenant to any part of the Premises. Unless Mortgagee has otherwise agreed in writing,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

2 9 3 7 5 3 2

Mortgagor shall not allow changes in the overall uses of the Premises. Mortgagor will not knowingly violate any of the Legal Requirements, and in the event any violation occurs unknowingly, Mortgagor will diligently take such remedial action as may be reasonably necessary to comply with such Legal Requirements.

3(A).4 If the United States, any state or any political subdivision thereof, or any agency, department, bureau, board, commission, or instrumentality of any of them, now existing or hereafter created, shall levy, assess, or charge any tax, assessment or imposition upon this Mortgage, the interest of Mortgagee in the Premises, or Mortgagee by reason of or as holder of any of the foregoing (other than federal, state or local income or franchise taxes), Mortgagor shall pay all such taxes, assessments and impositions to, for, or on account of Mortgagee (or provide funds to Mortgagee for such payment), as they become due and payable and on demand shall furnish proof of such payment to Mortgagee.

3(A).5 In the event of the passage after the date hereof of any state law deducting from the value of the land for the purposes of taxation any lien thereon, or changing in any way the laws now in force for the taxation of mortgages or debts secured by mortgages for state or local purposes, or the manner of collection of any such taxes, and imposing a tax, either directly or indirectly, on this Mortgage, Mortgagor shall indemnify and hold harmless Mortgagee from any loss, cost, expenses or damage arising from the effect of such law on this Mortgage. Nothing in this subsection shall be construed to make Mortgagor liable for any income or franchise tax payable by Mortgagee, its successors or assigns, unless such tax results from a breach or default by Mortgagor hereunder.

3(A).6 If any law or regulation is enacted or adopted permitting, authorizing or requiring any of the matters set forth in Sections 3(A).4 and 5, which law or regulation prohibits the Mortgagor from paying such items or indemnifying the Mortgagee from such items, then all sums secured hereby shall, at the option of Mortgagee, become due and payable thirty (30) days after notice from Mortgagee to Mortgagor and if such full payment is not made within such thirty (30) days it shall be an Event of Default hereunder.

RECORDED

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

2 9 3 7 5 3 2

SECTION 3(B). ENVIRONMENTAL REPRESENTATION AND INDEMNITY.

3(B).1 Mortgagor hereby represents and warrants to Mortgagee that:

A. Compliance.

To the best of the Mortgagor's knowledge based on due inquiry, the Premises (including underlying groundwater and areas leased to tenants, if any), and the use and operation thereof, have been and are currently in compliance with all applicable laws, ordinances, requirements and regulations (including consent decrees and administrative orders) relating to public health and safety and protection of the environment, including those statutes, laws, regulations, and ordinances identified in the definition of "Hazardous Material" above, all as amended and modified from time-to-time (collectively, "Environmental Laws"). All required governmental permits and licenses are in effect, and Mortgagor is in compliance therewith. To the best of Mortgagor's knowledge based on due inquiry, all Hazardous Material generated or handled on the Premises has been disposed of in a lawful manner.

B. Absence of Hazardous Material.

No generation, manufacture, storage, treatment, transportation or disposal of Hazardous Material has, to the best of Mortgagor's knowledge based on due inquiry, occurred or is occurring on or from the Premises, except as has been disclosed in writing to and approved by the Mortgagee ("Permitted Material"). To the best of Mortgagor's knowledge based on due inquiry, no environmental or public health or safety hazards currently exist with respect to the Premises or the business or operations conducted thereon. No underground storage tanks (including petroleum storage tanks) are present on or under the Premises except as has been disclosed in writing to and approved by the Mortgagee ("Permitted Tanks").

C. Proceedings and Actions.

There have been, to the best of Mortgagor's knowledge based on due inquiry, no past, and there are no pending or threatened: (i) actions or proceedings by any governmental agency or any other entity regarding public health risks or the environmental condition of the Premises, or the disposal or presence of Hazardous Material, or regarding any Environmental Laws; or (ii) liens or governmental actions, notices of violations, notices of noncompliance or other proceedings of any kind that could impair the value of the Premises, or the priority of the Mortgage lien or of any of the other Loan Documents.

3(B).2 Mortgagor hereby covenants and agrees with the Mortgagee as follows:

92987532

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

2007532

A. Compliance.

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

B. Absence of Hazardous Material.

Other than Permitted Material, no Hazardous Material shall be introduced to or handled on the Premises without thirty (30) days' prior written notice to the Mortgagee.

C. Proceedings and Actions.

Mortgagor shall immediately notify the Mortgagee and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports, or notices relating to the condition of the Premises or compliance with Environmental Laws. Mortgagor shall promptly cure and have dismissed with prejudice any such actions and proceedings to the satisfaction of the Mortgagee. Mortgagor shall keep the Premises free of any lien imposed pursuant to any Environmental Laws.

D. Environmental Audit.

Mortgagor shall provide such information and certifications which the Mortgagee may reasonably request from time to time to insure Mortgagor's compliance with this Section 3(B). To investigate Mortgagor's compliance with Environmental Laws and with this Section, the Mortgagee shall have the right, but no obligation, at any time to enter upon the Premises, take samples, review Mortgagor's books and records, interview Mortgagor's employees and officers, and conduct similar activities. Mortgagor shall cooperate in the conduct of such an audit.

3(B).3 Mortgagee is entitled to rely upon Mortgagor's representations and warranties contained in this Section 3(B) despite any independent investigations by the Mortgagee or its consultants. Notwithstanding anything herein to the contrary, Mortgagor's liability hereunder shall not in any way be diminished because of any environmental investigations or findings made by either the Mortgagor, the Mortgagee or their consultants.

92567532

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

3(B).4 The term "Mortgagee's Environmental Liability" shall mean any and all losses (excluding, however, a reduction in Shared Appreciation Interest because of a reduction in FMV (as defined in the Loan Agreement) caused by any of the factors identified in this Section 3(B).4), liabilities, obligations, penalties, claims, litigation, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages), disbursements or expenses of any kind or nature whatsoever (including attorneys' fees at trial and appellate levels and experts' fees and disbursements and expenses incurred in investigating, defending against or prosecuting any litigation, claim or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against Mortgagee or any of Mortgagee's affiliates, shareholders, directors, officers, employees, and agents (collectively "Affiliates") in connection with or arising from:

1. any Hazardous Material on, in, under or affecting all or any portion of the Premises, the groundwater, or any surrounding areas;
2. any misrepresentation, inaccuracy or breach of any warranty, covenant or agreement contained or referred to in this Section 3(B);
3. any violation or claim of violation by Mortgagor of any Environmental Laws; or
4. the imposition of any lien for damages caused by or the recovery of any costs for the cleanup, release or threatened release of Hazardous Material.

Mortgagor agrees to indemnify, defend (at trial and appellate levels and with counsel acceptable to the Mortgagee and at Mortgagor's sole cost) and hold the Mortgagee and its Affiliates free and harmless from and against the Mortgagee's Environmental Liability. The foregoing indemnification, defense and hold harmless obligations shall survive repayment of the Note or any transfer of the Premises by foreclosure or by a deed in lieu of foreclosure for any Mortgagee's Environmental Liability arising during the term of the Loan or during Mortgagor's ownership or control of the Premises or caused directly or indirectly by the Mortgagor.

Mortgagor, its successors and assigns, hereby waive, release and agree not to make any claim or bring any cost recovery action against the Mortgagee under CERCLA or any state equivalent, or any similar law now existing or hereafter enacted. It is expressly understood and agreed that to the extent that the Mortgagee is strictly liable under any Environmental Laws, Mortgagor's obligation to the Mortgagee under this indemnity shall likewise be without regard to fault on the part of Mortgagor with respect to

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

2987532

the violation or conditions which results in liability to the Mortgagee.

SECTION 4 LIENS

4.1 Subject to the provisions of the section captioned "Permitted Contests", and except as provided herein, Mortgagor shall not do or suffer anything to be done whereby the Premises shall be encumbered by any mechanic's, laborer's or materialman's lien. If any mechanic's, laborer's or materialman's lien or notice of claim thereof is filed against the Premises with respect to work, labor or materials furnished or claimed to be furnished to the Premises, Mortgagor shall within sixty (60) days from the date of filing, cause the same to be withdrawn, discharged or removed.

4.2 Subject to the provisions of the section captioned "Permitted Contests", except for any Approved First Mortgage, Mortgagor shall not voluntarily create or suffer to exist any other lien, security interest or encumbrance upon the Premises or any portion thereof or interest therein, except the Permitted Exceptions. If any such other lien or notice of claim thereof is filed against the Premises or any portion thereof or interest therein, Mortgagor shall within a reasonable time from the date of filing and no later than sixty (60) days from such date, cause the same to be withdrawn, discharged or removed.

SECTION 5 INSPECTIONS

Mortgagee, its engineers, appraisers, attorneys and other representatives and agents, shall have the right to enter onto the Premises, during normal business hours, and without notice, for the purposes of (a) making such tests and inspections as Mortgagee deems necessary or appropriate in connection with this Mortgage or the Loan Documents and (b) reviewing such books and records, tenant registers, insurance policies and other papers as Mortgagee deems necessary or appropriate in connection with this Mortgage or the Loan Documents.

SECTION 6 MAINTENANCE AND ALTERATIONS

6.1 Mortgagor will: not abandon the Premises; not do or suffer anything to be done which would depreciate or impair the value of the Premises; and maintain, preserve and keep the Premises in good, safe and insurable condition and repair and promptly make or cause to be made any necessary and proper repair, replacements, renewals, additions or substitutions required by wear, damage, obsolescence or destruction.

6.2 Mortgagor shall not remove or demolish any portion of the Improvements or perform or cause to be performed any alteration to the Improvements (except such alterations that (i) may be required

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

in an emergency, (ii) are made in connection with the ordinary maintenance and repair of the Improvements or (iii) constitute tenant improvements in a Lease approved, or deemed to have been approved, pursuant to the terms hereof or the Loan Agreement by Mortgagee), without the prior consent of Mortgagee. Mortgagor shall inform Mortgagee promptly of any proposed alteration to the Improvements, and Mortgagee will be entitled to review and approve the plans and specifications for any such alteration. (Any alteration made to the Improvements, except those excluded in the above parenthetical, is hereinafter called an "Alteration".)

6.3 Any Alteration shall be completed in a good and workmanlike manner, and in compliance with all Legal Requirements.

6.4 Each Alteration shall be and remain a part of the Premises and shall be subject to this Mortgage.

6.5 No Alteration shall adversely affect the value or utility of the Premises. Any Alteration shall be conducted under a contract for architectural or engineering services approved in writing by Mortgagee, and no such Alteration shall be made except in accordance with plans and specifications prepared and approved in writing by such architect and/or engineer and approved in writing by Mortgagee.

6.6 Mortgagee shall have the right to require Mortgagor, before commencement of work for any Alteration, to furnish to Mortgagee Mortgagor's guarantee of completion within a reasonable time, free and clear of all liens, encumbrances, chattel mortgages, conditional bills of sale, and other charges, and in accordance with the plans and specifications approved by Mortgagee.

6.7 Provided any tenant is obligated to remove, at the end of the applicable lease term, any inventory, trade fixtures, machinery or equipment installed by such Tenant and repair any damage to the Premises, Mortgagor may place or permit any tenant to place upon the Premises any inventory, trade fixtures, machinery or equipment belonging to such tenant and may remove the same or permit the same to be removed at any time during the term of this Mortgage; provided that the Mortgagor shall promptly repair all damages to the Premises caused by such installation or removal.

6.8 Mortgagor shall pay to Mortgagee all reasonable fees and expenses incurred by Mortgagee in connection with any Alteration including, but not limited to, the reasonable fees and expenses of an architect and/or engineer selected by Mortgagee to review, on behalf of Mortgagee, plans and specifications for such Alteration.

SECTION 7 CONDEMNATION

7.1 If the use, occupancy or title to the Premises or any part thereof or interest therein shall be taken, condemned,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

2 9 8 7 5 3 2

requisitioned or sold in, by or on account of any eminent domain proceeding or by other action by any authority having the power of eminent domain (any such occurrence being hereinafter referred to as a "Condemnation"), the rights and obligations of Mortgagee and Mortgagor shall be governed by the provisions of this section.

7.2 All awards or compensation payments made in any Condemnation proceeding or action, or in lieu of such proceeding or action, after the payment therefrom of all costs and expenses of Mortgagor and Mortgagee, including reasonable attorneys' fees and fees of expert witnesses and all other reasonable expenses incurred in connection with the collection of such award or compensation (the "Net Condemnation Proceeds"), shall be paid to Mortgagee and shall be applied by Mortgagee in accordance with the terms hereof.

7.3 Mortgagor shall promptly give notice to Mortgagee upon Mortgagor's learning of the commencement of any action or proceeding to take all or a part of the Premises by exercise of the right of condemnation or eminent domain. Mortgagee shall be entitled, at its option, to appear in its own name and, if there is an Event of Default hereunder, on behalf of Mortgagor, in any action or proceeding relating to any Condemnation.

7.4 Any proceeds from such Condemnation shall be paid to Mortgagee, such proceeds or damages in such circumstances being assigned to Mortgagee to be applied as provided below. Mortgagee shall jointly with Mortgagor settle claims relating to such proceeds or damages and may with Mortgagor collect and endorse any checks issued in the name of Mortgagor with respect thereto. No settlement of any Condemnation proceeding shall be made without the prior consent of Mortgagee, provided, however, that if an Event of Default by Mortgagor under this Mortgage then exists, Mortgagee may, at its option, settle any claims with the taking authority, and Mortgagor hereby irrevocably assigns the same to Mortgagee, and Mortgagor hereby grants to Mortgagee full power and authority as attorney in fact coupled with an interest to settle such claims, such settlement to be irrevocable by Mortgagor, and to collect and endorse any checks issued in the name of Mortgagor.

7.5 Upon a Condemnation of the Premises in its entirety, or a Condemnation of such portion of the Premises that, in the opinion of Mortgagee, it is not economically feasible to maintain the remainder thereof, or to repair and restore the part of the Premises remaining after such Condemnation to a complete architectural whole which would be economically feasible to operate for mixed residential and retail uses (such a Condemnation being hereinafter called a "Total Condemnation"), or in the event of any other Condemnation after which Mortgagor and Mortgagee agree that Mortgagor need not restore the Premises to its condition prior to such Condemnation, then the Net Condemnation proceeds shall be paid in the following priority:

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

2987532

(a) First, to the holder of any Approved First Mortgage, an amount equal to the then unpaid principal balance thereunder, together with all interest and other charges accrued thereon;

(b) Second, to Mortgagee, an amount equal to the Obligations for application in accordance with the Note; and

(c) The balance, if any, to Borrower.

7.6 Upon a Condemnation, other than a Total Condemnation, Mortgagor shall repair or restore (the "Restoration") that portion of the Premises not taken in Condemnation as nearly as possible to the value, character and condition thereof immediately prior to the Condemnation pursuant to plans, specifications and a time schedule approved by Mortgagee. Mortgagor shall promptly commence and diligently prosecute to completion the Restoration, subject to and in accordance with the provisions of the section captioned "Alterations". The Net Condemnation Proceeds shall be paid to Mortgagee, and provided there is no Event of Default as determined by Mortgagee hereunder, shall be applied in the following order of priority:

(a) First, subject to Mortgagee's approval and subject to compliance with Mortgagee's disbursement procedures, which may include provisions similar to those set forth for disbursement of Net Casualty Proceeds in the section captioned "Damage or Destruction", to reimburse Mortgagor for the cost of the Restoration (the "Restoration Cost");

(b) Second, if required by such holder, to the holder of an Approved First Mortgage, an amount equal to the then unpaid principal balance thereunder, together with all interest and other charges accrued thereon;

(c) Third, to Mortgagee, an amount equal to the Obligations for application in accordance with the Note; and

(d) Fourth, the balance, if any, to Mortgagor.

7.7 If any Condemnation shall be for temporary use or occupancy by the condemning authority, the Net Condemnation Proceeds, provided payments thereof are made monthly, and provided there is no Event of Default hereunder, shall belong and be paid to Mortgagor. If payments for any Condemnation for temporary use or occupancy shall be made other than on a monthly basis, Mortgagee shall be entitled to hold such payments as further security for the performance of the Obligations until such Net Condemnation Proceeds are disbursed as provided below. Any such Net Condemnation Proceeds shall be invested by Mortgagee in government securities or other investments satisfactory to Mortgagee. Such Net Condemnation Proceeds, and any amounts earned by the investment thereof, shall be disbursed to Mortgagor in a manner determined by Mortgagee, in

92987532

UNOFFICIAL COPY

Property of Cook County Clerk's Office

its discretion, in order that all such amounts are disbursed in approximately equal monthly payments over the term of the temporary use or occupancy taken in the Condemnation giving rise to such proceeds.

SECTION 8 DAMAGE OR DESTRUCTION

8.1 Mortgagor covenants and agrees that in case of damage to or destruction of the Improvements located on the Land from fire or other casualty (any such event, a "Casualty"), whether or not any insurance proceeds are available or adequate for such purpose and regardless of the dollar amount of such damage or loss, Mortgagor shall, subject to the provisions of the following Subsection 8.3, at its sole cost and expense, promptly commence the Restoration of the Improvements to as nearly as possible the condition existing immediately prior to such damage or destruction. Mortgagor shall promptly notify Mortgagee of the extent of any such damage, and of the estimated cost of the Restoration. The plans and specifications for any Restoration and Mortgagor's arrangements for the performance thereof must be approved in advance by Mortgagee, which approval shall not be unreasonably withheld or delayed (Mortgagee being entitled to all of the protections and assurances accorded Mortgagee under the section captioned "Alterations"). The Restoration shall be begun promptly and prosecuted to completion with due diligence. The identity of the contractors chosen by Mortgagor to perform the Restoration shall be subject to Mortgagee's prior approval.

8.2 No settlement on account of any loss or damage in excess of One Hundred Thousand Dollars (\$100,000) shall be made with any insurers without the consent of Mortgagee. Any insurance proceeds shall be paid to Mortgagee, such proceeds being irrevocably assigned to Mortgagee. Notwithstanding anything to the contrary contained herein or in any provision of applicable law, the proceeds of insurance policies coming into possession of Mortgagee shall not be deemed trust funds. In the event of any loss or damage in excess of \$100,000 Mortgagee shall jointly with Mortgagor settle claims relating to such proceeds and may collect and endorse any checks issued in the name of Mortgagor with respect thereto. In the event of any other loss or damage after an Event of Default, Mortgagor hereby irrevocably assigns all power and authority to Mortgagee, as attorney in fact coupled with an interest, to settle such claims, with such settlement to be irrevocable by Mortgagor, and to collect and endorse any checks issued in the name of Mortgagor.

8.3 The proceeds of the insurance maintained by Mortgagor and payable on account of any Casualty, after deducting therefrom the costs and expenses of Mortgagor and Mortgagee reasonably incurred in adjusting any claims and in otherwise effecting collection (the "Net Casualty Proceeds") shall be disbursed as follows:

92987532

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

2007532

(a) In the case of damage to or destruction of the Improvements involving a cost of repair not exceeding One Hundred Thousand Dollars (\$100,000), provided there is no Event of Default hereunder, the Net Casualty Proceeds shall be paid to Mortgagor for the Restoration Cost.

(b) Until the Restoration has been completed, rent or business interruption insurance or similar proceeds shall be paid to Mortgagee and applied to the payment (when and as due and payable) of first, the installments of interest and other payments due under any Approved First Mortgage and second, the regularly scheduled payments of Base Interest due under the Note. The balance, if any, of such proceeds shall be paid to Mortgagor or as Mortgagor may direct.

(c) In the case of damage to or destruction of the Improvements involving a cost of repair exceeding One Hundred Thousand Dollars (\$100,000), and in the case of any damage or destruction after an Event of Default, the Net Casualty Proceeds shall be paid to Mortgagee to be applied as provided either in subsections (d) or (e).

(d) In the event that, in the reasonable opinion of Mortgagee, it is feasible to complete the Restoration within a time period acceptable to Mortgagee, then upon receipt by Mortgagee of:

(i) A certificate of Mortgagor dated not more than thirty (30) days prior to the date of such receipt (A) requesting the payment of a specified amount of the Net Casualty Proceeds; (B) describing in reasonable detail the work and materials applied to the Restoration since the date of the last such certificate of Mortgagor and enclosing bills for such work and materials and related costs; (C) stating that such specified amount does not exceed the cost of such work, materials and related costs; and (D) stating that such work, materials and related costs have not previously been made the basis for any withdrawal of any portion of the Net Casualty Proceeds;

(ii) A certificate of an independent engineer or an independent architect designated by Mortgagor, who in either case shall be approved by Mortgagee, stating in his or her opinion (A) that the work and materials described in the accompanying bills and certificate of Mortgagor were satisfactorily performed and were necessary and appropriate to the Restoration and in accordance with plans and specifications therefor required and/or approved by Mortgagee; (B) that the amounts specified in such bills and certificate of Mortgagor are not in

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

2 9 8 7 5 3 2

excess of the reasonable cost of such work and materials; and (C) the additional aggregate amount, if any, required to complete the Restoration;

- (iii) Evidence reasonably satisfactory to Mortgagee, that the cost of such work and materials have been paid in full or will be paid in full out of such advance except for amounts which Mortgagor is entitled to withhold from the contractor performing the Restoration; and
- (iv) The certification of a title insurance company satisfactory to Mortgagee, evidencing that as of the date of payment described below there exists no mechanic's, laborer's, materialman's or other lien, encumbrance or security interest prior to or on a parity with the estate, rights and interests in the Premises of Mortgagee or of Mortgagor except, as to any of the foregoing, (A) any Approved First Mortgage and (B) any other matter which under any provision of this Mortgage is not prohibited or which Mortgagor is excused from paying or discharging;
- (v) Evidence that Mortgagor has in force rental continuation insurance covering the longer of one (1) year or the time Mortgagee reasonably estimates will be necessary to complete such restoration and rebuilding;
- (vi) Evidence that certain lease with MTS, Inc., d/b/a Tower Records, as tenant thereunder, and Mortgagor, as landlord, thereunder, dated November 21, 1989 (the "Tower Lease") remains in effect and may not be (and is in fact not) terminated notwithstanding the Casualty;

Mortgagee shall promptly pay to Mortgagor the amount of the Net Casualty Proceeds specified in such certificate of Mortgagor, provided that the balance then remaining on deposit or account (together with any sums deposited by Mortgagor as contemplated by the following sentence) with Mortgagee will be sufficient for the completion of the Restoration as determined by the certificate required by the foregoing subsection (e)(ii). Prior to the commencement of the Restoration, and at any time thereafter upon notice from Mortgagee, Mortgagor shall deposit with Mortgagee, such sums as may be required, in addition to the amount of Net Casualty Proceeds then being held, for the completion of the Restoration. Any Net Casualty Proceeds and other sums deposited pursuant to the foregoing sentence shall be held by Mortgagee in an interest bearing account with the interest earned thereon, if not applied to the Restoration, to go to the Property as a part of Gross Receipts

92587532

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

2937532

(as defined in the Note). Any balance of the Net Casualty Proceeds, after the completion of the Restoration, as evidenced by a certificate of such independent engineer or independent architect and upon receipt by Mortgagee of evidence satisfactory to Mortgagee that there are no liens on the Premises as a result of the Restoration, shall be paid first, to the holder of any Approved First Mortgage to be applied against the indebtedness due thereunder, then to Mortgagee to be applied against the Obligations in accordance with the Note, and the balance, if any, to Mortgagor.

(e) In the event that any of the conditions set forth in subsection (d) above are not or cannot be satisfied, the Net Casualty Proceeds shall be paid, first to the holder of an Approved First Mortgage to be applied against the indebtedness due thereunder, then to Mortgagee to be applied against the Obligations in accordance with the Note and the balance, if any, to Mortgagor, and Mortgagor shall thereupon be relieved of its obligation under this Section to perform the Restoration.

SECTION 9 INSURANCE

9.1 Mortgagor shall maintain insurance on the Premises of the following character (individually or with blanket coverage), in form or forms and issued by Transamerica Insurance Company or another company or companies satisfactory to the Mortgagee, with premiums which shall be maintained at the Mortgagor's expense throughout the term of the Loan (and evidence of prepayment of all premiums through a date at least six (6) months after the Floor Funding Date (as defined in the Loan Agreement)):

(a) a property insurance policy on an "all risks" basis including the perils of Collapse written on an all risk basis with an "Agreed Amount" Clause maintained in force at all times during the term of the Loan. Such coverage should insure "the building standard" tenant improvements and betterments. Sub-limits for certain coverages are acceptable under the "All Risk" for:

Extended Period of Indemnity on Business Income	60 Days
Extra Expense	\$ 100,000
Demolition, Increased Cost of Construction	\$1,000,000
Toxic Substance Removal	The lesser of ten percent (10%) of the value of the Improvements or \$10,000

Unless approved in writing by the Mortgagee, deductibles are not to exceed \$10,000.

(b) until the entire Premises has been granted a final, complete and unconditional certificate of occupancy, an "All-Risk"

92587532

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 2 9 1 7 5 3 2

Builders Risk policy which includes Completed Value, Non-reporting form Replacement Cost Coverage for so called "soft costs";

(c) loss of rents insurance for a period of one year in an amount not less than the gross annual rental of all leases affecting the Premises (an agreed amount clause shall be added to all policies, and the limit of liability shall be reviewed annually to reflect any increase of gross rentals);

(d) if a Boiler & Machinery exposure exists, but is excluded from the "All Risk" Property Policy, Mortgagor shall procure a Boiler & Machinery Policy. If applicable, coverage shall be amended to allow "testing" during the course of construction.

Such coverage, if written separate from the "All Risk" Property Policy, shall require a Joint Loss Agreement (per specified wording approved by Mortgagee) endorsed to both the "All Risk" Property Policy and Boiler & Machinery Policy. The Boiler & Machinery Policy should also include Time Element coverages in amounts and form acceptable to Mortgagee.

(e) during the term of this Loan, Mortgagor shall keep in force at its expense Comprehensive General Liability Insurance including an ISO Broad Form Endorsement or its equivalent with respect to the Premises with limits of not less than \$1,000,000 Combined Single Limits (CSL). Such coverage, if written on a Claims made basis, must maintain a retroactive date prior to the Floor Funding Date, and Mortgagor agrees to maintain the same retroactive date during the entire term of the Loan;

(f) in addition to Comprehensive or Commercial General Liability coverage, Mortgagor shall secure Umbrella Liability Coverage with minimum limits of \$10,000,000 or such additional limits as Mortgagee may reasonably require in writing from time to time. If the primary underlying coverage is written on an occurrence form, the Umbrella must be written on an occurrence form unless approved by the Mortgagee; and

(g) such other or additional insurance as may be reasonably required by the Mortgagee.

9.2 All of the aforementioned insurance policies except for the comprehensive general liability insurance shall name Mortgagee as mortgagee and loss payee, and the comprehensive general liability policy shall name Mortgagee as an additional insured, in each of the foregoing cases as its interests may appear, subject to the rights of the holder of the Approved First Mortgage and shall include such other parties as Mortgagor and Mortgagee may reasonably designate, as additional insured, as their interests may appear. All policies shall be written on companies carrying a rating of X or better, according to the standards set by A.M. Best Company (or similar rating by an equivalent rating company).

92917532

UNOFFICIAL COPY

Property of Cook County Clerk's Office

9.3 Every such policy shall bear a mortgagee endorsement in favor of Mortgagee. All policies shall state that any loss shall be payable in accordance with the policy terms notwithstanding any act or negligence of Mortgagor or Mortgagee. Every policy referred to in this Section shall provide that it shall not be cancelled or modified except after thirty (30) days' written notice to Mortgagee and the policies must contain waiver of subrogation clauses acceptable to the Mortgagee.

9.4 Mortgagor shall deliver to Mortgagee from time to time a written certification of Mortgagor's insurance agent(s) to the effect that the insurance required by this Section is in effect.

9.5 Mortgagee may review the requirements of this Section 9 from time to time in light of the risks to be insured in this transaction and may require such modifications or additions to such requirements as are commercially reasonable. Without limiting the generality of the foregoing, upon Mortgagee's request from time to time, Mortgagor shall, at Mortgagee's sole cost and expense, cause the amount of coverage under the title insurance policy insuring the lien of this Mortgage to be increased to the maximum amount available on a commercially reasonable basis, but in no event more than the fair market value of the Premises.

SECTION 10 TRANSFERS

10.1 Except as provided in the Loan Agreement and in this Section 10, Mortgagor shall not sell, mortgage, encumber, finance, refinance, hypothecate, lease, create interests in, or otherwise transfer all or any part of the Premises or any direct or indirect beneficial interest in Mortgagor or any part of any general partner's or limited partner's interest in Mortgagor without the prior consent of Mortgagee, which consent may be withheld for any reason or no reason.

10.2 Mortgagor covenants and agrees that, during the term of this Mortgage, no lease or sublease of any portion of the Premises or any rentals under any lease, or any rents, issues or profits issuing from the Premises, shall be sold, assigned, transferred, mortgaged, pledged or otherwise disposed of or encumbered, except to Mortgagee or to the holder of any Approved First Mortgage, whether by operation of law or otherwise, without the prior consent of Mortgagee in each instance, and any attempt to do so without such consent shall be null and void.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

2 4 8 7 5 3 2

10.3 In the event that a transfer occurs in violation of Section XII of the Loan Agreement or that the Premises or any portion thereof or interest therein, or any direct or indirect beneficial interest in Mortgagor is sold, transferred or encumbered (voluntarily or involuntarily) without the prior consent of Mortgagee as provided herein (only if such transfer or encumbrance is not otherwise permitted without Mortgagee's consent as provided in the Loan Agreement), Mortgagee, at its sole option, may accelerate the maturity of the Note, in which event all principal, interest and other amounts owing thereunder shall become immediately due and payable together with the premium set forth in the Note for prepayment following an Event of Default.

SECTION 11 ASSIGNMENT BY MORTGAGEE

Mortgagee shall have the right, at its sole cost and expense, to assign, participate, syndicate or transfer any or all of its interest in this Mortgage, including sales through one or more private placements or publicly registered offerings. Mortgagor shall cooperate with Mortgagee to effect such transactions, shall provide such information as may be necessary, and shall execute documentation as requested by Mortgagee in connection therewith, including amendments or restatements of the Loan Documents so long as such amendments or restatements do not alter the essential business terms thereof. Notwithstanding anything to the contrary contained herein, no such assignment by the Mortgagee shall release the Mortgagee from its obligations under the Loan.

SECTION 12 PERMITTED CONTESTS

12.1 Provided that there is then no Event of Default hereunder, Mortgagor shall have the right after giving written notice to Mortgagee and subject to the conditions stated below, to diligently contest in good faith by appropriate legal proceedings the amount or validity of any tax or other charge (except insurance premiums) referred to in the section captioned "Taxes, Assessments and Insurance Premiums; Compliance with Law", any lien referred to in the section captioned "Liens" (subject to the conditions set forth therein), or the application of any Legal Requirement applicable to the Premises or to the use thereof. During the pendency of such legal proceedings, Mortgagor shall not be required to pay any such tax or other charge, discharge any such lien, or comply with any such Legal Requirement provided that the following conditions are satisfied:

(a) The proceedings stay the collection, realization or enforcement of any such tax, other charge, lien, or Legal Requirement;

(b) The delay in any such payment, discharge or compliance does not subject the Premises, or any portion thereof, to possible

92587532

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

2987532

sale, forfeiture, foreclosure or loss (including loss of appeal rights related to such contest);

(c) Any such delay does not subject any sum due hereunder to possible application and satisfaction of any such payment, lien, claim, or compliance;

(d) Any such delay does not subject Mortgagee to the risk of any criminal liability; and

(e) Mortgagor deposits with the holder of any Approved First Mortgage or, if such deposit is not required by such holder, with Mortgagee a sum of money or such other security as Mortgagee deems reasonable to prevent Mortgagee from incurring any loss, cost, expense or damage as a result of any such contest; provided, however, that with respect to any lien referred to in the section captioned "Liens", the Mortgagor shall have the right to cause the title insurer to insure or bond over, to the Mortgagee's satisfaction, (i) mechanic's liens not in excess of \$300,000 in the aggregate (other than liens placed against the Premises by Jerome H. Meyer & Co. which must be addressed in accordance with subclause (ii) below) without depositing cash collateral with the title insurer and (ii) mechanic's liens in excess of \$300,000 in the aggregate and/or liens placed against the Premises by Jerome H. Meyer & Co. provided Mortgagor deposits cash collateral with the title insurer in an amount satisfactory to the title insurer, but not less than the difference between \$300,000 and the total amount of such mechanic liens.

12.2 To the extent not duplicative of the deposit required pursuant to Section 12.1(e), during the pendency of any such proceedings, Mortgagor shall set aside reserves for any such taxes, charges, liens or other matters in such amounts as Mortgagee reasonably determines to be adequate. Mortgagor shall deposit such reserves in a segregated interest-bearing account selected by Mortgagor with Mortgagee's reasonable approval, and so long as there is no Event of Default continuing hereunder, all interest thereon shall be paid to Mortgagor.

12.3 Notwithstanding the foregoing, in the event that Mortgagee determines that the conditions set forth in the foregoing subsections are not satisfied at any time during the pendency of the legal proceedings contemplated by the foregoing subsections then after notice to Mortgagor, Mortgagee may pay any such tax or other charge, discharge any lien, or comply with any Legal Requirement, and Mortgagor shall pay to Mortgagee, on demand, all payments, costs and expenses incurred by Mortgagee in taking any such actions, including, but without limitation, reasonable attorneys' fees and expenses, together with interest from the date of such demand at the rate of fifteen percent (15%) per annum.

92587532

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

12.4 Nothing contained in this Section shall be deemed to limit or restrict Mortgagee's rights under the section captioned "Mortgagee's Right to Cure or Extend".

SECTION 13 LITIGATION

Mortgagor hereby covenants that it shall promptly (and in any event within fifteen (15) days after Mortgagor's own receipt of notice) notify Mortgagee in writing of a pending or threatened (if such threat is contained in a written notice to Mortgagor) suits, or proceedings at law or in equity, or before or by any governmental authority or arbitration panel, which (i) if adversely determined would materially affect the financial integrity or the viability of the Mortgagor or the Premises or, (ii) involve the validity or enforceability of the Obligations or the priority of the lien against the Premises. Mortgagor shall also notify Mortgagee in writing as soon as it has knowledge of any default with respect to any order, writ, injunction, decree or demand of any governmental authority affecting the Mortgagor or the Premises, where such default could materially affect or impair the Mortgagor's financial condition or operation, or the Premises. Mortgagor covenants and warrants that it shall promptly, within fifteen (15) days after delivery or receipt of communications regarding: litigation involving claims in excess of \$15,000 or litigation threatened in a writing received by Mortgagor involving claims in excess of \$15,000, or mechanics' liens, deliver a copy of the same to Mortgagee.

SECTION 14 EVENTS OF DEFAULT

Time is of the essence in the performance of this Mortgage. Each of the following events shall constitute an Event of Default under this Mortgage:

14.1 If Mortgagor shall fail to satisfy any monetary Obligations five (5) business days after the same become due and payable;

14.2 If Mortgagor shall fail to perform or observe the obligations, terms, and conditions of Section 10 hereof or shall fail to maintain insurance of the types and with the limits required by Section 9.1 hereof, or shall fail to make any of the payments required pursuant to Section 3(A).2, or shall fail to cause any lien or notice of claim to be withdrawn, discharged or removed in accordance with Section 4 hereof or contested in accordance with Section 12 hereof or shall fail to give Mortgagee any notice required hereunder within the time provided therefor;

14.3 If Mortgagor shall fail to perform or observe any other non-monetary Obligation, or any other term, condition or covenant of this Mortgage or the Loan Documents, which failure shall continue for thirty (30) days after written notice to Mortgagor;

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

2007532

provided that if Mortgagor has commenced to cure such failure within such cure period and has exercised diligent efforts to effect such cure within such period, such thirty (30) day period shall be extended for a reasonable additional period while such diligent efforts continue, not to exceed an additional ninety (90) days.

14.4 If Mortgagor shall (i) admit in writing that it is unable to pay its debts as such debts become due; (ii) make an assignment for the benefit of its creditors; (iii) file a voluntary petition under Title 11 of the United States Code; (iv) file any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, State or other bankruptcy or insolvency statute or law; or (v) seek or consent to or acquiesce in the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Mortgagor or of all or any substantial part of its properties or of the Premises;

14.5 If (i) within ten (10) days after the commencement of any proceeding against Mortgagor seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, State or other bankruptcy or insolvency statute or law, Mortgagor shall not have moved to dismiss such proceedings or (ii) within ninety (90) days after the commencement of any such proceeding, such proceeding shall not have been dismissed; or (iii) within thirty (30) days after the appointment, without the consent or acquiescence of Mortgagor, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Mortgagor or of all or any substantial portion of its properties or of the Premises, such appointment shall not have been vacated or stayed on appeal or otherwise, or within thirty (30) days after the expiration of any such stay, such appointment shall not have been vacated;

14.6 If a default occurs under the Approved First Mortgage, after giving effect to any applicable notice and cure periods;

14.7 If an Event of Default occurs under any of the Loan documents.

92987532

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

SECTION 15 REMEDIES

15.1 Upon any Event of Default hereunder, Mortgagee shall have all rights and remedies permitted by law including, but not limited to, the following:

(a) Mortgagee shall have such rights and remedies in respect of so much of the Premises as may under applicable law, be personal property, or any part thereof as are provided by the Uniform Commercial Code as in effect in the State of Illinois and such other rights and remedies in respect thereof which it may have at law or in equity or under this Mortgage, including without limitation, the right to take possession of the Premises wherever located and to sell all or any portion thereof at public or private sale, without prior notice to Mortgagor, except as otherwise required by law (and if notice is required by law, after fifteen (15) days' prior written notice), at such place or places and at such time or times and in such manner and upon such terms, whether for cash or on credit, as Mortgagee in its sole discretion may determine. Mortgagee shall apply the proceeds of any such sale first to the payment of the costs and expenses incurred by Mortgagee in connection with such sale or collection, including attorneys' fees and legal expenses, second to the payment of the Obligations in accordance with the terms of the Note.

(b) Mortgagee may take immediate possession of the Premises (which Mortgagor agrees to surrender to Mortgagee) and until a foreclosure sale is made, shall have the right to manage, control and lease the same to such person or persons and at such rental and for such term as Mortgagee may deem proper and to collect all the rents, issues and profits therefrom, including those past due as well as those thereafter accruing, with the right in Mortgagee to cancel any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same; to make such expenditures for maintenance, repairs and costs of operation as it may deem advisable; and after deducting the cost thereof and a reasonable commission not to exceed four percent of the gross amounts of rents collected, to apply the residue to the payment of any sums which are unpaid hereunder or under the Note secured hereby. Taking of possession under this paragraph shall not prevent concurrent or later proceedings for the foreclosure sale of the Premises as provided elsewhere herein. Notwithstanding anything herein contained to the contrary, Mortgagee assumes no obligation to discharge any duty or obligation under any lease nor shall Mortgagee be liable for any acts or failure to act in connection therewith.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(c) the Mortgagee shall also have the right, immediately or at any time thereafter (in Mortgagee's sole discretion), to foreclose this Mortgage. Upon the filing of any complaint for that purpose, the court in which such complaint is filed may, upon application of the Mortgagee or at any time thereafter, either before or after foreclosure sale, and without notice to the Mortgagor or to any party claiming under the Mortgagor and without regard to the solvency or insolvency at the time of such application of any person then liable for the payment of any of the Obligations, without regard to the then value of the Premises or whether the same shall then be occupied, in whole or in part, as a homestead, by the owner of the equity of redemption, and without regarding any bond from the complainant in such proceedings, appoint a receiver for the benefit of the Mortgagee, with power to take possession, charge, and control of the Premises, to lease the same, to keep the buildings thereon insured and in good repair, and to collect all Rents during the pendency of such foreclosure suit and during any period from the end of the redemption period up to and including the date which is thirty (30) days after the confirmation of sale. The court may, from time to time, authorize said receiver to apply the net amounts remaining in his hands, after deducting reasonable compensation for the receiver and his counsel as allowed by the court, in accordance with Section 15.2. This Mortgage may be foreclosed once against all, or successively against any portion or portions, of the Premises, as the Mortgagee may elect, until all of the Premises have been foreclosed against and sold. In case of any foreclosure of this Mortgage (or the commencement of or preparation therefor) in any court, all expenses of every kind paid or incurred by the Mortgagee for the enforcement, protection or collection of this security, including court costs, attorneys' fees, stenographers' fees, costs of advertising, and costs of title insurance and any other documentary evidence of title, shall be paid by the Mortgagor.

(d) Mortgagee may exercise any other remedy specifically granted under any other instrument executed by Mortgagor in connection with this Mortgage or now or hereafter existing in equity, or at law, by virtue of statute or otherwise.

15.2 Subject to the rights of the holder of the Approved First Mortgage, the purchase money proceeds or avails of any foreclosure sale, together with any other sums which then may be held by Mortgagee under this Mortgage whether under the provisions of this Section or otherwise, shall be applied as follows:

(a) First, to the payment of the costs and expenses of such sale, including, without limitation, the fees of Mortgagee's attorneys, and a commission to the party making the sale equal to the commission allowed to the trustees for making the sales of property under orders or decrees of a court having competent jurisdiction;

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(b) Second, to the payment of the Obligations and any other sums required to be paid by Mortgagor to Mortgagee pursuant to any other provision of this Mortgage;

(c) Third, to those persons entitled under the law to receive any remaining funds.

15.3 No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of Mortgagee in exercising any right or power accruing upon any Event of Default shall impair any such rights or power, or shall be construed to be a waiver of any such Event of Default or any acquiescence therein. Every power and remedy given by this Mortgage to Mortgagee may be exercised from time to time as often as may be deemed expedient by Mortgagee.

15.4 Mortgagor covenants not to hinder, delay or impede the execution of any power herein granted to Mortgagee and waives, to the extent that Mortgagor lawfully may, all right to have the Premises or any part thereof marshalled upon any foreclosure hereof.

15.5 All rights and remedies accorded to Mortgagee by this Mortgage and by law are separate and cumulative and not alternative and may be pursued separately, successively or concurrently at Mortgagor's sole option. All covenants hereof shall be construed as affording to Mortgagee rights additional to and not exclusive of the rights conferred under any provision of any applicable state or local law relating to mortgages, or any supplement, amendment or addition thereto.

15.6 In the event this Mortgage is placed in the hands of an attorney for the collection of any sum payable hereunder, Mortgagor agrees to pay all costs of collection, including, without limitation, reasonable attorneys' fees including appeals, without the institution of any action or proceeding, and in addition all costs, disbursements and allowances provided by law.

15.7 Notwithstanding anything contained in this Mortgage, the Mortgagee shall not be obligated to perform or discharge, and does not undertake to perform or discharge, any obligation, duty or liability of the Mortgagor, and the Mortgagor shall and does hereby agree to indemnify against and hold the Mortgagee harmless of and from: any and all liabilities, losses or damages which the Mortgagee may incur or pay by reason of its exercise of rights hereunder; and any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any of the contracts,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

documents or instruments evidencing or creating any of the Personal Property. The Mortgagee shall not have responsibility for the control, care, management or repair of the Premises or be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Premises resulting in loss, injury or death to any tenant, licensee, employee, stranger or other person. No liability shall be enforced or asserted against the Mortgagee in its exercise of the powers herein granted to it, and the Mortgagor expressly waives and releases any such liability. Should the Mortgagee incur any such liability, loss or damage under any of the Leases or under or by reason hereof, or in the defense of any claims or demands, the Mortgagor agrees to reimburse the Mortgagee immediately upon demand for the full amount thereof, including costs, expenses and attorneys' fees.

SECTION 16 MORTGAGEE'S RIGHT TO CURE OR EXTEND

If Mortgagor shall fail to make any payment or perform any act required to be made or performed hereunder, or under the Obligations, Mortgagee, after giving notice to Mortgagor of such failure and without waiving or releasing any obligation or default, may (without becoming liable to Mortgagor or any person in possession holding under Mortgagor, except to the extent of Mortgagee's or its agents' and employees' gross negligence or willful misconduct) at any time thereafter make such payment or perform such act for the account and at the expense of Mortgagor, and may enter upon the Premises for such purpose and take all such action thereon as, in Mortgagee's opinion, may be necessary or appropriate therefor. All sums so paid by Mortgagee and all costs and expenses (including, without limitation, attorneys' fees and expenses) so incurred, together with interest at the rate of fifteen percent (15%) per annum, shall be deemed to be part of the Obligations secured by this Mortgagee and shall be paid by Mortgagor to Mortgagee on demand.

SECTION 17 RELEASE AND DISCHARGE

Mortgagee agrees that, upon demand therefor, and at Mortgagor's expense, it will discharge and release this Mortgage upon the satisfaction of the entire indebtedness secured by the Note (subject to the provisions of Section 1.1 of the Note) and of the obligations, covenants and conditions of the Mortgagor which are set forth in the Loan Documents.

SECTION 18 EXCULPATION OF MORTGAGOR

Except as set forth below and as provided in any guaranty, no trustee, beneficiary, partner, shareholder, director or officer of Mortgagor or any trustee, beneficiary, partner, shareholder, director or officer of a partner of a partner of Mortgagor, and no legal representative, heir or estate of any of the foregoing shall have any personal liability for (i) the payment of any sum of money

33387532

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

7 2 9 8 7 5 3 2

which is or may be payable hereunder or under the Loan Documents, including, but not limited to, the repayment of the indebtedness evidenced by the Note, or (ii) the performance or discharge of any covenants or undertakings of Mortgagor hereunder or under any of the Loan Documents; and, in the enforcement of any of its rights hereunder, Mortgagee shall proceed solely against the assets of Mortgagor from time to time, and any other collateral given as security for payment of the Note or for payment or performance under the Loan Documents, and shall not seek any deficiency judgment.

Nothing contained in this Section shall impair the validity of the indebtedness evidenced by the Note or in any way affect or impair the lien of the Loan Documents or the right of the holder of the Note and the Loan Documents to foreclose on the Loan Documents in accordance with their provisions and to exercise its other rights upon an Event of Default. Nor shall anything contained in this Section be deemed to impede or prejudice the rights of the holder of this Mortgage to recover against any person for:

- (i) knowing misrepresentation or fraud;
- (ii) retention of rents or other income after receipt of a notice of default;
- (iii) application of insurance or condemnation proceeds otherwise than as permitted or required by the terms of the Loan Documents;
- (iv) removal of personal property after receipt of a notice of default; or
- (v) any cost or liability or decrease in value to an amount less than the then outstanding principal balance of the Loan resulting from (a) the presence, release, treatment or removal of any Hazardous Materials at the Property, and/or (b) any environmental liability arising out of the events described in Section 3(B).4 hereof.

The right of Mortgagee to recover pursuant to clause (v) shall survive satisfaction of the Obligations secured hereby.

SECTION 19 EXCULPATION OF MORTGAGEE

Notwithstanding anything to the contrary contained in this Mortgage, no present or future shareholder, director, officer or partner of Mortgagee or of any entity which is now or hereafter a shareholder, director, officer or partner of Mortgagee (or of any entity which is now or hereafter a shareholder, director, officer or partner of a shareholder, director, officer or partner of Mortgagee) shall have any personal liability, directly or indirectly, under or in connection with this Mortgage or any

92987532

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 2 9 8 7 5 3 2

agreement made or entered into under or in connection with the provisions of this Mortgage, or any amendment or amendments to any of the foregoing made at any time or times, heretofore or hereafter, and Mortgagor hereby forever and irrevocably waives and releases any and all such personal liability. In addition, neither Mortgagee nor any successor or assign of Mortgagee shall have at any time or times hereafter any personal liability, directly or indirectly, under or in connection with or secured by any agreement, lease, instrument, encumbrance, claim or right affecting or relating to the Premises or to which the Premises is now or hereafter subject. The limitation of liability provided in this paragraph is in addition to, and not in limitation of, any limitation on liability applicable to Mortgagee provided by law or by any other contract, agreement or instrument.

SECTION 20 SECURITY AGREEMENT

20.1 This instrument shall constitute a "security agreement" within the meaning of the Uniform Commercial Code as in effect in the State of Illinois, with the Mortgagor as debtor (with its address as set forth below) and with the Mortgagee as secured party (with its address as set forth below), with respect to the personal property covered hereby and a security interest shall attach thereto and shall be vested directly in Mortgagee to secure the sums secured by this Mortgage and all other sums and charges which may become due hereunder. Mortgagor, upon request from Mortgagee, agrees to file financing and continuation statements with respect to the personal property, from time to time as necessary to perfect and continue the perfection of Mortgagee's security interest in the personal property. Mortgagor also agrees to execute and deliver such further instruments as Mortgagee may reasonably request to further evidence and secure Mortgagee's interest in the personal property and shall pay all filing fees in connection therewith.

20.2 Trust No. 12599 and Beneficiary warrants that Mortgagor's principal place of business is c/o Ruttenberg & Ruttenberg, 325 West Huron Street, Suite 806, Chicago, Illinois 60610 Attention: David W. Ruttenberg, Esq. and Alan Lev, Esq.

SECTION 21 NOTICES, DEMANDS AND OTHER INSTRUMENTS

Any notice, exercise of option or election, communication, consent, approval, expression of satisfaction, request or other document or demand required or permitted under this Mortgage shall be in writing, and shall be deemed delivered on the earlier of (a) actual receipt, (b) the next business day after the date when sent by Federal Express or another recognized overnight courier or (c) the second business day after the date when sent by registered or certified mail, postage prepaid, addressed as follows:

- (i) To Mortgagee:

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

2007532

To The Address Set Forth
In the Note

With a copy to:

Mayer, Brown & Platt
190 South LaSalle Street
Chicago, Illinois 60603
Attention: John J. Gearen, Esq.
Paul E. Meyer, Esq.

(if) To Mortgagor:

To the Address Set Forth
In the Note

Either party may, from time to time, change the address at which such written notices or elections, communications, requests, or other documents or demands are to be mailed, by giving the other party written notice of such changed address in the manner hereinabove provided.

SECTION 22 ESTOPPEL CERTIFICATES

Mortgagor shall, from time to time, upon twenty (20) days' prior request by Mortgagee, execute, acknowledge and deliver to Mortgagee a certificate stating that this Mortgage is unmodified and in full force and effect (or, if there have been modifications, that this Mortgage is in full effect, as modified, and setting forth such modifications), stating that to the knowledge of the Mortgagor no default exists hereunder or specifying each such default of which the Mortgagor has knowledge, and stating that either no Event of Default has occurred and is continuing hereunder or under the Note or specifying each such Event of Default.

RECORDED

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

2907531

SECTION 23 GOVERNING LAW; SEPARABILITY; BINDING EFFECT

THIS MORTGAGE SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS. Each provision hereof shall be separate and independent and the breach of any such provision by a party hereto shall not discharge or relieve such party from its obligations to perform each and every covenant to be performed by such party hereunder. If any provision hereof or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remaining provisions hereof, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and enforceable to the extent permitted by law. All provisions contained in this Mortgage shall be binding upon, and inure to the benefit of, and be enforceable by, the respective successors and assigns of Mortgagee and Mortgagor to the same extent as if each such successor and assign were named as a part hereto. This Mortgage may not be changed, modified or discharged except by a writing signed by both Mortgagee and Mortgagor.

SECTION 24 HEADINGS

The headings to the various paragraphs and Exhibits of this Mortgage have been inserted for reference only, and shall not to any extent have the effect of modifying, amending or changing the express terms and provisions of this Mortgage.

SECTION 25 WAIVER

The Mortgagor, on behalf of itself and all persons now or hereafter interested in the Premises, voluntarily and knowingly hereby: acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in the Illinois Mortgage Foreclosure Law, Ill. Rev. Stat. Ch. 110, Section. 15-1101 et seq., herein the "Act"), or residential real estate (as defined in the Act); waives, to the fullest extent permitted by applicable law, any and all rights to redemption and any and all other rights and benefits under all present and future appraisement, homestead, moratorium, valuation, exemption, stay, extension, redemption and marshalling statutes, laws or equities now or hereafter existing, and agrees that no defense, claim or right based on any thereof will be asserted, or may be enforced, in any action enforcing or relating to this Mortgage or any of the Premises. Without limiting the generality of the preceding sentence, the Mortgagor, on its own behalf and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date of this Mortgage, hereby irrevocably waives any and all rights of redemption from sale or from or under any order, judgment or decree of foreclosure of this Mortgage or under any power contained herein

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

202007532

or under any sale pursuant to any statute, order, decree or judgment of any court.

26 COMPLIANCE WITH ILLINOIS MORTGAGE FORECLOSURE LAW

26.1 If any provision of this Mortgage is inconsistent with any applicable provision of the Act (as defined above), the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can fairly be construed in a manner consistent with the Act.

26.2 Without in any way limiting or restricting any of Mortgagee's rights, remedies, powers and authorities under this Mortgage, and in addition to all such rights, remedies, powers, and authorities, the Mortgagee shall also have and may exercise any and all rights, remedies, powers and authorities which the holder of a mortgage is permitted to have or exercise under the provisions of the Act, as the same may be amended from time to time. If any provision of this Mortgage shall grant to Mortgagee any rights, remedies, powers or authorities upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with all of the rights, remedies, powers and authorities granted in the Act to the fullest extent permitted by law.

26.3 Without limiting the generality of the foregoing, all expenses incurred by Mortgagee, to the extent reimbursable under Sections 15-1510, 15-1512, or any other provision of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in any other provision of this Mortgage, shall be added to the indebtedness secured by this Mortgage and by the judgment of foreclosure.

92981512

SECTION 27 TRUSTEE EXCULPATION

This Mortgage is executed by the Trustee not individually or personally, but solely as trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such trustee, and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on Trustee personally to perform any covenant, undertaking, representation or agreement, either express or implied, contained herein, all such personal liability of Trustee, if any, being expressly waived by each and every person now or hereafter claiming any right or security under this Mortgage. Trustee hereby represents that it possesses full power and authority to execute and deliver this instrument.

SECTION 28 NO PROPERTY MANAGER'S LIEN

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

2 9 8 7 5 3 2

Any property management agreement for or relating to all or any part of the Premises, whether now in effect (excluding, however, (i) that certain Management Agreement, dated September 28, 1989 by and between Mortgagor and Jerome H. Meyer & Co. and (ii) that certain Parking Facility Management Agreement for Belden Centre, dated July 26, 1990, by and between Standard Parking Corporation and Belden Parking Limited Partnership, an Illinois limited partnership, as assignee) or entered into hereafter by the Trustee or the Borrower or any agent of either of them, with a property manager shall contain a "no lien" provision whereby the property manager forever and unconditionally waives and releases any and all mechanics' lien rights and claims that it or anyone claiming through or under it may have at any time pursuant to any statute of law (including, without limitation, Ill. Rev. Stat., 1985, ch. 32, §1). Such property management agreement or a short form thereof including such waiver shall, at the Mortgagee's request, be recorded with the Office of the Recorder of Deeds for the county in which the Premises are located. In addition, the Mortgagor shall cause all property managers (including, without limitation, those excluded in the parenthetical in the first sentence of this Section 28), to enter into a subordination agreement with the Mortgagee, in recordable form, whereby the property manager subordinates its present and future lien rights and those of any party claiming by, through or under it, to the lien of this Mortgage. The Mortgagor's failure to cause any of the foregoing to occur shall constitute a default under this Mortgage.

SECTION 29 FUTURE ADVANCES

This Mortgage secures all present and future Obligations of the Mortgagor to the Mortgagee. The amount of present Obligations secured hereby is \$9,200,000; the maximum amount, including present and future Liabilities, which may be secured hereby at any one time is \$36,800,000, plus interest, plus any disbursements and taxes and insurance on the Premises, plus interest thereon, and any other sums advanced in accordance with the terms hereof or any of the Loan Documents to protect the security of this Mortgage or any of the Loan Documents.

SECTION 30 LOAN AGREEMENT

To the extent not expressly stated otherwise herein, all of the terms and conditions of the Loan Agreement shall survive the execution of this Mortgage and shall remain in full force and effect; provided, however, to the extent of any inconsistency between the terms and conditions of the Loan Agreement and this Mortgage, the terms and provisions of this Mortgage shall govern and control.

SECTION 31 NO WAIVER

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

02987532

No failure or delay by Mortgagee in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. Without limiting the foregoing, no disbursement by Mortgagee after a default by Borrower hereunder shall constitute a waiver of any of the Mortgagee's remedies established or referred to hereunder or shall obligate Mortgagee to make any further disbursement. No waiver, consent or approval of any kind by Mortgagee shall be effective unless (and it shall be effective only to the extent) expressly set out in a writing signed and delivered by Mortgagee. No notice to or demand on Borrower in any case shall entitle Borrower to any other notice or demand in similar or other circumstances, nor shall such notice or demand constitute a waiver of the rights of Mortgagee to any other or further actions. In its sole discretion, Mortgagee may, at any time and from time to time, waive any one or more of the requirements contained herein, but such waiver in any instance or under any particular circumstances shall not be considered a waiver of such requirement or requirements in any other instance or under any other circumstance.

COOK County Clerk's Office

92587532

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

2907532

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed, and sealed as of the date first above written.

MORTGAGOR:

TRUST NO. 12599:

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but as Trustee under Trust Agreement dated April 18, 1957 and known as Trust No. 12599

BENEFICIARY:

BELDEN CENTRE LIMITED PARTNERSHIP, an Illinois limited partnership

By: ROTZ & Company, an Illinois corporation, sole general partner

By: [Signature]
Name: J. M. [unclear] ASST. SECRETARY
Title: [unclear]

By: [Signature]
Name: David W. Rotz
Title: President

This document was prepared by (and after recording should be returned to):

Paul E. Meyer, Esq.
Mayer, Brown & Platt
190 South LaSalle Street
Chicago, Illinois 60603

COOK County Clerk's Office

99987532

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 2 9 0 7 5 3 2

STATE OF ILLINOIS)
COUNTY OF COOK) SS.

I, E. M. SOVIENSKI, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT personally known to me to be the RICHARD WURLAN ^{VICE} President of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a National Banking Association corporation, as Trustee as aforesaid and Gregory S. KASOBYAN personally known to me to be the ASSISTANT Secretary of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such VICE President and ASSISTANT Secretary of said corporation, they signed and delivered the said instrument pursuant to proper authority duly given by the Board of Directors of said corporation as Trustee as aforesaid, as their free and voluntary act and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

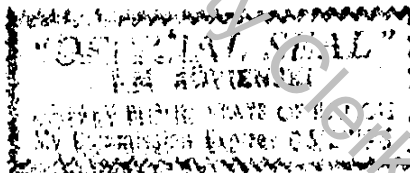
GIVEN under my hand and notarial seal this Dec 23 day of 1992,
19__.

E. M. Sovieniski

Notary Public

[SEAL]

My Commission Expires:



92987532

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

27 7 5 3 2

STATE OF IL)
COUNTY OF Cook) SS.

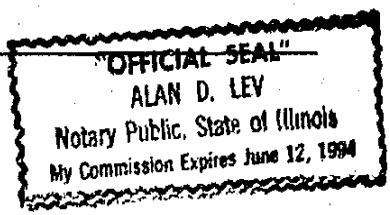
I, Alan D. Lev, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT David W. Potvin personally known to me to be the _____ President of ROTZ & Company, an Illinois corporation, sole general partner of BELDEN CENTRE LIMITED PARTNERSHIP, a limited partnership organized and existing under the laws of the State of Illinois, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such he signed and delivered the said instrument pursuant to proper authority, as his/her free and voluntary act, and as the free and voluntary act and deed of said limited partnership, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 26th day of December, 1992.

Alan D. Lev
Notary Public

[SEAL]

My Commission Expires:



RECORDED

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION OF THE PROJECT

PARCEL 1:

LOT 1 IN FOSTER SUBDIVISION OF THAT PART OF BLOCK 3 LYING SOUTH OF THE EAST AND WEST CENTER LINE OF BLOCKS 2 AND 3 IN CANAL TRUSTEES' SUBDIVISION OF SECTION 33, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOT 8 (EXCEPT THE EAST 126 FEET THEREOF) IN BLOCK 2 IN PETERBORO TERRACE ADDITION TO CHICAGO, BEING A SUBDIVISION OF PART OF BLOCK 2 IN CANAL TRUSTEES' SUBDIVISION OF SECTION 33, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

AN EXCLUSIVE, PERPETUAL EASEMENT FOR THE BENEFIT OF PARCELS 1 AND 2 AS CREATED BY AMENDED AND RESTATED EASEMENT AGREEMENT DATED NOVEMBER 14, 1989 AND RECORDED ON NOVEMBER 15, 1989, AS DOCUMENT NO. 89544441 AND RE-RECORDED NOVEMBER 27, 1989 AS DOCUMENT NO. 89563481 AND SUPPLEMENT TO AMENDED AND RESTATED EASEMENT AGREEMENT RECORDED NOVEMBER 22, 1991 AS DOCUMENT NO. 91616961 FOR:

(i) PURPOSES OF ALLOWING EMPLOYEES, ENGINEERS, ARCHITECTS, CONTRACTORS AND OTHER AGENTS OF THE OWNER OF THE LAND TO CONSTRUCT A SHOPPING CENTER ON THE LAND AND FOR ANY REPAIRS THERETO OR REPLACEMENTS THEREOF,

(ii) DRIVEWAY AND DELIVERY PURPOSES,

(iii) PURPOSES OF VEHICULAR AND PEDESTRIAN INGRESS TO AND EGRESS FROM THE LAND FROM AND TO BELDEN AVENUE,

(iv) PARKING PURPOSES FOR AUTOMOBILES, TRUCKS AND OTHER VEHICLES IN SUCH LOCATIONS THEREON AS THE OWNER OF THE LAND MAY SELECT,

(v) GARBAGE REMOVAL, AND

(vi) FOR OTHER USES CONSISTENT WITH THE FOREGOING AND FOR NO OTHER PURPOSE.

OVER, UPON, ACROSS AND ABOVE (BUT NOT SUBSURFACE EXCEPT AS OTHERWISE PROVIDED IN SAID EASEMENT) THE FOLLOWING DESCRIBED LAND:

92587532

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

2987532

THE WEST 45.0 FEET OF THE EAST 126.0 FEET OF LOT 8 IN BLOCK 2 IN PETERBORO TERRACE ADDITION TO CHICAGO BEING A SUBDIVISION OF PART OF BLOCK 2 IN CANAL TRUSTEES' SUBDIVISION OF SECTION 33, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 4:

NON-EXCLUSIVE, PERPETUAL, SUBSURFACE EASEMENT FOR THE BENEFIT OF PARCELS 1 AND 2 AS CREATED BY AMENDED AND RESTATED EASEMENT AGREEMENT DATED NOVEMBER 14, 1989 AND RECORDED NOVEMBER 15, 1989 AS DOCUMENT NO. 89544441 AND RE-RECORDED NOVEMBER 27, 1989 AS DOCUMENT NO. 89563481 AND SUPPLEMENT TO AMENDED AND RESTATED EASEMENT AGREEMENT RECORDED NOVEMBER 22, 1991 AS DOCUMENT NO. 91616961 FOR AN UNDERGROUND DRIVEWAY EASEMENT FOR VEHICULAR INGRESS TO AND EGRESS FROM UNDERGROUND PARKING GARAGE TO BE CONSTRUCTED ON PARCELS 1 AND 2 FROM AND TO COMMONWEALTH AVENUE OVER, UPON AND ACROSS THE PORTION OF THE UNDERGROUND GARAGE DIRECTLY BENEATH THE FOLLOWING DESCRIBED LAND:

THE SOUTH 19.92 FEET OF THE NORTH 21.0 FEET OF THE EAST 99.0 FEET OF LOT 8 IN BLOCK 2 IN PETERBORO TERRACE ADDITION TO CHICAGO BEING A SUBDIVISION OF PART OF BLOCK 2 IN CANAL TRUSTEES' SUBDIVISION OF SECTION 33, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALSO

THE WEST 20.0 FEET OF THE EAST 99.0 FEET OF THE NORTH 76.0 FEET OF LOT 8 IN BLOCK 2 IN PETERBORO TERRACE ADDITION TO CHICAGO, BEING A SUBDIVISION OF PART OF BLOCK 2 IN CANAL TRUSTEES' SUBDIVISION OF SECTION 33, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALSO

THE SOUTH 18.75 FEET OF THE NORTH 79.78 FEET OF THE WEST 40.0 FEET OF THE EAST 119.0 FEET OF LOT 8 IN BLOCK 2 IN PETERBORO TERRACE ADDITION TO CHICAGO, BEING A SUBDIVISION OF PART OF BLOCK 2 IN CANAL TRUSTEES' SUBDIVISION OF SECTION 33, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

PARCEL 5:

AN EXCLUSIVE, PERPETUAL SUBSURFACE EASEMENT FOR THE BENEFIT OF PARCELS 1 AND 2 AS CREATED BY AMENDED AND RESTATED EASEMENT AGREEMENT DATED NOVEMBER 14, 1989 AND RECORDED NOVEMBER 15, 1989 AS DOCUMENT NO. 89544441 AND RE-RECORDED NOVEMBER 27, 1989 AS DOCUMENT NO. 89563481 AND SUPPLEMENT TO AMENDED AND RESTATED

92987532

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00000000

UNOFFICIAL COPY

297/532

EASEMENT AGREEMENT RECORDED NOVEMBER 22, 1991 AS DOCUMENT NUMBER 91616961 FOR CONSTRUCTION REPAIR, REPLACEMENT, USE AND MAINTENANCE OF THE UNDERGROUND GARAGE TO BE LOCATED AT THE LAND BENEATH THE FOLLOWING DESCRIBED LAND:

THE WEST 7.0 FEET OF THE EAST 126.0 FEET OF LOT 8 IN BLOCK 2 IN PETERBORO TERRACE ADDITION TO CHICAGO, BEING A SUBDIVISION OF PART OF BLOCK 2 IN CANAL TRUSTEES' SUBDIVISION OF SECTION 33, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALSO

THE SOUTH 15.0 FEET OF THE NORTH 76.0 FEET OF THE WEST 2.0 FEET OF THE EAST 120.50 FEET OF LOT 8 IN BLOCK 2 IN PETERBORO TERRACE ADDITION TO CHICAGO, BEING A SUBDIVISION OF PART OF BLOCK 2 IN CANAL TRUSTEES' SUBDIVISION OF SECTION 33, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 6:

AN EXCLUSIVE, PERPETUAL EASEMENT FOR THE BENEFIT OF PARCELS 1 AND 2 AS CREATED BY AMENDED AND RESTATED EASEMENT AGREEMENT DATED NOVEMBER 14, 1989 AND RECORDED NOVEMBER 15, 1989 AS DOCUMENT NO. 89544441 AND RERECORDED NOVEMBER 27, 1989 AS DOCUMENT NO. 89563481 AND SUPPLEMENT TO AMENDED AND RESTATED EASEMENT AGREEMENT RECORDED NOVEMBER 22, 1991 AS DOCUMENT NO. 91616961 OVER, UPON, ACROSS AND ABOVE (BUT NOT SUBSURFACE EXCEPT FOR THE GARAGE EASEMENT PARCEL AND ANY DOWN-RAMP TO THE SHOPPING CENTER GARAGE) THE PORTION OF THE APARTMENT BUILDING PARCEL DESCRIBED AS THE "GARAGE ENTRY EASEMENT PARCEL" BELOW FOR

(i) PURPOSES OF ALLOWING EMPLOYEES, ENGINEERS, ARCHITECTS, CONTRACTORS AND OTHER AGENTS OF THE SHOPPING CENTER TRUST TO CONSTRUCT THE GARAGE ENTRY FOR THE SHOPPING CENTER AND FOR ANY REPAIRS THERETO OR REPLACEMENTS THEREOF,

(ii) REPAIR, REPLACEMENT, USE AND MAINTENANCE OF THE GARAGE ENTRY FOR THE SHOPPING CENTER AND

(iii) PURPOSES OF VEHICULAR AND PEDESTRIAN INGRESS TO AND EGRESS FROM THE SHOPPING CENTER GARAGE FROM AND TO THE DRIVEWAY AND PARKING EASEMENT PARCEL:

GARAGE ENTRY EASEMENT PARCEL

THE WEST 3.00 FEET OF THE EAST 126.0 FEET OF THE NORTH 27.20 FEET OF LOT 8 IN BLOCK 2 IN PETERBORO TERRACE ADDITION TO CHICAGO, BEING A SUBDIVISION OF PART OF BLOCK 2 IN CANAL TRUSTEES' SUBDIVISION OF

92987532

UNOFFICIAL COPY

Faint, illegible text at the top of the page, possibly a header or introductory paragraph.

Property of Cook County Clerk's Office

Faint, illegible text at the bottom of the page, possibly a footer or concluding paragraph.

UNOFFICIAL COPY

922687532

SECTION 33, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 7:

AN EXCLUSIVE, PERPETUAL EASEMENT FOR THE BENEFIT OF PARCELS 1 AND 2 AS CREATED BY AMENDED AND RESTATED EASEMENT AGREEMENT DATED NOVEMBER 14, 1989 AND RECORDED NOVEMBER 15, 1989 AS DOCUMENT NO. 8954441 AND RERECORDED NOVEMBER 27, 1989 AS DOCUMENT NO. 89563481 AND SUPPLEMENT TO AMENDED AND RESTATED EASEMENT AGREEMENT RECORDED NOVEMBER 22, 1991 AS DOCUMENT NO. 91616961 OVER, UPON ACROSS AND ABOVE (BUT NOT SUBSURFACE) THE PORTION OF THE APARTMENT BUILDING PARCEL DESCRIBED AS THE "PARKING SIGN EASEMENT PARCEL" BELOW FOR THE REPAIR, REPLACEMENT, USE AND MAINTENANCE OF THE MONOLITH PARKING SIGN LOCATED THEREON:

PARKING SIGN EASEMENT PARCEL

THE NORTH 3.50 FEET OF THE SOUTH 5.75 FEET OF THE WEST 1.53 FEET OF THE EAST 84.51 FEET OF LOT 8 IN BLOCK 2 IN PETERBORO TERRACE ADDITION TO CHICAGO, BEING A SUBDIVISION OF PART OF BLOCK 2 IN CANAL TRUSTEES' SUBDIVISION OF SECTION 33, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 8:

AN EXCLUSIVE, PERPETUAL EASEMENT FOR THE BENEFIT OF PARCELS 1 AND 2 AS CREATED BY AMENDED AND RESTATED EASEMENT AGREEMENT DATED NOVEMBER 14, 1989 AND RECORDED NOVEMBER 15, 1989 AS DOCUMENT NO. 8954441 AND RERECORDED NOVEMBER 27, 1989 AS DOCUMENT NO. 89563481 AND SUPPLEMENT TO AMENDED AND RESTATED EASEMENT AGREEMENT RECORDED NOVEMBER 22, 1991 AS DOCUMENT NO. 91616961 OVER, UPON, ACROSS AND ABOVE (BUT NOT SUBSURFACE) THE PORTION OF THE APARTMENT BUILDING PARCEL DESCRIBED AS THE "PLANTER EASEMENT PARCEL" BELOW FOR THE REPAIR, REPLACEMENT, USE AND MAINTENANCE OF THE PLANTER LOCATED THEREON:

PLANTER EASEMENT PARCEL

THE WEST 7.00 FEET OF THE EAST 126.0 FEET OF THE NORTH 12.00 FEET OF THE SOUTH 16.90 FEET OF LOT 8 IN BLOCK 2 IN PETERBORO TERRACE ADDITION TO CHICAGO, BEING A SUBDIVISION OF PART OF BLOCK 2 IN CANAL TRUSTEES' SUBDIVISION OF SECTION 33, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 9:

AN EXCLUSIVE, PERPETUAL SUBSURFACE EASEMENT FOR THE BENEFIT OF PARCELS 1 AND 2 AS CREATED BY AMENDED AND RESTATED EASEMENT AGREEMENT DATED NOVEMBER 14, 1989 AND RECORDED NOVEMBER 15, 1989 AS DOCUMENT NO. 8954441 AND RERECORDED NOVEMBER 27, 1989 AS

922687532

UNOFFICIAL COPY

Property of Cook County Clerk's Office

COOK COUNTY CLERK

UNOFFICIAL COPY

2 9 8 7 5 3 2

DOCUMENT NO. 89563481 AND SUPPLEMENT TO AMENDED AND RESTATED EASEMENT AGREEMENT RECORDED NOVEMBER 22, 1991 AS DOCUMENT NO. 91616961 OVER, UPON, ACROSS AND BENEATH THE PORTION OF THE APARTMENT BUILDING PARCEL DESCRIBED AS THE "CABLE TV EASEMENT PARCEL" BELOW FOR THE REPAIR, REPLACEMENT, USE AND MAINTENANCE OF THE CABLE TELEVISION WIRING AND CONTROL BOX, LOCATED THEREON WHICH ENTERS THE APARTMENT BUILDING FROM BELDEN AVENUE, AND SERVES BOTH THE APARTMENT BUILDING AND THE SHOPPING CENTER:

CABLE TV EASEMENT PARCEL

THE NORTH 2.0 FEET OF THE SOUTH 7.0 FEET OF THE WEST 19.0 FEET OF THE EAST 76.08 FEET OF LOT 8 IN BLOCK 2 IN PETERBORO TERRACE ADDITION TO CHICAGO, BEING A SUBDIVISION OF PART OF BLOCK 2 IN CANAL TRUSTEES' SUBDIVISION OF SECTION 33 TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 10:

AN EXCLUSIVE, PERPETUAL SUBSURFACE EASEMENT FOR THE BENEFIT OF PARCELS 1 AND 2 AS CREATED BY AMENDED AND RESTATED EASEMENT AGREEMENT DATED NOVEMBER 14, 1989 AND RECORDED NOVEMBER 15, 1989 AS DOCUMENT NO. 8954441 AND RERECORDED NOVEMBER 27, 1989 AS DOCUMENT NO. 89563481 AND SUPPLEMENT TO AMENDED AND RESTATED EASEMENT AGREEMENT RECORDED NOVEMBER 22, 1991 AS DOCUMENT NO. 91616961 OVER, UPON, ACROSS AND BENEATH THE PORTION OF THE APARTMENT BUILDING PARCEL DESCRIBED AS THE "UNDERGROUND UTILITIES, CONDUIT AND CABLE TV EASEMENT PARCEL" BELOW FOR THE REPAIR, REPLACEMENT, USE AND MAINTENANCE OF CERTAIN UNDERGROUND UTILITIES, CONDUIT AND CABLE T.V. WIRING THEREON:

UNDERGROUND UTILITIES, CONDUIT AND CABLE T.V. EASEMENT PARCEL

THE WEST 49.92 FEET OF THE EAST 126 FEET OF LOT 8 IN BLOCK 2 IN PETERBORO TERRACE ADDITION TO CHICAGO, BEING A SUBDIVISION OF PART OF BLOCK 2 IN CANAL TRUSTEES' SUBDIVISION OF SECTION 33, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 11:

AN EXCLUSIVE, PERPETUAL EASEMENT FOR THE BENEFIT OF PARCELS 1 AND 2 AS CREATED BY AMENDED AND RESTATED EASEMENT AGREEMENT DATED NOVEMBER 14, 1989 AND RECORDED NOVEMBER 15, 1989 AS DOCUMENT NO. 8954441 AND RERECORDED NOVEMBER 27, 1989 AS DOCUMENT NO. 89563481 AND SUPPLEMENT TO AMENDED AND RESTATED EASEMENT AGREEMENT RECORDED NOVEMBER 22, 1991 AS DOCUMENT NO. 91616961 OVER, UPON, ACROSS AND BENEATH THE PORTION OF THE APARTMENT BUILDING PARCEL DESCRIBED AS THE "GARAGE DOOR AND CARD READER EASEMENT PARCEL" BELOW FOR THE REPAIR, REPLACEMENT, USE AND MAINTENANCE OF A GARAGE DOOR BETWEEN

92587532

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

2 9 8 7 5 3 2

THE APARTMENT BUILDING GARAGE AND THE SHOPPING CENTER GARAGE AND A CARD READER SERVING SUCH DOOR LOCATED THEREON:

GARAGE DOOR AND CARD READER EASEMENT PARCEL:

THE SOUTH 2.0 FEET OF THE NORTH 78.0 FEET OF THE WEST 14.0 FEET OF THE EAST 120.50 FEET OF LOT 8 IN BLOCK 2 IN PETERBORO TERRACE ADDITION TO CHICAGO, BEING A SUBDIVISION OF PART OF BLOCK 2 IN CANAL TRUSTEES' SUBDIVISION OF SECTION 33, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 12:

A NON-EXCLUSIVE EASEMENT FOR THE USE FOR THEIR INTENDED PURPOSE OF ALL "FACILITIES", AS DEFINED IN THE SUPPLEMENT EXISTING AS OF OCTOBER 15, 1991 LOCATED IN THE APARTMENT BUILDING PARCEL DESCRIBED BELOW AND CONNECTED TO FACILITIES LOCATED IN THE SHOPPING CENTER PARCEL (AND ANY REPLACEMENTS THEREOF) WHICH PROVIDE THE SHOPPING CENTER PARCEL WITH ANY UTILITIES OR SERVICES OR WHICH MAY OTHERWISE BE NECESSARY TO THE OPERATION OF, USE AND ENJOYMENT OF THE SHOPPING CENTER PARCEL.

APARTMENT BUILDING PARCEL

THE EAST 126 FEET OF LOT 8 IN BLOCK 2 IN PETERBORO TERRACE ADDITION TO CHICAGO, BEING A SUBDIVISION OF PART OF BLOCK 2 IN CANAL TRUSTEES' SUBDIVISION OF SECTION 33, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 13:

AN EXCLUSIVE, PERPETUAL EASEMENT FOR THE BENEFIT OF PARCELS 1 AND 2 AS CREATED BY EASEMENT FOR ENCROACHMENT FOR THE BENEFIT OF PARCELS 1 AND 2 AS CREATED BY GRANT DATED OCTOBER 4, 1991, AND RECORDED MARCH 24, 1992 AS DOCUMENT NO. 92195007 OVER, ON, ACROSS AND ABOVE THE FOLLOWING DESCRIBED LAND.

THAT PART OF THE EAST 0.18 FEET OF LOT 2 IN FOSTER'S SUBDIVISION OF PART OF BLOCK 3 LYING SOUTH OF THE EAST AND WEST CENTER LINE OF BLOCKS 2 AND 3 IN CANAL TRUSTEES' SUBDIVISION OF PART OF SECTION 33, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, WHICH PART LIES SOUTH OF THE NORTH LINE OF LOT 8 AND ITS WESTERLY EXTENSION IN BLOCK 2 IN CANAL TRUSTEES SUBDIVISION OF SECTION 33, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

92987532

UNOFFICIAL COPY

THE BOARD OF SUPERVISORS OF THE COUNTY OF COOK, ILLINOIS, HAS THIS DAY PASSED THE FOLLOWING RESOLUTION:

RESOLUTION NO. 12345

WHEREAS, the Board of Supervisors of Cook County, Illinois, has received a request from the [Name] for the [Purpose]; and

WHEREAS, the Board of Supervisors of Cook County, Illinois, has determined that it is in the best interests of the County to [Action];

Property of Cook County Clerk's Office

AND WHEREAS, the Board of Supervisors of Cook County, Illinois, has determined that it is in the best interests of the County to [Action];

IT IS THE ORDER OF THE BOARD OF SUPERVISORS OF COOK COUNTY, ILLINOIS, THAT [Action];

AND THAT THE COUNTY CLERK OF COOK COUNTY, ILLINOIS, BE AND HE IS HEREBY AUTHORIZED TO [Action];

IN WITNESS WHEREOF, the Board of Supervisors of Cook County, Illinois, has caused this Resolution to be signed and its official seal to be hereunto affixed this [Date] day of [Month], [Year].

BOARD OF SUPERVISORS OF COOK COUNTY, ILLINOIS

UNOFFICIAL COPY

2 9 8 7 5 7 2

COMMON ADDRESS: 2301 N. CLARK STREET AND 350 WEST BELDEN AVENUE,
CHICAGO, ILLINOIS

PIN (PARCELS 1 AND 2): 14-33-106-013
14-33-200-011

Property of Cook County Clerk's Office

92587532

UNOFFICIAL COPY

COOK COUNTY CLERK'S OFFICE

CLERK OF COURT

Property of Cook County Clerk's Office

000000000000

UNOFFICIAL COPY

EXHIBIT B

PERMITTED EXCEPTIONS

Exceptions 1, 8-13, 15, 16 (which shall indicate that such tenants' rights are rights of tenants in possession, as tenants only, with no options to purchase or rights of first refusal), 17-19, 25-29, 32, 37 and 38 on the Title Commitment issued on October 19, 1992 by Near North National Title Corporation and an Intercreditor Agreement and Estoppel dated December 28, 1992 between Mortgagee and John Hancock Mutual Life Insurance Company.

Property of Cook County Clerk's Office

92587532

UNOFFICIAL COPY

Property of Cook County Clerk's Office

500 100 1000