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FIRST AMENDMENT TO AMENDED AND RESTATED  
DEVELOPMENT LOAN AGREEMENT, AMENDED AND RESTATED  
PROMISSORY NOTE, AMENDED AND RESTATED MORTGAGE,  
SECURITY AGREEMENT AND FINANCING STATEMENT,  
AMENDED AND RESTATED SECURITY ASSIGNMENT OF BENEFICIAL  
INTEREST IN LAND TRUST AND AMENDED AND RESTATED  
GUARANTY OF PAYMENT

THIS FIRST AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT LOAN AGREEMENT, AMENDED AND RESTATED PROMISSORY NOTE, AMENDED AND RESTATED MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT, AMENDED AND RESTATED SECURITY ASSIGNMENT OF BENEFICIAL INTEREST IN LAND TRUST AND AMENDED AND RESTATED GUARANTY OF PAYMENT (this "Amendment") is entered into as of February 29, 1992, by and among STANDARD BANK AND TRUST COMPANY, (the "Trustee") not personally but as trustee under a Trust Agreement dated September 3, 1986, and known as Trust No. 10608 (the "Trust"), ORCHARD HILL BUILDING COMPANY, an Illinois general partnership having an office at 6280 Joliet Road, Countryside, Illinois 60525 (the "Maker"), Robert E. Callagher, an individual having an address at 6280 Joliet Road, Countryside, Illinois 60525 (the "Guarantor") and CONTINENTAL BANK N.A., a national association having its principal office at 231 South LaSalle Street, Chicago, Illinois 60697 (the "Bank").

## RECITALS

A. Reference is made to the following documents (the "Loan Documents"):

- a. that certain Amended and Restated Development Loan Agreement, dated as of May 4, 1989 (herein said Amended and Restated Development Loan Agreement, as amended hereby and as may be further amended, supplemented or modified from time to time is referred to herein as the "Loan Agreement") by and between Maker and Bank (any term capitalized, but not defined herein, that is defined in the Loan Agreement, shall have the same meaning for purposes herein as it is given in the Loan Agreement);
- b. that certain Amended and Restated Mortgage, Security Agreement and Financing Statement, of even date with the Loan Agreement (herein said Amended and Restated Mortgage, Security Agreement and Financing Statement, as amended hereby and as may be further amended, supplemented or modified from time to time is called the "Mortgage") by and between Maker and Trustee as mortgagor thereunder and Bank. The Mortgage was recorded in the real property records of Cook County,

COOK COUNTY, ILLINOIS

*Robert E. Callagher*

*Standard Bank and Trust Company*  
*Robert E. Callagher*  
*Continental Bank N.A.*

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Illinois as document 90229829 encumbering certain real property in Cook County, Illinois more particularly described in Exhibit A hereto;

- c. that certain Amended and Restated Promissory Note in the principal face amount of \$1,215,000.00 of even date with the Loan Agreement (herein said Amended and Restated Promissory Note, as amended hereby and as may be further amended, supplemented or modified from time to time is called the "Note"), executed and delivered by Trustee and Maker evidencing Maker's promise to repay the Loan (as that term is defined in the Loan Agreement);
- d. that certain Amended and Restated Guaranty of Payment of even date with the Loan Agreement (herein said Amended and Restated Guaranty of Payment, as amended hereby and as may be further amended, supplemented or modified from time to time is called the "Guaranty"), executed by Guarantor; and
- e. that certain Amended and Restated Security Assignment of Beneficial Interest in Land Trust of even date with the Loan Agreement (herein such Amended and Restated Security Assignment of Beneficial Interest, as amended hereby and as may be further amended, supplemented or modified from time to time is called the "ABI") by Maker as security for the Note and any and all obligation of the Maker under the Loan Papers.

B. The Loan Agreement provides that the Loan was originally to mature on March 1, 1992 but the Maker has now requested that the maturity of the Loan be extended through March 1, 1993.

NOW THEREFORE, in consideration of Ten Dollars (\$10.00) in hand paid, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the various agreements set out herein the parties do hereby agree as follows:

I. On or before March 31, 1992, the Maker will pay to the Bank a non-refundable loan extension fee (the "Extension Fee") of Seven Thousand Three Hundred Five and 12/100 Dollars (\$7,305.12).

II. On or before March 31, 1992 the Maker will pay to the Bank, as prepayment of amounts disbursed under the Loan (the "Paydown") the sum of One Hundred Thousand and 00/100 Dollars (\$100,000.00), which Paydown amount may not be reborrowed.

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111. Subject to payment of the Extension Fee, payment of the Paydown and satisfaction of the conditions set forth in Section XIX of this Amendment the Loan Agreement is hereby amended as follows:

- a. The last physical line of text on page 5 is hereby deleted and replaced with:

"The Loan shall mature on March 1, 1993."

- b. The first grammatical sentence of Section 4(i) on page 6 is deleted in its entirety and replaced with the following:

"(i) An amended and restated promissory note (as it may from time to time be supplemented, modified or otherwise amended, the "Note"), executed by the Borrower and the Trustee, in the principal sum of \$1,215,000.00, payable to the order of the Bank on or before March 1, 1993."

- c. Section 1.11 on pages 4 and 5, Section 5.D on pages 7 and 8 and Section 5.7 on page 13 of the Loan Agreement are deleted in their entirety and replaced with the following new Section 21:

## "ENVIRONMENTAL MATTERS

### SECTION 21

#### 21.1 Definitions.

For purposes of this Section:

1. "Premises" means: the real estate described in Appendix A to this Loan Agreement, including improvements presently and hereafter situated thereon or thereunder, construction material used in such improvements, surface and subsurface soil and water, areas leased to tenants, and all business, uses, and operations thereon.
2. "Environmental Laws" means:
  - a. any present or future federal statute, law, code, rule, regulation, ordinance, order, standard, permit, license, certificate, document or requirement (including consent decrees, judicial decisions and administrative orders) together with all related amendments, implementing regulations and reauthorizations, pertaining to the protection,

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preservation, conservation or regulation of the environment, including, but not limited to: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq. ("CERCLA"); the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq. ("TOSCA"); the Clean Air Act, 42 U.S.C. Section 7401 et seq. and the Clean Water Act, 33 U.S.C. Section 1251 et seq.;

- ii. any present or future state or local statute, law, code, rule, regulation, ordinance, order, standard, permit, license or requirement (including consent decrees, judicial decisions and administrative orders) together with all related amendments, implementing regulations and re-authorizations, pertaining to the protection, preservation, conservation or regulation of the environment;
3. "Hazardous Material" means:
- a. "hazardous substances" as defined by CERCLA;
- b. "hazardous waste" as defined by RCRA;
- c. any hazardous, dangerous or toxic chemical, material, waste pollutant, contaminant or substance ("pollutant") within the meaning of any Environmental law, prohibiting, limiting or otherwise regulating the use, exposure, release, emission, discharge, generation, manufacture, sale, transport, handling, storage, treatment, reuse, presence, disposal or recycling of such pollutant;
- d. any petroleum or crude oil or fraction thereof;
- e. any radioactive material, including any source, special nuclear or by-product material as defined at 42 U.S.C. Section 2011 et seq., and amendments thereto and re-authorizations thereof;
- f. asbestos-containing materials in any form or condition; and
- g. polychlorinated biphenyls ("PCBs") in any form or condition.

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4. "Environmental Actions" means:
- a. any notice of violation, complaint, claim, citation, demand, inquiry, report, action, assertion of potential responsibility, lien, encumbrance, or proceeding regarding the Premises, whether formal or informal, absolute or contingent, matured or unmatured, brought or issued by any governmental unit, agency, or body, or any person or entity respecting:
    - (i) Environmental laws;
    - (ii) the environmental condition of the Premises, or any portion thereof, or any property near the Premises, including actual or alleged damage or injury to humans, public health, wildlife, biota, air, surface or subsurface soil or water, or other natural resources; or
    - (iii) the use, exposure, release, emission, discharge, generation, manufacture, sale, transport, handling, storage, treatment, reuse, presence, disposal or recycling of Hazardous Material either on the Premises or off-site;
  - b. any violation or claim of violation by Borrower of any Environmental Law whether or not involving the Premises;
  - c. any Lien for damages caused by, or the recovery of any costs incurred by any person or governmental entity for the investigation, identification or cleanup of any release or threatened release of Hazardous Material; or
  - d. the destruction or loss of use of property or the injury, illness or death of any officer, director, employee, agent, representative, tenant or invitee of Borrower or any other person alleged to be or possibly to be, arising from or caused by the environmental condition of the Premises or the release, emission or discharge of Hazardous Materials from the Premises.

## 4.1.2 Representations and Warranties.

Borrower hereby represents and warrants to Bank that:

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1. Compliance. To the best of Borrower's knowledge based on all appropriate and thorough inquiry and except as described in writing to the Bank, the Premises and Borrower have been and are currently in compliance with all Environmental Laws. There have been, to the best of Borrower's knowledge based on all appropriate and thorough inquiry, no past, and there are no pending or threatened, Environmental Actions to which Borrower is a party or which relate to the Premises. All required governmental permits and licenses are in effect, and Borrower is in compliance therewith. Borrower has not received any notice of any Environmental Action respecting Borrower, the Premises or any off-site facility to which has been sent any Hazardous Material for off-site treatment, recycling, reclamation, reuse, handling, storage or disposal.
2. Absence of Hazardous Material. No use, exposure, release, emission, discharge, generation, manufacture, sale, handling, reuse, presence, storage, treatment, transport, recycling or disposal of Hazardous Material has, to the best of Borrower's knowledge based on all appropriate and thorough inquiry, occurred or is occurring on or from the Premises except in compliance with Environmental Laws and as described in writing to the Bank ("Hazardous Material"). The term "released" shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or dispersing into the environment (including the abandonment or discarding of barrels, containers and other receptacles containing any Hazardous Material). To the best of Borrower's knowledge based on all appropriate and thorough inquiry, all Hazardous Material used, treated, stored, transported to or from, generated or handled on the Premises has been disposed of on or off the Premises in a lawful manner. To the best of Borrower's knowledge based on all appropriate and thorough inquiry, no environmental, public health or safety hazards currently exist with respect to the Premises. To the best of Borrower's knowledge based on all appropriate and thorough inquiry, no underground storage tanks (including but not limited to petroleum or heating oil storage tanks) are present on or under the Premises except as has

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been disclosed in writing to Bank ("Disclosed Tanks").

## 21.3 Borrower's Covenants.

Borrower hereby covenants and agrees with Bank as follows:

1. **Compliance.** The Premises and Borrower shall comply with all Environmental Laws. All required governmental permits and licenses shall be obtained and maintained, and Borrower shall comply therewith. All Hazardous Material on the Premises will be disposed of in a lawful manner without giving rise to liability under any Environmental Laws. Borrower will satisfy all requirements of applicable Environmental Laws for the registration, operation, maintenance, closure and removal of all underground storage tanks on the Premises, if any. Without limiting the foregoing, all Hazardous Material shall be handled in compliance with all applicable Environmental Laws.
2. **Absence of Hazardous Material.** Other than Disclosed Material, no Hazardous Material shall be introduced to or used, exposed, released, emitted, discharged, spilled, manufactured, sold, transported, handled, stored, treated, stored, presented, disposed of or recycled on the Premises without thirty (30) days prior written notice to Bank.
3. **Environmental Actions and Right to Consent.** Borrower shall immediately notify Bank of all Environmental Actions and provide copies of all written notices, complaints, correspondence and other documents relating thereto within two business days of receipt, and Borrower shall keep Bank informed of all responses thereto. Borrower shall promptly cure and have abated with a permanent satisfactory to Bank and Borrower shall keep the Premises free of any encumbrance arising from any judgment, liability or lien imposed pursuant to any Environmental Actions. Notwithstanding the foregoing sentence, Borrower may, diligently, in good faith and by appropriate legal proceedings, contest such proceedings provided: (i) Borrower first furnishes to Bank such deposits or other collateral as Bank, in its sole discretion, deems sufficient to fully protect Bank's interests; (ii)



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such contest shall have the effect of preventing any threatened or pending sale or forfeiture of all or any portion of the Premises or the loss or impairment of Bank's lien and security interests in and to the Premises; and (iii) such contest will not cause Bank to incur any liability, in Bank's sole judgment. Borrower shall permit Bank, at Bank's option, to appear in and to be represented in any such contest and shall pay upon demand all expenses incurred by Bank in so doing, including attorneys' fees.

4. Future Environmental Audits. Borrower shall provide such information and certification which Bank may reasonably request from time to time to monitor Borrower's compliance with this Section for the sole purpose of protecting Bank's security interest. To protect its security interest, Bank shall have the right, but not the obligation, at any time to enter upon the Premises, take samples, review Borrower's books and records, interview Borrower's employees and officers, and conduct such other activities as Bank, at its sole discretion, deems appropriate. Borrower shall cooperate fully in the conduct of such an audit. If Bank decides to conduct such an audit because of (i) an Environmental Action; (ii) Bank's considering taking possession of or title to the Premises after default by Borrower; (iii) a material change in the use of the Premises which, in Bank's opinion, increases the risk to its security interest; or (iv) the introduction of Hazardous Material other than enclosed Material to the Premises, then Borrower shall pay upon demand all costs and expenses connected with such audit, directly and indirectly, and shall bear interest at the default rate (as that term is defined in the Note). Nothing in this Section shall give or be construed as giving Bank the right to direct or control Borrower's actions in compliance with environmental laws.

5. Event of Default and Opportunity to Cure. If Borrower fails to comply with any of its covenants contained in this Section 13 within thirty (30) days after notice by Bank to Borrower, Bank may, at its option, declare an Event of Default. If, however, the noncompliance cannot, in Bank's reasonable determination, be corrected within such thirty (30) day period, and if Borrower has

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promptly commenced and diligently pursued action to cure such noncompliance to Bank's satisfaction, then borrower shall have such additional time as is reasonably necessary to correct such noncompliance, provided Borrower continues to diligently pursue corrective action, but in no event more than a total of one hundred eighty (180) days after the initial notice of noncompliance by Bank.

## 11.4 Bank's Right to Rely.

Bank is entitled to rely upon Borrower's representations, warranties and covenants contained in this Section despite any independent investigations by Bank or its consultants. The Borrower shall take all necessary actions to determine for itself, and to remain aware of, the environmental condition of the Premises. Borrower shall have no right to rely upon any independent environmental investigations or findings made by Bank or its consultants unless otherwise stated in writing therein and agreed to in writing by Bank.

## 11.5 Indemnification.

The term "Bank's Environmental Liability" shall mean any and all losses, liabilities, obligations, penalties, claims, fines, lost profits, demands, litigation, defenses, costs, judgments, suits, proceedings, damages (including consequential, punitive and exemplary damages), settlements or expenses of any kind or nature whatsoever (including attorneys' fees at trial and appellate levels and expert's fees and disbursements and expenses incurred in investigating, defending against, settling or prosecuting any suit, litigation, claim or proceeding) which may at any time be either directly or indirectly imposed upon, incurred by or asserted or awarded against Bank or any of Bank's parent and subsidiary corporations and their affiliates, shareholders, directors, officers, employees, and agents (collectively, Bank's "Affiliates") in connection with or arising from:

1. any Hazardous Material used, exposed, emitted, released, incinerated, generated, manufactured, sold, transported, handled, stored, treated, reused, presented, disposed of or recycled on, in or under all or any portion of the Premises, or any surrounding areas;

11.544 (Rev. 11/92) 12/91

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1. any misrepresentation, inaccuracy or breach of any warranty, covenant or agreement contained or referred to in this Section;
2. any violation, liability or claim of violation or liability, under any Environmental Laws;
3. the imposition of any Lien for damages caused by, or the recovery of any costs incurred for the cleanup of, any release or threatened release of Hazardous Material; or
4. any Environmental Actions.

Borrower shall indemnify, defend (at trial and appellate levels and with counsel, experts and consultants acceptable to Bank and at Borrower's sole cost) and hold Bank and its Affiliates free and harmless from and against Bank's Environmental Liability (collectively, "Borrower's Indemnification Obligations"). Borrower's Indemnification Obligations shall survive in perpetuity with respect to any Bank's Environmental Liability.

Borrower and its successors and assigns hereby waive, release and agree not to make any claim or bring any cost recovery action against Bank under or with respect to any Environmental Laws. Borrower's obligation to Bank under this indemnity shall likewise be without regard to fault on the part of Borrower or Bank with respect to the violation or condition which results in liability to Bank."

17. Subject to payment of the Extension Fee, payment of the Paydown and the satisfaction of the conditions set forth in Section XIX of this Amendment, the Note is hereby amended as follows:

1. The carryover paragraph on the second physical page of the Note is hereby deleted in its entirety and replaced with:

"provided, however, that if not sooner paid, the entire balance of principal and interest evidenced by this note shall be due and payable on March 1, 1993 (the "payment date")."

18. Subject to payment of the Extension Fee, payment of the Paydown and the satisfaction of the conditions set forth in

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Section XIX of this Amendment, the Mortgage is hereby amended as follows:

- a. The third grammatical paragraph on the first physical page of the Note is hereby deleted in its entirety and replaced with:

"WHEREAS, Mortgagor is justly indebted to the Mortgagee for the principal sum of One Million Two Hundred and Fifteen Thousand Dollars (\$1,215,000.00) which indebtedness is represented by an amended and restated promissory note (as it may be supplemented, modified or otherwise amended, the "Note") for said Loan Amount, bearing even date herewith, payable to the order of Mortgagee and delivered, due and payable as provided in said Note, with the final payment on indebtedness term due and payable, if not sooner paid, on March 1, 1993; and"

- b. Appendix A of the Mortgage is hereby amended by replacing:

"1. The loan of real estate taxes not yet due and payable for 1991 and subsequent years."

with:

"1. Real Estate taxes for 1991 and subsequent years not yet due and payable."

VI. Subject to payment of the Extension Fee, payment of the Pay Loan and satisfaction of the conditions set forth in Section XIX of this Amendment, the ABI is hereby amended as follows:

Section 1 of the ABI is amended by replacing, on the second physical line of the second physical page, the date

"March 1, 1992"

with the date

"March 1, 1993".

VII. Subject to payment of the Extension Fee, payment of the Pay Loan and the satisfaction of the conditions set forth in Section XIX of this Amendment, all references in the Loan Agreement, the Note, the Mortgage, the ABI and the Guaranty to the date by which the principal amount of the loan or the Note is

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due and payable or other references to the maturity date of the loan are hereby deleted and replaced with March 1, 1993.

VIII. A. Subject to payment of the Extension Fee, payment of the Paydown and the satisfaction of the conditions set forth in Section XIX of this Amendment, the Mortgage is hereby amended by replacing Sections 2 and 3 in their entirety with the following language:

## "1. Insurance

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

- A. All Risk. Insurance against loss to the Premises which during construction shall be on an "All Risk" perils "Builders' Risk", non-reporting "Completed Value" form and after completion of construction shall be on an "All Risk" policy form, in each case, covering insurance risks no less broad than those covered under a Standard Multi Peril (SMI) policy form, which contains a 1987 Commercial 177 "Causes of Loss - Special Form", including theft, and insurance against such other risks as Mortgagee may reasonably require, including, but not limited to, insurance covering the cost of demolition of undamaged portions of any portion of the Premises when required by code or ordinance, the increased cost of reconstruction to conform with current code or ordinance requirements and the cost of debris removal. In addition, during construction such policies shall cover real estate property taxes; architect, engineer's, and consultant fees; legal and accounting fees, including, but not limited to, the cost of in-house attorneys and paralegals; advertising and promotional expenses; interest on money borrowed; additional commissions incurred upon renegotiating leases and any and all other expenses which may be incurred as a result of any property loss or destruction by an insured. Such policies shall be in amounts equal to the full replacement cost of the Premises (other than the Real Estate), including all fixtures, equipment, construction materials and personal property on and off site, and Mortgagor's interest in any household improvements. Such policies shall also

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contain a 10% co-insurance clause with an agreed amount endorsement (with such amount to include the replacement cost of the foundation and any underground pipes), a permission to occupy endorsement and deductibles which are in amounts acceptable to Mortgagee.

- B. Boiler and Machinery. Upon completion, broad form boiler and machinery insurance including business interruption extra expense and rent and rental value insurance, on all equipment and objects customarily covered by such insurance and/or involved in the heating, cooling, electrical and mechanical systems of the Premises (if any are located at the Premises), providing for full repair and replacement cost coverage, and other insurance of the types and in amounts as Mortgagee may reasonably require, but in no event less than that customarily carried by persons owning or operating like properties.
- C. Workers' Compensation. During the construction of (or making of any alterations or improvements to) the Premises, (i) insurance covering claims based on the owner's or employer's contingent liability not covered by the insurance provided in subsection (1) below and (ii) workers' compensation insurance covering all persons engaged in such alterations or improvements.
- D. Flood. Insurance against loss or damage by flood or surfsite in compliance with the Flood Disaster Protection Act of 1973, as amended from time to time, if the Premises are now, or at any time while the liabilities remain outstanding shall be, situated in any area which an appropriate governmental authority designates as a special flood hazard area, Zone A or Zone V, in amounts equal to the full replacement value of all above-grade structures on the Premises.
- E. Earthquake. Insurance against loss or damage by earthquake, if the Premises are now, or at any time while the liabilities remain outstanding shall be, situated in any area which is classified as a Major Damage Zone, Zones 2 and 3, by the International Conference of Building Officials in an amount equal to the probable maximum loss for the Premises, fixtures and equipment, plus the cost of debris removal.

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F. Public Liability. Commercial general public liability insurance against death, bodily injury and property damage arising in connection with the Premises. Such policy shall be written on a 1986 standard ISO occurrence basis form or equivalent form, shall list Mortgagee as the named insured, shall designate thereon the location of the Premises and have such limits as Mortgagee may reasonably require, but in no event less than \$1,000,000. Mortgagee shall also obtain excess umbrella liability insurance with such limits as the Mortgagee may reasonably require, but in no event less than \$10,000,000.

Contractor's Insurance. During the entire period of any additional construction or repairs performed on the Premises, Mortgagee shall cause to be furnished to Mortgagee certification from the insurance carrier for each general contractor and subcontractors' compensation, employers' liability, commercial auto liability, excess umbrella liability coverage and commercial general liability insurance (including contractual liability and completed operations coverage) written on a 1986 standard "ISO" occurrence basis form or its equivalent, with general liability insurance limits as Mortgagee may reasonably require, but in no event less than \$10,000,000. Mortgagee shall be named as an additional insured under such liability policies. Mortgagee shall cause each subcontractor to maintain commercial general liability, commercial automobile liability, workers' compensation, employers' liability, and excess umbrella liability coverage in form and amount satisfactory to Mortgagee.

H. Other Insurance. Such other insurance relating to the Premises and the use and operation thereof, as Mortgagee may, from time to time, reasonably require, including, but not limited to, fire, theft, products liability and non-owned aircraft.

I.2 Policy Requirements. All insurance shall: (i) be carried in companies with a Best's rating of AXX or better, or otherwise acceptable to Mortgagee; (ii) in form and content acceptable to Mortgagee; (iii) provide thirty (30) days' advance written notice to Mortgagee before any cancellation, adverse material modification or notice of non-renewal; and (iv) to the extent limits are not

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otherwise specified herein, contain deductibles which are in amounts acceptable to Mortgagee.

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

4.3 Delivery of Policies. Any notice pertaining to insurance and required pursuant to this Section 4.3 shall be given in the manner provided herein at Mortgagee's address stated above (Attention: Joseph C. Peck). The insurance shall be evidenced by the original policy or a true and certified copy of the original policy, or, in the case of liability insurance, by certificates of insurance. Mortgagor shall use its best efforts to deliver originals of all policies and renewals (or certificates evidencing the same), marked "paid", (or evidence satisfactory to Mortgagee of the continuing coverage) to Mortgagee at least fifteen (15) days before the expiration of existing policies and, in any event, Mortgagor shall deliver originals of such policies or certificates to Mortgagee at least five (5) days before the expiration of existing policies. If Mortgagee has not received satisfactory evidence of such renewal or substitute insurance in the time frame herein specified, Mortgagee shall have the right, but not the obligation, to purchase such insurance for Mortgagee's interest only. Any amounts so disbursed by Mortgagee pursuant to this Section shall be a part of the liabilities and shall bear interest at the default interest rate provided in



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the Note. Nothing contained in this Section shall require Mortgagee to incur any expense or take any action hereunder, and inaction by Mortgagee shall never be considered a waiver of any right accruing to Mortgagee on account of this Section.

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

3.5 Insurance Review. At Mortgagee's option, but not more often than annually, Mortgagor shall provide Mortgagee with a report from an independent insurance consultant of regional or national prominence acceptable to Mortgagee, certifying that Mortgagor's insurance is in compliance with this Section 3.

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

3.7 Application of Proceeds. If all or any part of the Premises shall be damaged or destroyed by fire or other casualty or shall be damaged or taken through the exercise of the power of eminent domain or other such cause, Mortgagor shall promptly and with all due diligence restore and repair the Premises whether or not the net insurance proceeds, award or other compensation

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(collectively, the "Proceeds") are sufficient to pay the cost of such restoration or repair. Mortgagee may require that all plans and specifications for such restoration or repair be submitted to and approved by Mortgagee in writing prior to commencement of the work. At Mortgagee's election, to be exercised by written notice to Mortgagor within thirty (30) days following Mortgagee's unrestricted receipt in cash or the equivalent thereof of the Proceeds, the entire amount of the Proceeds, shall either: (i) be applied to the liabilities in such order and manner as Mortgagee may elect or (ii) be made available to Mortgagor on the terms and conditions set forth in this Section 3.7 to finance the cost of restoration or repair with any excess to be applied to the liabilities in the inverse order of priority. Any application of the Proceeds to reduce the liabilities shall constitute a voluntary prepayment subject to any prepayment premiums or fees provided in the Note or other documents evidencing the liabilities. Mortgagee may apply the Proceeds to such prepayment premiums or fees. If the amount of the Proceeds to be made available to Mortgagor pursuant to this Section 3.7 is less than the cost of the restoration or repair as estimated by Mortgagee at any time prior to completion thereof, Mortgagee shall cause to be deposited with Mortgagee the amount of such deficiency within thirty (30) days of Mortgagee's written request thereof (but in no event later than the commencement of the work) and Mortgagee's deposited funds shall be disbursed prior to the proceeds. If Mortgagee is required to deposit funds under this Section 3.7, the deposit of such funds shall be a condition precedent to Mortgagee's obligation to disburse the Proceeds held by Mortgagee hereunder. The amount of the Proceeds which is to be made available to Mortgagor, together with any deposits made by Mortgagee hereunder, shall be held by Mortgagee to be disbursed from time to time to pay the cost of repair or restoration either, at Mortgagee's option, to Mortgagor or directly to contractors, subcontractors, material suppliers and other persons entitled to payment in accordance with and subject to such conditions to disbursement as Mortgagee may impose to assure that the work is fully completed in a good and workmanlike manner and paid for and that no liens or claims arise by reason thereof. Mortgagee may require (i)

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evidence of the estimated cost of completion of such restoration or repair satisfactory to Mortgagee and (ii) such architect's certificates, waivers of lien, contractors' sworn statements, title insurance endorsements, plats of survey and other evidence of cost, payment and performance acceptable to Mortgagee. If Mortgagee requires mechanics' and materialmen's lien waivers in advance of making disbursements, such waivers shall be deposited with an escrow trustee acceptable to Mortgagee pursuant to a construction loan escrow agreement satisfactory to Mortgagee. No payment made prior to final completion of the repair or restoration shall exceed ninety percent (90%) of the value of the work performed from time to time. Mortgagee may commingle any such funds held by it with its other general funds. Mortgagee shall not be obligated to pay interest in respect of any such funds held by it nor shall Mortgagee be entitled to a credit against any of the liabilities except and to the extent the funds are applied thereto pursuant to this Section 4.7. Without limitation of the foregoing, Mortgagee shall have the right at all times to apply such funds to the cure of any default or the performance of any obligations of Mortgagor under the Note, or any of the Loan Papers."

4. [intentionally deleted]"

P. Subject to payment of the Extension Fee, payment of the Paydown and the satisfaction of the conditions set forth in Section XIX of this Amendment, the Loan Agreement is hereby amended by deleting Section 12.2 in its entirety, and replacing it with:

"Borrower agrees to furnish copies of insurance policies and certificates of insurance in companies, coverages and amounts as set forth in Section 12.2 of the Mortgage."

13. Subject to payment of the Extension Fee, payment of the Paydown and the satisfaction of the conditions set forth in Section XIX of this Amendment, the Loan Agreement is hereby amended by adding the following Section 22:

"22. The Borrower hereby represents and warrants:

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that there are no suits, actions or proceedings pending or threatened against the Borrower, any of its partners, shareholders or affiliates or guarantors of the Loan, if any, including but not limited to suits, actions or proceedings under the Racketeer Influenced and Corrupt Organizations Act of 1970 or any other federal or state law, for which forfeiture of assets is a potential penalty.

The Borrower agrees that the filing of formal charges, by any governmental or quasi governmental entity, including, without limitation, the issuance of an indictment, under any federal or state law, including without limitation, the Racketeer Influenced and Corrupt Organizations Act of 1970, for which forfeiture of assets is a potential penalty against Borrower, any of its partners, shareholders or affiliates, or guarantors of the Loan, if any shall, constitute an Event of Default under the Loan Agreement and no grace or cure period shall apply to such event of default.

XI. Subject to payment of the Extension Fee, payment of the Paydown and the satisfaction of the conditions set forth in Section XIX of this Amendment, the Loan Agreement is hereby amended by adding the following Section 23:

"23. The Borrower represents and warrants to the Bank for so long as any of the Loan remains outstanding that the Borrower is not an "employee benefit plan" (within the meaning of section 3(3) of ERISA) to which ERISA applies and the Borrower's assets do not constitute assets of any such plan. "ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time."

XII. Subject to payment of the Extension Fee, payment of the Paydown and the satisfaction of the conditions set forth in Section XIX of this Amendment, the Mortgage is hereby amended by adding the following Section 6a:

"6a. Notwithstanding anything in the Mortgage to the contrary:

2. The Mortgagor acknowledges Mortgagor's right to obtain a new appraisal (or update of an existing appraisal) at any time while the loan or any portion thereof remains outstanding, (a) when, in Mortgagor's reasonable judgment, such an appraisal is

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warranted as a result of Mortgagee's internal evaluation of the subject loan (at a minimum, a reappraisal will be required three years from the date of value cited in the original appraisal report), and/or (b) to comply with statutes, rules, regulations, or directives of governmental agencies having jurisdiction over Mortgagee.

2. The Mortgagor hereby agrees to pay, upon demand, all appraisers' fees and related expenses incurred by Mortgagee from time to time in obtaining appraisal reports."

XII. Subject to payment of the Extension Fee, payment of the Paydown and the satisfaction of the conditions set forth in Section XIX of this Amendment, the Note is hereby amended by inserting the following language before the first full paragraph on page 4 of the Existing Promissory Note:

"1. Continental shall reasonably determine that the application or adoption of any law, rule, regulation, directive, interpretation, treaty or guideline regarding capital adequacy, or any change therein or in the interpretation or classification thereof, whether or not having the force of law (including, without limitation, application of changes to Regulation H and Regulation Z of the Federal Reserve Board issued by the Federal Reserve Board on January 19, 1989 and Regulations of the Comptroller of the Currency, Department of the Treasury, 12 CFR Part 4, Appendix A, issued by the Comptroller of the Currency on January 17, 1989) increases the amount of capital required or expected to be maintained by Continental or any Person (defined for purposes hereof as an individual, partnership, corporation, trust, joint venture, joint stock company, association, unincorporated organization, government or agency or political subdivision thereof or other entity) controlling Continental, and such increase is based upon the existence of Continental's obligations hereunder and other commitments of such type, then from time to time, within 10 days after demand from Continental, the undersigned shall pay to Continental such amount or amounts as will compensate Continental or such controlling Person, as the case may be, for such increased capital requirement. The determination of any amount to be paid by the undersigned under this paragraph shall take into consideration the policies of Continental or any Person controlling Continental with respect to capital adequacy and shall be based upon any reasonable averaging, attribution and allocation methods. A certificate of Continental setting forth the amount or amounts as shall be necessary to compensate Continental as

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specified in this paragraph shall be delivered to Maker and shall be conclusive in the absence of manifest error."

XIII. The Trustee and Maker expressly agree and understand that this Amendment shall not be construed as a novation of the Mortgage.

XIV. The Trustee and Maker confirm for the benefit of the Bank that the Mortgage, as amended hereby, secures the payment of principal of and interest on the Note and any and all other of Maker's obligations to the Bank under any and all liabilities, direct or contingent, that may now or hereafter become owing to the Bank under the Mortgage and the Loan Papers (as that term is defined in the Loan Agreement).

XV. All references in the Loan Agreement, the Note, the Mortgage, the Guaranty or the ABL to the Loan Agreement, the Note, the Mortgage, the Guaranty or the ABL shall hereinafter refer to said documents as respectively amended hereby and as each may be further amended, supplemented or modified from time to time.

XVI. Each of the parties hereto reaffirms, ratifies and confirms all of the terms, conditions, agreements and provisions set forth in each of the Loan Agreement, the Note, the Mortgage, the Guaranty and the ABL as hereby amended, to which it is a party. Without limitation of the foregoing, the Maker specifically reaffirms, ratifies and confirms Section 33 of the Mortgage and the first grammatical paragraph on page 4 of the Note.

XVII. To induce the Bank to enter into this Amendment, the Maker warrants to the Bank that:

a. **Authorization No Conflict.** The execution and delivery of this Amendment, the borrowings as evidenced by the Loan Agreement and the Note and as secured by the Mortgage and the ABL (all as amended hereby), and the performance by the Maker of its obligations under this Amendment are within the Maker's partnership powers, have been duly authorized by all necessary partnership and corporate action, have received all necessary governmental approval (if any shall be required) and do not and will not contravene or conflict with any provision of law, the partnership agreement of the Maker, or of any other agreement binding upon the Maker or its general partner.

b. **Validity and Binding Nature.** This Amendment is the legal, valid and binding obligation of the Maker enforceable against the Maker in accordance with its terms. The following previously submitted documents continue to be

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will and complete: Certified Copy of Trust Agreement 1999, showing Orchard Hill Building Company as the Beneficial owner.

XXIII. To induce the Bank to enter into this Amendment, the Guarantor warrants to the Bank that:

a. *Authorization; No conflict.* The execution and delivery of this Amendment, the Guaranty of the Maker's borrowings as evidenced by the Note (all as amended hereby) and the performance by the Guarantor of its obligations under the Guaranty are within the Guarantor's powers, have received all necessary governmental approval (if any shall be required) and do not and will not contravene or conflict with any provision of law or of any other agreement binding upon the Guarantor.

b. *Validity and Binding Nature.* This Amendment is the legal, valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms.

XXIV. On or before March 31, 1999, the Maker will also deliver the following, all in form and substance satisfactory to the Bank:

a. An opinion of counsel for the Maker and the Guarantor addressing, among other things, the enforceability of this Amendment, as well as compliance with usury laws.

b. The letter of direction authorizing the Trustee to execute this Amendment.

c. Certification by the Trustee as to current beneficial interest and parties holding power of direction with respect to the Trust.

d. At the option of the Bank, promptly and at the request of the Bank, a copy of any and all documents with respect to this Trust executed by the Trustee, all of the foregoing to be certified as true and correct by the Trustee.

e. A letter from Maker certifying that there have been no changes to Maker's partnership documents from those previously delivered to the Bank.

f. An endorsement or endorsements to the lender's title policy named pursuant to the Mortgage relating the policy and all endorsements thereto to the date hereof reserving the priority of the Mortgage, as amended hereby,

11.5.99 10:21 AM







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## CERTIFICATION BY TRUSTEE

The undersigned Trustee represents that, as disclosed by its records as of the date hereof, the Wife identified in the foregoing Amendment is the sole owner of 100% of the beneficial interest in the aforementioned Trust, subject to no liens, charges, encumbrances, collateral assignments, security interests or exceptions of any kind whatsoever other than the ABI (as defined in the foregoing Amendment) and the encumbrances referred to in the ABI, and that the Trust Agreements for said Trusts have not been amended since May 4, 1990.

TRUSTEE:

STANDARD FARM AND TRUST COMPANY,

as Trustee aforesaid

BY:

ROBERT W. GRIFFITH, Vice President

ATTEST:

JAMES J. MARTIN, JR.  
Trust Officer

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## PARCELS

### LEGAL DESCRIPTION

#### PARCEL 1:

LOTS 1, 2, 7, 12, 13, 14, 17, 18, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 39, 40, 41, 42, 43, 44 AND 45 IN GALLAGHER AND HENRY'S ISHNALA UNIT NO. 12, A SUBDIVISION OF PART OF THE EAST 1/2 OF THE SOUTH EAST 1/4 OF SECTION 2, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN Numbers:	27-02-410-016-0000	27-02-410-021-0000
	27-02-410-022-0000	27-02-410-023-0000
	27-02-411-011-0000	27-02-411-012-0000
	27-02-413-003-0000	27-02-413-004-0000
	27-02-413-007-0000	27-02-413-008-0000
	27-02-413-009-0000	27-02-413-010-0000
	27-02-413-011-0000	27-02-413-012-0000
	27-02-413-013-0000	27-02-413-014-0000
	27-02-414-001-0000	27-02-414-002-0000
	27-02-414-004-0000	27-02-414-005-0000
	27-02-414-006-0000	27-02-414-007-0000
	27-02-414-008-0000	27-02-414-011-0000
	27-02-414-012-0000	27-02-414-013-0000
	27-02-414-014-0000	27-02-414-015-0000
	27-02-414-016-0000	27-02-414-017-0000

Common Address: Subdivision located on the north west and south west corners of the intersection of Cambridge Drive and 60th Avenue in the Village of Orland Park, Illinois.

#### PARCEL 2:

LOTS 48, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 69, 70, 71, 72 IN GALLAGHER AND HENRY'S ISHNALA UNIT NO. 12, A SUBDIVISION OF PART OF THE EAST 1/2 OF THE SOUTH EAST 1/4 OF SECTION 2, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN Numbers:	27-02-410-025-0000	27-02-410-027-0000
	27-02-410-028-0000	27-02-410-029-0000
	27-02-413-016-0000	27-02-413-017-0000
	27-02-413-018-0000	27-02-413-019-0000
	27-02-413-020-0000	27-02-413-001-0000
	27-02-415-002-0000	27-02-415-003-0000
	27-02-415-004-0000	27-02-415-005-0000
	27-02-415-011-0000	27-02-415-014-0000

Common Address: Subdivision located on the north west and south west corners of the intersection of Bradford Drive and 60th Avenue in the Village of Orland Park, Illinois.

2025-08-17

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## PARCEL 3:

LOTS 75, 76, 77, 78, 81, 82, 86, 87, 88, 89, 90, 91, 92, 93 AND 105 IN GALLAGHER AND HENRY'S ISHNALA UNIT NO. 14, A SUBDIVISION OF PART OF THE WEST 1/2 OF THE WEST 1/2 OF THE SOUTH WEST 1/4 OF SECTION 1, TOWNSHIP 36 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN Numbers:	27-01-305-001-0000	27-01-305-002-0000
	27-01-305-003-0000	27-01-305-004-0000
	27-01-305-007-0000	27-01-305-008-0000
	27-01-305-012-0000	27-01-305-013-0000
	27-01-305-014-0000	27-01-305-015-0000
	27-01-305-016-0000	27-01-305-017-0000
	27-01-305-018-0000	27-01-305-019-0000
	27-01-307-005-0000	

Common Address: Subdivision located on the north east and south east corners of the intersection of Cambridge Drive and 80th Avenue in the Village of Orland Park, Illinois.

## PARCEL 4:

LOTS 2, 11, AND 12 IN GALLAGHER AND HENRY'S ISHNALA UNIT NO. 15, A SUBDIVISION OF PART OF THE WEST 1/2 OF THE WEST 1/2 OF THE SOUTH WEST 1/4 OF SECTION 1, TOWNSHIP 36 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN Numbers:	27-01-306-009-0000	27-01-306-018-0000
	27-01-306-013-0000	

Common Address: Subdivision located at the north west corner of the intersection of Cambridge Drive and 80th Avenue in the Village of Orland Park, Illinois.

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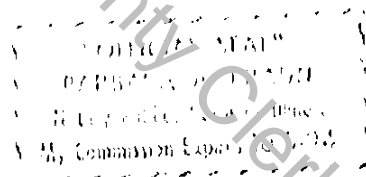
STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I, <sup>A</sup> BARBARA BRAUN, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that JOSEPH C. BILLS, Vice President of CONTINENTAL BANK N.A., a national banking association, and ROSE E. GOS, ~~Secretary~~ Secretary of said association, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such        Vice President and        Secretary, respectively, appeared before me this        day in person and acknowledged that as such        Vice President and        Secretary they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said association, for the uses and purposes therein set forth pursuant to proper authority duly given by the Board of Directors of said association.

Given under my hand and Notarial Seal this 27 day of MARCH, 1992.

*Barbara Braun*

Notary Public



10-2-92





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STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I, Edith Rose, \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT BRIGLIETTI ASSOCIATES, INC., Vice President of STANDARD PAPER AND PAPER COMPANY, and JAMES HARTIG, JR., Secretary of said Company, who are personally known to me to be the persons whose names are subscribed to the foregoing instrument as such Vice President and Secretary, respectively, appeared before me this \_\_\_\_\_ day of \_\_\_\_\_ and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Company, as trustee as aforesaid, for the uses and purposes therein set forth; and the said Edith Rose, Secretary then and there acknowledged that in her official capacity as Secretary, as custodian of the corporate seal of said Company, did affix the corporate seal of said Company to said instrument as said James Hartig, Jr. Secretary's own free and voluntary act and as the free and voluntary act of said Company, as trustee as aforesaid, for the uses and purposes therein set forth.

Given under my hand and Notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 1992.

Notary Public



This instrument prepared by:

Jack Edellbrock  
Mayer, Brown & Platt  
199 South LaSalle Street  
Chicago, Illinois 60603

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STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS

I, \_\_\_\_\_, a Notary Public in and for said county, in the State aforesaid, DO HEREBY CERTIFY THAT Robert E. Fullmer, personally known to me to be the General Partner of RICHARD HILL BUILDING COMPANY, an Illinois general partnership, 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 General Partner he signed and delivered the said instrument as General Partner as his free and voluntary act, and as the free and voluntary act and deed of said general partnership, for the uses and purposes therein set forth. Given under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 1992.

\_\_\_\_\_  
Notary Public  
C. CHALMERS  
M. J. Hager  
Notary Public, State of Illinois  
My Commission Expires July 11, 1995

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