

CONSOLIDATED, AMENDED AND RESTATED
MORTGAGE, SECURITY AGREEMENT,
ASSIGNMENT OF LEASES AND RENTS, AND
FINANCING STATEMENT

9700

THIS CONSOLIDATED, AMENDED AND RESTATED MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS, AND FINANCING STATEMENT ("Amended Mortgage") is made as of March 28, 1993, by LASALLE NATIONAL TRUST, N.A., as successor trustee to LaSalle National Bank, not personally, but as Trustee under Trust Agreement dated November 7, 1983 and known as Trust No. 107291 ("Trustee"), and HIGGINS-MANNHEIM PROPERTIES, an Illinois general partnership ("Borrower") (Trustee and Borrower are collectively referred to herein as "Mortgagor"), to and for the benefit of THE CHASE MANHATTAN BANK, N.A., a national banking association ("Mortgagee").

R E C I T A L S:

A. Trustee is the legal owner and Borrower is the beneficial owner of certain real estate located in Rosemont, Illinois, and legally described in Exhibit A attached hereto and made a part hereof.

B. Mortgagor requested and Mortgagee made, three loans to Mortgagor in the aggregate principal amount of Fifty One Million Three Hundred Forty-Five Thousand Dollars (\$51,345,000) (collectively, the "Prior Loans"). The Prior Loans are evidenced by two Notes dated November 17, 1987 and one Note dated August 15, 1989, by Trustee in favor of Mortgagee in the principal amounts of Forty-Four Million Two Hundred Thousand Dollars (\$44,200,000), Five Million Eight Hundred Eighty-Eight Thousand Dollars (\$5,888,000), and One Million Two Hundred Fifty-Seven Thousand Dollars (\$1,257,000), respectively (collectively, the "Prior Notes"). The Prior Notes are secured by, respectively, (a) a certain Building Loan Mortgage, Assignment of Leases and Rents and Security Agreement dated November 17, 1987 and recorded with the Cook County, Illinois Recorder of Deeds ("Recorder") on November 24, 1987 as Document No. 87627273, as amended by that certain Mortgage Modification Agreement dated as of November 18, 1987 and recorded with the Recorder on December 22, 1987 as Document No. 87671175, (b) a certain Mortgage, Assignment of Leases and Rents and Security Agreement dated November 17, 1987 and recorded with the Recorder on November 24, 1987 as Document No. 87627274, as amended by that certain Mortgage Modification Agreement dated as of November 18, 1987 and recorded with the Recorder on December 22, 1987 as Document No. 87671176, and (c) a certain Mortgage, Assignment of Leases and Rents and Security Agreement dated August 15, 1989 and recorded with the Recorder on August 17, 1989 as Document No. 89384132 (collectively, the "Prior Mortgages").

C. Pursuant to that certain Consolidated, Amended and Restated Loan Agreement of even date herewith ("Amended Loan Agreement"), Mortgagor has requested, and Mortgagee has agreed, to consolidate and increase the amount of the Prior Loans and to otherwise restructure the Prior Loans (the Prior Loans, as consolidated and restructured, are referred to herein as the "Amended Loan"). Pursuant to the increase and the restructuring

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

of the Prior Loans, the Prior Notes are being replaced and superseded by (i) that certain Consolidated, Amended and Restated Note of even date herewith by Trustee in favor of Mortgagee in the original principal amount of \$51,345,000 ("Note A"), and (ii) that certain Consolidated, Amended and Restated Note of even date herewith by Trustee in favor of Mortgagee in the original principal amount of \$8,248,926.75 ("Note B;" and together with Note A, the "Amended Notes"). The Amended Notes amend, restate, replace, extend and supersede the Prior Notes, but continue to evidence the indebtedness heretofore evidenced by the Prior Notes and all new indebtedness. The Amended Notes provide, among other things, for the accrual or deferral of certain interest payments and for the payment of additional interest (computed as provided in the Amended Notes) based on the appreciated value of the Premises (as defined below). Final payment of all outstanding principal, interest, accrued or deferred interest and additional interest under the Amended Notes is due on or before January 31, 1997, as such date may be extended to January 31, 1998 pursuant to the terms of the Amended Notes and Amended Loan Agreement. All of said principal and interest is made payable at such place as the holder or holders of the Amended Notes ("Holders") may from time to time in writing appoint.

D. The Prior Loans are in default. As a condition to Mortgagee agreeing to forbear from exercising its right to foreclose on the property conveyed by the Prior Mortgages and exercise its other rights and remedies under the documents evidencing and securing the Prior Loans, and as a further condition to the consolidation, increase and restructuring of the Prior Loans, Mortgagee requires Mortgagor to enter into this Amended Mortgage, which shall consolidate, amend, restate, replace and supersede the Prior Mortgages.

E. Mortgagee has relied on the statements and agreements contained herein in agreeing to consolidate, increase and restructure the Prior Loans.

NOW, THEREFORE, Mortgagor, in consideration of the debt evidenced by the Amended Notes and to secure the timely payment of principal, interest, accrued or deferred interest and additional interest in accordance with the terms and provisions of the Amended Notes and in accordance with the terms, provisions and limitations of this Amended Mortgage, and to secure the performance of the covenants and agreements contained herein and in the Amended Notes, the Amended Loan Agreement and any other documents evidencing and securing the Amended Loan (collectively the "Amended Loan Documents") to be performed by Mortgagor, does by these presents CONVEY, MORTGAGE AND WARRANT unto Mortgagee, its successors and assigns, the real estate described in Exhibit A attached hereto and made a part hereof ("Land") situated, lying, and being in the Village of Rosemont, County of Cook and State of Illinois, and all of its estate, right, title and interest therein, which, with the property hereinafter described, is referred to as the "Premises";

TOGETHER with all easements, rights of way, strips and gores of land, vaults, streets, alleys, water rights, mineral rights, and rights used in connection with the Land or to provide a means of access to the Land, and all tenements, hereditaments and appurtenances thereof and thereto pertaining or belonging, and all underground and overhead passageways and licenses in connection therewith;

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

TOGETHER with all leasehold estates, right, title and interest of the Mortgagor in any and all leases, subleases, management agreements, arrangements, concessions, or agreements, written or oral, relating to the use and occupancy of the Land and improvements or any portion thereof located thereon, now or hereafter existing or entered into;

TOGETHER with all rents, issues and profits thereof for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily) and all accounts receivable derived from the operation of the Premises;

TOGETHER with any and all buildings and improvements now or hereafter erected on the Land, including, but not limited to, the fixtures, attachments, appliances, equipment, machinery, and other articles attached to said buildings and improvements and all tangible personal property owned by Mortgagor now or any time hereafter located on or at the Land or used in connection therewith, including, but not limited to, all goods, machinery, tools, equipment (including fire sprinklers and alarm systems, air conditioning, heating, boilers, refrigerating, electronic monitoring, water, lighting, power, sanitation, waste removal, entertainment, recreational, window or structural cleaning rigs, maintenance and all other equipment of every kind), lobby and all other indoor or outdoor furniture (including tables, chairs, planters, desks, sofas, shelves, lockers and cabinets), furnishings, appliances, inventory, rugs, carpets and other floor coverings, draperies, drapery rods and brackets, awnings, venetian blinds, partitions, chandeliers and other lighting fixtures, and all other fixtures, apparatus, equipment, furniture, furnishings, and articles, if any, used in connection with the operation of an office building on the Land, it being understood that the enumeration of any specific articles of property shall in nowise result in or be held to exclude any items of property not specifically mentioned;

TOGETHER with all the estate, interest, right, title, other claim or demand, including claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Mortgagor now has or may hereinafter acquire in the Premises, and any and all awards made for the taking by eminent domain, or by any proceedings or purchase in lieu thereof, of the whole or any part of the Premises, including without limitation any awards resulting from the change of grade of streets and awards for severance damages.

TOGETHER with all other property (real or personal) owned by Mortgagor from time to time.

All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared to form a part and parcel of the real estate and to be appropriated to the use of the real estate, and shall for the purposes of this Mortgage be deemed to be real estate and conveyed and mortgaged hereby.

Mortgagor covenants that it is lawfully seized of the Premises, that the same are unencumbered except for the Permitted Exceptions (as defined in the Amended Loan Agreement), and that it has good right, full power and lawful authority to convey and mortgage the same, and that it will warrant and forever defend

UNOFFICIAL COPY

RIDER ATTACHED TO AND MADE A PART OF THE TRUST DEED OR MORTGAGE
DATED APRIL 29 1993 UNDER TRUST NO. 107291

This Mortgage or Trust Deed in the nature of a mortgage is executed by LA SALLE NATIONAL TRUST, W.A., not personally, but as Trustee under Trust No. 107291 in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said LA SALLE NATIONAL TRUST, W.A. hereby warrants that it possesses full power and authority to execute the Instrument) and it is expressly understood and agreed that nothing contained herein or in the note, or in any other instrument given to evidence the indebtedness secured hereby shall be construed as creating any liability on the part of said mortgagor or grantor, or on said LA SALLE NATIONAL TRUST, W.A. personally to pay said note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant, either express or implied, herein contained, all such liability, if any, being hereby expressly waived by the mortgagee or Trustee under said Trust Deed, the legal owners or holders of the note, and by every person now or hereafter claiming any right or security hereunder; and that so far as the mortgagor or grantor and said LA SALLE NATIONAL TRUST, W.A. personally are concerned, the legal holders of the note and the owner or owners of any indebtedness accruing hereunder shall look solely to the premises hereby mortgaged or conveyed for the payment thereof by the enforcement of the lien created in the manner herein and in said note provided or by action to enforce the personal liability of the guarantor or guarantors, if any. Trustee does not warrant, indemnify, defend title nor is it responsible for any environmental damage.

Form XX0133
5-1-90

93225400

UNOFFICIAL COPY

said Premises and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

TO HAVE AND TO HOLD the Premises unto the said Mortgagee, its successors and assigns, forever, for the purposes and uses herein set forth.

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

Maintenance, Repair and Restoration of Improvements, Payment of Liens, Etc.

1. Mortgagor shall (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed; (b) keep the Premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien (other than the Permitted Liens (as defined in the Amended Loan Agreement) which shall be disposed of pursuant to the terms of the Amended Loan Agreement) provided, however, that Mortgagor shall have the right to contest in good faith and with reasonable diligence the validity of any such lien or claim upon furnishing (i) to the title insurance company approved by Mortgagee such security or indemnity as it may require to induce said title insurance company to issue its title insurance commitments or its mortgage title insurance policies insuring against all such claims or liens, or (ii) to Mortgagee such other security with respect to such claim as may be acceptable to Mortgagee; (c) pay when due any indebtedness which may be secured by a lien or charge on the Premises and comply with all requirements of all loan documents evidencing or securing such indebtedness, and, upon request, exhibit satisfactory evidence of the discharge of such lien to Mortgagee; (d) complete in accordance with the terms of the Amended Loan Agreement any building or buildings or any improvements now or at any time in the process of erection upon the Premises and any renovation of existing buildings; (e) comply in all material respects with all requirements of law, municipal ordinances or restrictions of record with respect to the Premises and the use thereof; (f) initiate or acquiesce in no zoning variation or reclassification without Mortgagee's written consent; (g) pay each item of indebtedness secured by this Amended Mortgage when due according to the terms hereof or of the Amended Notes; (h) make no material alterations to or demolish any portion of the Premises, except as required by law or municipal ordinance or as contemplated by the Amended Loan Agreement without Mortgagee's prior written consent; and (i) suffer or permit no change in the general nature of the occupancy of the Premises without Mortgagee's written consent.

Payment of Taxes

2. Mortgagor shall pay before any penalty attaches all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and other charges against the Premises ("Impositions") when due, and shall, upon written request, furnish to Mortgagee duplicate receipts therefor. Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any such Impositions provided: (1) that such contest shall have the effect of preventing the collection of the Impositions so contested and the sale or forfeiture of said Premises or any part thereof, or any interest therein, to satisfy the same; (2) that Mortgagor has, before such Impositions shall have been increased by any interest, penalties or costs, notified Mortgagee in writing of the intention of

93225400

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Mortgagor to contest the same; and (3) that Mortgagor shall have deposited with Mortgagee at such place as Mortgagee may from time to time in writing appoint, and, in the absence of such appointment, then at the office of Mortgagee in New York, New York, a sum of money which shall be sufficient in the reasonable judgment of Mortgagee to pay in full such contested Impositions and all penalties and interest that might become due thereon, and shall keep on deposit an amount so sufficient at all times, increasing such amount to cover additional penalties and interest whenever, in the reasonable judgment of Mortgagee, such increase is advisable. In case Mortgagor shall fail to prosecute such contest with reasonable diligence or shall fail to maintain sufficient funds on deposit as hereinabove provided, Mortgagee may at its option apply the money so deposited in payment of or on account of such Impositions, or that part thereof then unpaid, together with all penalties and interest thereon. If the amount of the money so deposited shall be insufficient for the payment in full of such Impositions, together with all penalties and interest thereon, Mortgagor shall forthwith upon demand either (a) deposit with Mortgagee a sum which when added to the funds then on deposit shall be sufficient to make such payment in full, or (b) in case Mortgagee shall have applied funds on deposit on account of such Impositions, restore said deposit to a sufficient amount. Mortgagee shall, upon the final disposition of such contest, apply the money so deposited in full payment of such Impositions or that part thereof then unpaid, together with all penalties and interest thereon (provided Mortgagor is not then in default) when so requested in writing by Mortgagor and furnished with sufficient funds to make such payment in full with an official bill for such Impositions.

Tax Deposits

3. (a) On the first day of each month until the indebtedness secured by this Amended Mortgage is fully paid, Mortgagor covenants and agrees to deposit at such place as Mortgagee may from time to time in writing appoint, and in the absence of such appointment, then at the office of Mortgagee in New York, New York, a sum equal to one-twelfth of the last total annual taxes and assessments for the last ascertainable year (general and special) on the Premises (unless said taxes are based upon assessments which exclude the improvements or any part thereof now constructed, or to be constructed, in which event the amount of such deposits shall be based upon Mortgagee's reasonable estimate as to the amount of taxes and assessments to be levied and assessed). Mortgagor, concurrently with the first monthly deposit of taxes required hereunder, will also deposit with Mortgagee an amount, based upon the taxes and assessments so ascertainable or so estimated by Mortgagee, as the case may be, for taxes and assessments on said Premises, on the accrual basis, for the period commencing on January 1 of the year succeeding the most recent year for which all taxes and assessments have been paid, and terminating on the date of such first monthly deposit. Except as provided in Section 5 hereof, such deposits are to be held in trust without any allowance of interest and are to be used for the payment of taxes and assessments (general and special) on the Premises next due and payable when they become due. If the funds so deposited are insufficient to pay any such taxes or assessments (general and special) for any year when the same shall become due and payable, Mortgagor shall, within ten (10) days after receipt of demand therefor from Mortgagee, deposit such additional funds as may be necessary to pay such taxes and assessments (general and special) in full. If the funds so deposited exceed the amount required to pay such taxes

93225400

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

and assessments (general and special) for any year, the excess shall be applied toward a subsequent deposit or deposits due from Mortgagor.

(b) The Amended Loan Agreement obligates Mortgagor to obtain separate real estate tax parcel designations for the Premises and an adjacent office building located on a tract of land owned by a different entity than Trustee ("Adjacent Parcel"). Until such time as separate tax parcels are created for the Premises and the Adjacent Parcel (to the reasonable satisfaction of Mortgagee), (i) the monthly tax deposits (and the initial deposit) required by Section 3(a) above shall take into account, in addition to the Premises, the amount of taxes and assessments (as estimated by Mortgagee) that are (and will be) due with respect to the Adjacent Parcel, and (ii) all of Mortgagor's obligations and undertakings contained in Sections 2 and 3(a) hereof shall be applicable to the Adjacent Parcel (in addition to the Premises). Notwithstanding the foregoing, in the event any first mortgagee of the Adjacent Parcel requires Mortgagor to make monthly tax deposits with respect to the Adjacent Parcel, and such mortgagee is unconditionally obligated to apply such amounts only against the amount of taxes and assessments that are (or will be) due with respect to the Adjacent Parcel, then so long as such monthly deposits are so required, Mortgagor shall not be obligated to deposit such sums pertaining to the Adjacent Parcel with Mortgagee as set forth above.

Insurance and Premium Deposits

4. (a) Mortgagor shall maintain casualty, liability and other policies of insurance relating to the Premises as required pursuant to Section 6.1(b)(3) of the Amended Loan Agreement.

Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon under a standard, non-contributory mortgagee clause acceptable to Mortgagee. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee copies of the original policy or policies of such insurance.

Within ninety (90) days following the end of each fiscal year of Mortgagor, at the request of Mortgagee, Mortgagor agrees to furnish evidence of replacement costs, without cost to Mortgagee, such as are regularly and ordinarily made by insurance companies to determine the then replacement cost of the building(s) and other improvements on the Premises.

(b) On the first day of each month until the indebtedness secured by this Amended Mortgage is fully paid, Mortgagor covenants and agrees to deposit at such place as Mortgagee may from time to time in writing appoint, and in the absence of such appointment, then at the office of Mortgagee in New York, New York, an installment of the premium or premiums that will become due and payable to renew the insurance as required in Section 4(a) hereof. Each of such installments shall be in an amount which, by the payment of approximately equal installments, will result in their accumulating in the hands of the depository a sufficient amount to pay renewal premiums upon such policies of insurance, at least one month prior to the expiration date or dates of the policy or policies to be renewed; except as provided in Section 5 hereof, such deposits to be held

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

without any allowance of interest and to be used for renewal of such insurance policies. If the funds so deposited are insufficient to pay all premiums for such renewals, Mortgagor shall within ten (10) days after receipt of demand therefor from Mortgagee, deposit such additional funds as may be necessary to pay such premiums. If the funds so deposited exceed the amount required to pay such premiums, the excess shall be applied toward a subsequent deposit or deposits due from Mortgagor.

Mortgagee's Interest in and Use of Deposits

5. Upon the occurrence of an Event of Default under this Amended Mortgage, the Amended Notes, or any of the other Amended Loan Documents and during the continuance thereof, Mortgagee may, at its option, without being required to do so, apply any moneys at the time on deposit pursuant to any provision of this Amended Mortgage, as any one or more of the same may be applicable, on any of Mortgagor's obligations herein or in the Amended Notes or Amended Loan Documents contained, in such order and manner as Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the Premises. Such deposits are hereby pledged as additional security for the indebtedness hereunder and shall be held to be irrevocably applied by the depository for the purposes for which made hereunder and shall not be subject to the direction or control of Mortgagor; provided, however, that neither Mortgagee nor said depository shall be liable for any failure to apply to the payment of taxes and assessments or insurance premiums any amount so deposited unless Mortgagor, while not in default hereunder, shall have requested said depository in writing to make application of such funds to the payment of the particular taxes or assessments or the payment of the particular insurance premiums as the case may be for payment of which they were deposited, accompanied by the bills for such taxes and assessments or insurance premiums.

Adjustment of Losses with Insurer and Application of Proceeds of Insurance

6. In case of loss, Mortgagee shall have the right (but not the obligation) to settle any insurance claim filed for more than \$100,000 and any claim filed for \$100,000 or less shall be adjusted and settled by Mortgagor provided that Mortgagee shall have the right to settle any claims that Mortgagor has not settled on or before one hundred twenty (120) days after the date of such loss. Mortgagee is at all times authorized to collect and receipt for any insurance money. Such insurance proceeds shall be applied in accordance with Section 13.1 of the Amended Loan Agreement. If Mortgagee can and does elect to apply such proceeds in payment or reduction of the indebtedness secured hereby, whether due or not, and if the same are insufficient to pay such amount in full, then Mortgagee may at its option declare the balance remaining unpaid on the Amended Notes and this Amended Mortgage to be due and payable forthwith and avail itself of any of the remedies provided herein or in the Amended Notes as in the case of a default. In case Mortgagee may or does not elect to apply the insurance proceeds to the indebtedness as set forth in the preceding sentence, such insurance proceeds shall be used to reimburse Mortgagor for the cost of rebuilding or restoration of the Premises. The Premises shall be so restored or rebuilt as to be of at least equal value and quality and substantially the same character as the Premises were prior to such damage or destruction. In the event Mortgagee elects or is

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

obligated to reimburse Mortgagor out of insurance proceeds, such proceeds shall be made available, from time to time, upon Mortgagee's being furnished with satisfactory evidence of the estimated cost of completion thereof and with such architect's certificates, waivers of lien, contractors' sworn statements and other evidence of cost and of payments as Mortgagee may require and approve and upon Mortgagor being otherwise in compliance with the provisions of the Amended Loan Agreement applicable to disbursement of loan proceeds. If the estimated cost of the work exceeds ten percent (10%) of the original principal amount of the indebtedness secured hereby, Mortgagee shall also be furnished with all plans and specifications for such rebuilding or restoration as Mortgagee may require which plans and specifications shall be subject to Mortgagee's approval. All payments made prior to final completion of the work shall be subject to all limitations of disbursements contained in the Amended Loan Agreement that would have applied if such disbursements were to be made for construction.

Notwithstanding anything to the contrary set forth in any of the Loan Documents, in case of the occurrence and continuance of an Event of Default under this Amended Mortgage whether or not such Event of Default shall have occurred after Mortgagor may have commenced restoration or rebuilding or let contracts or otherwise obligated itself for the payment of any of the costs thereof or may otherwise have become entitled to receive reimbursement out of insurance proceeds, and whether or not foreclosure proceedings may have commenced, Mortgagee shall be relieved of any obligation for reimbursement of Mortgagor, and the proceeds of any such insurance policy or policies, to the extent not theretofore applied to reimbursement for restoration or rebuilding, may, at the option of the Mortgagee, be applied: (a) in payment or reduction of the indebtedness secured hereby; or (b) in payment or reduction of the amount due in accordance with any judgment of foreclosure and any supplemental judgments that may be entered in any such proceedings; or (c) to payments directly to persons furnishing and supplying labor, services and materials for any such restoration or rebuilding, and the balance, if any, after full payment and satisfaction of all such indebtedness, shall be paid to the owner of the equity of redemption if it shall then be entitled to the same or as the court may direct. In case of the foreclosure of this Amended Mortgage, the court in its judgment may provide that Mortgagee, as judgment creditor, may cause a new or additional loss clause to be attached to each of said policies making the loss thereunder payable to it as such judgment creditor; and any such foreclosure judgment may further provide, unless the right of redemption has been waived pursuant to Section 15-160(b) of the Illinois Mortgage Foreclosure Law, as amended from time to time ("Act"), that in case of redemption under said judgment, pursuant to the Act, then, and in every such case, the redeemer may cause the preceding loss clause attached to each insurance policy to be cancelled and a new loss clause to be attached thereto, making the loss thereunder payable to such redeemer. In the event of foreclosure sale, Mortgagee is hereby authorized, but not required, without the consent of Mortgagor, to assign or cause a receiver to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as Mortgagee may deem advisable, to cause the interest of such purchaser to be protected by any of the said insurance policies.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

11/18/2014

UNOFFICIAL COPY

Stamp Tax

7. If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over Mortgagor, any tax is due or becomes due in respect of the issuance of the Amended Notes, or recording of this Amended Mortgage, Mortgagor covenants and agrees to pay such tax in the manner required by any such law. Mortgagor further covenants to hold harmless and agrees to indemnify Mortgagee, its successors or assigns, against any liability incurred by reason of the imposition of any tax on the issuance of the Amended Notes, or recording of this Amended Mortgage.

Prepayment Privilege

8. Mortgagor shall have the privilege of making prepayment on the principal of the Amended Notes in whole or in part, in accordance with the terms and conditions set forth in the Amended Notes.

Effect of Extensions of Time and Amendments

9. If the payment of the indebtedness secured by this Amended Mortgage or any part thereof be extended or varied or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse, if any, against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation or release. Any person or entity taking a junior mortgage or other lien upon the Premises or any interest therein, shall take said lien subject to the rights of Mortgagee herein to amend, modify, and supplement this Amended Mortgage, the Amended Notes, the Amended Loan Documents, or any other document or instrument evidencing, securing, or guaranteeing the indebtedness hereby secured and to vary the rate of interest and the method of computing the same, and to impose additional fees and other charges, and to extend the maturity of said indebtedness, and to grant partial releases of the lien of this Amended Mortgage, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Amended Mortgage losing its priority over the rights of any such junior lien. Nothing in this Paragraph contained shall be construed as waiving any provision contained herein which provides, among other things, that it shall constitute an Event of Default if the Premises be sold, conveyed, or further encumbered.

Effect of Changes in Laws Regarding Taxation

10. In the event of the enactment after this date of any law of the State of Illinois or any political subdivision thereof deducting from the value of land for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Premises, or the manner of collection of taxes, so as to affect this Amended Mortgage or the debt secured hereby or the Holders, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor; provided, however, that if in the opinion of counsel for

93225400

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Mortgagee (a) it might be unlawful to require Mortgagor to make such payment or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable sixty (60) days from the giving of such notice.

Mortgagee's Performance of Defaulted Acts; Protective Advances; Subrogation

11. After (and during the continuation of) an Event of Default hereunder or under the Amended Notes or any other Amended Loan Documents, (or in the event Mortgagor fails to perform any of its covenants or agreements herein or in any of the other Amended Loan Documents which, in Mortgagee's judgment, requires immediate cure due to the material nature of the loss or damage which could result from such failure) Mortgagee may, but need not, make any payment or perform any act herein or therein required of Mortgagor, in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on any Prior Encumbrances (as hereinafter defined), if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or contest any tax or assessment.

In the event Mortgagee shall elect, pursuant to this Section 11, to undertake to perform Mortgagor's obligations for restoration or rebuilding as required of Mortgagor by Section 6 or Section 22 of this Amended Mortgage, or the Amended Loan Agreement, Mortgagee shall not be required to restore or rebuild the improvements to any greater extent than will be covered by available proceeds or estimated proceeds of insurance or condemnation award. An estimate of available proceeds may be made if at such time as Mortgagee is prepared to arrange for plans, solicit bids, let a contract, or otherwise proceed with restoration, the loss may not have been adjusted with insurers or the court may not have finally determined the amount of a condemnation award. If Mortgagee shall have expended any amount for restoration or rebuilding in excess of the actual or estimated proceeds of insurance or condemnation award for the purpose of such repair or replacement, the amount of such excess ("Excess Restoration Cost") so expended by Mortgagee shall constitute additional indebtedness hereunder and shall be secured by the lien hereof.

All advances, disbursements and expenditures (collectively "advances") made by Mortgagee as permitted above, whether before and during foreclosure, prior to sale, and where applicable, after sale, for the following purposes, including interest thereon at the Default Rate (as such term is defined in Section 28 hereof), are hereinafter referred to as "Protective Advances":

- (a) advances pursuant to this Section 11;
- (b) Excess Restoration Costs;
- (c) advances in accordance with the terms of this Amended Mortgage to: (i) protect, preserve or restore the Premises; (ii) preserve the lien of this Amended Mortgage or the priority thereof; or (iii) enforce this Amended

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Mortgage, as referred to in Subsection (b)(5) of Section 15-1302 of the Act;

(d) payments of (i) when due installments of principal, interest or other obligations in accordance with the terms of any Prior Encumbrance; (ii) when due installments of real estate taxes and other Impositions; (iii) other obligations authorized by this Amended Mortgage; or (iv) with court approval any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, all as referred to in the first paragraph of this Section of this Amended Mortgage and in Section 15-1505 of the Act;

(e) attorneys' fees and other costs incurred in connection with the foreclosure of this Amended Mortgage as referred to in Sections 1504 (d)(2) and 15-1510 of the Act and in connection with any other litigation or administrative proceeding to which the Mortgagee may be or become or be threatened or contemplated to be a party, including probate and bankruptcy proceedings, or in the preparation for the commencement or defense of any such suit or proceeding; including filing fees, appraisers' fees, outlays for documents and expert evidence, witness fees, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of judgment) of procuring all such abstracts of title, title charges and examinations, foreclosure minutes, title insurance policies, Torrens certificates, appraisals, and similar data and assurances with respect to title and value as Mortgagee may deem reasonably necessary either to prosecute or defend such suit or, in case of foreclosure, to evidence to bidders at any sale which may be had pursuant to the foreclosure judgment the true condition of the title to or the value of the Premises;

(f) Mortgagee's fees and costs arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b) (1) of Section 15-1508 of the Act;

(g) payment by Mortgagee of Impositions as required of Mortgagor by Sections 2 and 3 of this Amended Mortgage;

(h) Mortgagee's advances of any amount required to make up a deficiency in deposits for installments of Impositions, as required of Mortgagor by Sections 2 and 3 of this Amended Mortgage;

(i) expenses deductible from proceeds of sale referred to in Subsections (a) and (b) of Section 15-1512 of the Act; and

(j) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) if the Premises or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the owner thereof; (ii) if any of the Premises consists of an interest in a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (iii) premiums upon casualty and liability insurance made by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, without regard to the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

limitation to maintaining of insurance in effect at the time any receiver or mortgagee takes possession of the Premises imposed by Subsection (c)(1) of Section 15-1704 of the Act; (iv) payments required or deemed by Mortgagee to be for the benefit of the Premises or required to be made by the owner of the Premises under any grant or declaration of easement, easement agreement, reciprocal easement agreement, agreement with any adjoining land owners or other instruments creating covenants or restrictions for the benefit of or affecting the Premises; (v) shared or common expense assessments payable to any association or corporation in which the owner of the premises is a member in any way affecting the Premises; (vi) operating deficits incurred by Mortgagee in possession or reimbursed by Mortgagee to any receiver; (vii) if the Amended Loan secured hereby is a construction loan, costs incurred by Mortgagee for completion of construction as may be authorized by the Amended Loan Agreement; and (viii) any monies expended in excess of the face amount of the Amended Notes as recited in Section 33 of this Amended Mortgage.

This Amended Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time the Prior Mortgages were originally recorded, pursuant to Subsection (b)(5) of Section 15-1302 of the Act.

The Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, be included in:

(a) determination of the amount of indebtedness secured by this Amended Mortgage at any time;

(b) the indebtedness found due and owing to the Mortgagee in the judgment of foreclosure and any subsequent amendment of such judgment, supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after entry of such judgment, it being hereby agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

(c) if right of redemption has not been waived by this Amended Mortgage, computation of the amount required to redeem, pursuant to Subsections (d)(2) and (e) of Section 15-1603 of the Act;

(d) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Act;

(e) determination of the application of income in the hands of any receiver or mortgagee in possession; and

(f) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Section 15-1508 and Section 15-1511 of the Act.

All moneys paid for Protective Advances or any of the other purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other moneys advanced by Mortgagee to protect the Premises and the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the Default Rate (as

93225400

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

such term is defined in Section 28 hereof). Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

Should the proceeds of the Amended Notes or any part thereof, or any amount paid out or advanced hereunder by Mortgagee, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any senior mortgage (as described in Subsection (i) of Section 15-1505 of the Act) or any other lien or encumbrance upon the Premises or any part thereof on a parity with or prior or superior to the lien hereof ("Prior Encumbrance"), then as additional security hereunder, the Mortgagee shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, however remote, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

Mortgagee's Reliance on Tax Bills, Etc.

12. Mortgagee in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any other prior lien, may, except as set forth to the contrary in the Amended Loan Agreement, do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

Acceleration of Indebtedness in Case of Default

13. Any of the following events shall be deemed an Event of Default hereunder:

(a) default shall be made with respect to covenants, agreements and obligations of Mortgagor hereunder involving (i) the payment of principal due under the Amended Notes, (ii) the payment of interest due under the Amended Notes which shall continue for ten (10) days, or (iii) default with respect to any other covenant, agreement or obligation involving the payment of money which shall continue for ten (10) days after notice from Mortgagee in case of other such monetary defaults; or

(b) default shall be made, with respect to nonmonetary covenants, agreements and obligations, of Mortgagor hereunder and shall continue uncured for twenty (20) days after notice thereof from Mortgagee, or in the event of a default which cannot with due diligence be cured within a period of twenty (20) days, if Mortgagor fails to proceed promptly after the service of said notice and with due diligence to commence and continue to prosecute the curing of such default (it being intended that in connection with a default not susceptible of being cured with due diligence within twenty (20) days, the time within which Mortgagor is to cure the same shall be extended by seventy (70) days up to a maximum of ninety (90) days if necessary to complete the same with due diligence); or

(c) any event of default shall have occurred under the Amended Notes, Amended Loan Agreement, or any Amended Loan

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Documents and the default shall not have been cured within the applicable grace period provided therefor, if any; or

(d) Any unpermitted transfer of title described in Section 31 hereof shall occur.

Upon the occurrence of any Event of Default hereunder, the whole of said principal sum hereby secured shall, at once, at the option of Mortgagee, become immediately due and payable, together with accrued interest thereon, together with all deferred and additional interest owed under the Amended Notes, without any presentment, demand, protest or notice of any kind to Mortgagor.

Foreclosure; Expense of Litigation; Indemnification

14 If an Event of Default has occurred hereunder, or when the indebtedness hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof and pursue all remedies afforded to a mortgagee under and pursuant to the Act. In case of any foreclosure sale of the Premises, the same may be sold in one or more parcels.

It is further agreed that if default be made in the payment of any part of the secured indebtedness, as an alternative to the right of foreclosure for the full secured indebtedness after acceleration thereof, Mortgagee shall have the right to institute partial foreclosure proceedings with respect to the portion of said indebtedness so in default, as if under a full foreclosure, and without declaring the entire secured indebtedness due (such proceeding being hereinafter referred to as a "partial foreclosure"), and provided that if foreclosure judgment is entered pursuant to a partial foreclosure proceeding because of default of a part of the secured indebtedness, such judgment and sale pursuant thereto may be made subject to the continuing lien of this Amended Mortgage for the unmatured part of the secured indebtedness; and it is agreed that such judgment or sale pursuant to a partial foreclosure if so made, shall not in any manner affect the unmatured part of the secured indebtedness, but as to such unmatured part this Amended Mortgage and the lien hereof shall remain in full force and effect just as though no foreclosure judgment or sale had been entered or made under the provisions of this Section. Notwithstanding the filing of any partial foreclosure or entry of a judgment of foreclosure therein, Mortgagee may elect at any time prior to a foreclosure sale pursuant to such judgment, to discontinue such partial foreclosure and to accelerate the secured indebtedness by reason of any uncured default or defaults upon which such partial foreclosure was predicated or by reason of any other defaults, and proceed with full foreclosure proceedings. It is further agreed that several foreclosure sales may be made pursuant to partial foreclosure without exhausting the right of full or partial foreclosure sale for any unmatured part of the secured indebtedness, it being the purpose to provide for a partial foreclosure sale of the secured indebtedness for any matured portion of the secured indebtedness without exhausting the power to foreclose and to sell the Premises pursuant to any such partial foreclosure for any other part of the secured indebtedness whether matured at the time or subsequently maturing, and without exhausting any right of acceleration and full foreclosure.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Without limiting the liability of Mortgagor as set forth above, Mortgagor shall indemnify Mortgagee and its officers, directors, employees and agents, and hold them harmless from and against all claims, injury, damage, loss and liability of any and every kind to any persons or property by reason of (i) Tenant Work contemplated by the Amended Loan Agreement; (ii) the operation or maintenance of the Premises as contemplated by the Amended Loan Documents; or (iii) any other action or inaction by, or matter which is the responsibility of, Mortgagor.

Application of Proceeds of Foreclosure Sale

15. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in accordance with the provisions of Subsection (c) of Section 15-1512 of the Act. The judgment of foreclosure or order confirming the sale shall provide (after application pursuant to Subsections (a) and (b) of said Section 15-1512) for application of sale proceeds in the following order of priority: first, all items not covered by the provisions of said Subsections (a) and (b), which under the terms hereof constitute secured indebtedness additional to that evidenced by the Amended Notes, with interest thereon as herein provided; and second, all principal and interest (including accrued, deferred and additional interest) remaining unpaid on the Amended Notes.

Appointment of Receiver

16. Upon, or at any time after the filing of a complaint to foreclose this Amended Mortgage, the court in which such complaint is filed shall appoint a receiver of the Premises whenever Mortgagee, when entitled to possession, so requests pursuant to Section 15-1702(a) of the Act or when such appointment is otherwise authorized by operation of law. Such receiver shall have all powers and duties prescribed by Section 15-1704 of the Act, including the power to make leases to be binding upon all parties, including the Mortgagor after redemption, the purchaser at a sale pursuant to a judgment of foreclosure and any person acquiring an interest in the Premises after entry of a judgment of foreclosure, all as provided in Subsection (g) of Section 15-1701 of the Act. In addition, such receiver shall also have the following powers: (a) to extend or modify any then existing leases, which extensions and modifications may provide for terms to expire, or for options to leases to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption, discharge of the mortgage indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser; and (b) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of the period of receivership. The court from time to time, either before or after entry of judgment of foreclosure, may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (a) the indebtedness secured hereby, or by or included in any judgment of foreclosure or supplemental judgment or other item for which Mortgagee is authorized to make a

93225400

UNOFFICIAL COPY

Protective Advance; and (b) the deficiency in case of a sale and deficiency.

Assignment of Rents and Leases

17. To further assure the repayment of the indebtedness secured hereby, Mortgagor hereby sells, assigns and transfers unto Mortgagee all the rents, issues and profits now due and which may hereafter become due under or by virtue of any lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the Premises or any part thereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by Mortgagee under the powers herein granted, it being the intention hereby to establish an absolute transfer and assignment of all such leases and agreements, and all the avails thereunder, to Mortgagee and not merely the passing of a security interest. Mortgagor hereby irrevocably appoints Mortgagee its true and lawful attorney in its name and stead (with or without taking possession of the Premises as provided in Section 19 hereof) to rent, lease or let all or any portion of the Premises to any party or parties at such rental and upon such terms as said Mortgagee shall, in its discretion, determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due or that may hereafter become due under each and every of the leases and agreements, written or verbal, or other tenancy existing, or which may hereafter exist on the Premises, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Mortgagee would have upon taking possession pursuant to the provisions of Section 19 hereof.

Mortgagor represents and agrees that no rent has been or will be paid by any person in possession of any portion of the Premises for more than one installment in advance and that, except as authorized in the Amended Loan Agreement, the payment of none of the rents to accrue for any portion of the said Premises will be waived, released, reduced, discounted or otherwise discharged or compromised by Mortgagor, except as may be approved in writing by Mortgagee. As between Mortgagor and Mortgagee, Mortgagor waives any rights of set off against any person in possession of any portion of the Premises. If any lease provides for the abatement of rent during repair of the Premises demised thereunder by reason of fire or other casualty, Mortgagor shall furnish to Mortgagee loss of rents or business interruption insurance, the policies to be in amount and form and written by such insurance companies as shall be satisfactory to Mortgagee. Mortgagor agrees that it will not assign any of the rents or profits of the Premises, except to a purchaser or grantee of the Premises.

Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the taking of actual possession of the Premises by Mortgagee pursuant to Section 19 hereof. In the exercise of the powers herein granted Mortgagee, no liability shall be asserted or enforced against Mortgagee except in the case of the gross negligence or wilful misconduct of Mortgagee, all such liability being expressly waived and released by Mortgagor.

Mortgagor further agrees to assign and transfer to Mortgagee all future leases upon all or any part of the Premises and to execute and deliver, at the request of Mortgagee, all such

UNOFFICIAL COPY

Property of Cook County Clerk's Office

11/15/2011

UNOFFICIAL COPY

further assurances and assignments in the Premises as Mortgagee shall from time to time reasonably require.

Although it is the intention of the parties that the assignment contained in this Section 17 shall be a present absolute assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that except as provided in the Cash Collateral Agreement (as defined in the Amended Loan Agreement), Mortgagee shall not exercise any of the rights or powers conferred upon it by this Section until a default shall have occurred under this Amended Mortgage, the Amended Note, the Amended Loan Agreement, the Amended Loan Documents or any other instrument evidencing or securing the indebtedness secured hereby or delivered pursuant to the Amended Loan Agreement and the default shall not have been cured within the applicable grace period provided therefor, if any.

Observance of Lease Assignment

18. Mortgagor expressly covenants and agrees that if Mortgagor, as lessor under the lease or leases assigned and transferred unto Mortgagee under Section 17 herein, shall fail to perform and fulfill any material term, covenant, condition or provision in said lease or leases, or any of them, on its part to be performed or fulfilled, at the times and in the manner in said lease or leases provided, or if Mortgagor shall suffer or permit to occur any breach or default under the provisions of any assignment of any lease or leases of the Premises given as additional security for the payment of the indebtedness secured hereby and such default shall not have been cured within the applicable grace period provided therefor, if any, then and in any such event, such breach or default shall constitute an Event of Default hereunder and at the option of Mortgagee, and after fifteen (15) days notice to Mortgagor, all unpaid indebtedness secured by this Amended Mortgage shall, notwithstanding anything in the Amended Notes or in this Amended Mortgage to the contrary, become due and payable as in the case of other defaults.

Mortgagee's Right of Possession in Case of Default

19. In any case in which under the provisions of this Amended Mortgage Mortgagee has a right to institute foreclosure proceedings, whether before or after the whole principal sum secured hereby is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after judgment thereunder, and at all times until confirmation of sale, Mortgagor shall forthwith, upon demand of Mortgagee, surrender to Mortgagee and Mortgagee shall be entitled to take and upon Mortgagee's request to the court to be placed in actual possession of, Mortgagee shall be placed in possession of the Premises or any part thereof, personally, or by its agent or attorneys as provided in Subsections (b)(2) and (c) of Section 1701 of the Act. In such event Mortgagee in its discretion may, with or without force and with or without process of law, enter upon and take and maintain or may apply to the court in which a foreclosure is pending to be placed in possession of all or any part of said Premises, together with all documents, books, records, papers and accounts of Mortgagor or then owner of the Premises relating thereto, and may exclude Mortgagor, its agents or servants, wholly therefrom and may, as attorney in fact or agent of Mortgagor, or in its own name as Mortgagee and under the powers herein granted, hold, operate, manage and control the Premises and conduct the business, if any, thereof, either personally or by its agents,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, and with full power: (a) to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same; (b) to elect to disaffirm any lease or sublease which is then subordinate to the lien hereof; (c) to extend or modify any then existing leases and to make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; (d) to enter into any management, leasing or brokerage agreements covering the Premises; (e) to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Premises as to it may seem judicious; (f) to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; and (g) to receive all of such avails, rents, issues and profits; hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Mortgagor. Without limiting the generality of the foregoing provisions of this Section, Mortgagee shall also have all power, authority and duties as provided in Section 15-1703 of the Act.

Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases. Except in the case of the gross negligence or wilful misconduct of Mortgagee, Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur by reason of its performance of any action authorized under this Section 19 and of and from 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 of Mortgagor. Should Mortgagee incur any such liability, loss or damage, by its performance or nonperformance of actions authorized by this Section, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest on any such amount at the Default Rate (as that term is hereinafter defined) shall be secured hereby, and Mortgagor shall reimburse Mortgagee therefor immediately upon demand.

Application of Income Received by Mortgagee

20. Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it by Section 17 and Section 19 hereof, shall have full power to use and apply the avails, rents, issues and profits of the Premises to the payment of or on

UNOFFICIAL COPY

account of the following, in such order as Mortgagee may determine:

(a) to the payment of the operating expenses of the Premises, including cost of management and leasing thereof (which shall include reasonable compensation to Mortgagee and its agent or agents, if management be delegated to an agent or agents, and shall also include leasing commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

(b) to the payment of Protective Advances;

(c) to the payment of all maintenance, repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of the Premises, and of placing the Premises in such condition as will, in the judgment of Mortgagee, make it readily rentable; and

(d) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale.

Mortgagee's Right of Inspection

21. Mortgagee shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

Condemnation

22. Mortgagor hereby assigns, transfers and sets over unto Mortgagee its entire interest in the proceeds ("Condemnation Proceeds") of any award or any claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation or any transaction in lieu of condemnation ("Condemnation"). If Mortgagor is obligated to restore or replace the damaged or destroyed buildings or improvements under the terms of any lease which are or may be prior to the lien of this Amended Mortgage and if such taking does not result in cancellation or termination of such lease, the condemnation proceeds shall be used to reimburse Mortgagor for the cost of rebuilding or restoring of buildings or improvements on the Premises, provided Mortgagor is not then in default under this Amended Mortgage. In all other cases Mortgagee shall have the right, at its option, to apply the Condemnation Proceeds upon or in reduction of the indebtedness secured hereby, whether due or not, and if the same are insufficient to pay such amount in full, Mortgagee may at its option declare the balance remaining unpaid on the Amended Notes and this Amended Mortgage to be due and payable forthwith and avail itself of any of the remedies provided herein or in the Amended Notes as in the case of an Event of Default. If the Condemnation Proceeds are required to be used as aforesaid to reimburse Mortgagor for the cost of rebuilding or restoring buildings or improvements on the Premises, or if Mortgagee elects that the Condemnation Proceeds be so used, and the buildings and other improvements shall be rebuilt or restored, the Condemnation Proceeds shall be paid out in the same manner as is provided in Section 6 hereof for the payment of insurance proceeds toward the cost of rebuilding or restoration of such buildings and other improvements subject to the same right, after the occurrence of an Event of Default, to

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

be relieved of any obligation for reimbursement of Mortgagor, as provided in said Section 6. Any surplus which may remain out of the Condemnation Proceeds after payment of such cost of rebuilding or restoration shall, at the option of Mortgagee, be applied on account of the indebtedness secured hereby or be paid to any other party entitled thereto.

Release

23. If Mortgagor shall fully pay all principal and interest (including accrued, deferred and additional interest) on the Amended Notes, and all other indebtedness secured hereby and comply with all of the other terms and provisions hereof to be performed and complied with by Mortgagor, then this Amended Mortgage shall be null and void. Mortgagee shall release this Amended Mortgage and the lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby and payment of any filing fee in connection with such release.

Giving of Notice

24. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be sent as provided in the Amended Loan Agreement.

Remedies Not Exclusive

25. No action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Amended Notes. Mortgagee shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Amended Mortgage or other agreement or any laws now or hereafter in force, notwithstanding some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment, security agreement, letter of credit or otherwise. Neither the acceptance of this Amended Mortgage nor its enforcement, whether by court action or other powers herein contained, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Amended Mortgage and any other remedy herein or by law provided or permitted, but each 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. Every power or remedy given hereby to Mortgagee or to which it may be otherwise entitled, may be exercised, concurrently or independently, from time to time, and as often as it may be deemed expedient by Mortgagee and Mortgagee may pursue inconsistent remedies. No waiver of any default of the Mortgagor hereunder shall be implied from any omission by the Mortgagee or Holders to take any action on account of such default if such default persists or be repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. No acceptance of any payment of any one or more delinquent installments which does not include interest at the penalty or Default Rate from the date of delinquency, together with any required late charge, shall constitute a waiver of the right of Mortgagee or Holders at any time thereafter to demand

UNOFFICIAL COPY

and collect payment of interest at such Default Rate or of late charges, if any.

Waiver of Statutory Rights

26. To the extent permitted by law, Mortgagor hereby agrees that it shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Amended Mortgage, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. Mortgagor acknowledges that the Premises do not constitute agricultural real estate, as said term is defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act. Mortgagor hereby waives any and all rights of redemption from sale under any judgment of foreclosure of this Amended Mortgage on behalf of Mortgagor and on behalf of each and every person acquiring any interest in or title to the Premises of any nature whatsoever, subsequent to the date of this Amended Mortgage. The foregoing waiver of right of redemption is made pursuant to the provisions of Section 15-1601(b) of the Act.

Estoppel Affidavits

27. Mortgagor, within five (5) business days after written request from Mortgagee, shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the indebtedness secured hereby and whether or not any offsets or defense exists against such indebtedness, and covering such other matters as Mortgagee may reasonably require.

"Default Rate"

28. "Default Rate" as used herein shall mean interest at the Default Rate defined in the Amended Notes.

Binding on Successors and Assigns

29. This Amended Mortgage and all provisions hereof shall be binding upon Mortgagor and all persons claiming under or through Mortgagor, and shall inure to the benefit of the Holders from time to time and of the successors and assigns of Mortgagee.

Definitions of "Mortgagor," "Mortgagee" and "Affiliated Parties"

30. The word "Mortgagor" when used herein shall include: (a) the original Mortgagor named in the preambles hereof; (b) said original Mortgagor's successors and assigns; and (c) all owners from time to time of the Premises. The words "Affiliated Parties" when used herein shall mean any and all of: (a) Melvin Simon & Associates, Inc., an Indiana corporation; (b) if Mortgagor is a trustee, beneficiaries of the trust, including the general partners of any general or limited partnership which is a beneficiary of the trust and the joint venture partners of any joint venture which is a beneficiary of the trust; (c) if Mortgagor is a general or limited partnership, the general partners thereof; and (d) if Mortgagor is a joint venture, its joint venture partners. The words "Holders" and "Mortgagee" when

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

used herein shall include all successors and assigns of the original Holders and Mortgagee identified in the preambles hereof.

Maintenance of Mortgagor's and Affiliated Parties' Interests

31. In determining whether or not to restructure the Prior Loans secured hereby, Mortgagee examined the creditworthiness of Borrower, found it acceptable and relied and continues to rely upon same as the means of repayment of the Amended Loan. Mortgagee also evaluated the background and experience of Borrower in owning and operating property such as the Premises, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Premises which is Mortgagee's security for the Amended Loan. Borrower is an entity controlled by individuals or entities well-experienced in borrowing money and owning and operating property such as the Premises, was ably represented by a licensed attorney at law in the negotiation and documentation of the Amended Loan secured hereby and bargained at arm's length and without duress of any kind for all of the terms and conditions of the Amended Loan, including this provision. Mortgagor recognizes that Mortgagee is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than the original Mortgagor. Mortgagor further recognizes that any secondary or junior financing placed upon the Premises (a) may divert funds which would otherwise be used to pay the Amended Notes secured hereby; (b) could result in acceleration and foreclosure by any such junior encumbrancer which would force Mortgagee to take measures and incur expenses to protect its security; (c) would detract from the value of the Premises should Mortgagee come into possession thereof with the intention of selling same; and (d) impair Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Premises.

In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security, both of repayment by Mortgagor and of the value of the Premises; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; (iii) allowing Mortgagee to raise the interest rate and/or collect assumption fees; and (iv) keeping the Premises free of subordinate financing liens, Mortgagor agrees that in this paragraph be deemed a restraint on alienation, that it is a reasonable one and that any sale, conveyance, assignment, further encumbrance or other transfer of title to the Premises or any interest therein (whether voluntary or by operation of law) without the Mortgagee's prior written consent shall be an Event of Default hereunder. For the purpose of, and without limiting the generality of, the preceding sentence, it shall be deemed to be an unpermitted transfer of title to the Premises and therefore an Event of Default hereunder, giving Mortgagee the right at its election under Section 13 hereof, to declare immediately due and payable the entire indebtedness secured hereby, if without Mortgagee's prior written consent (unless otherwise provided for in the Amended Loan Agreement):

(a) Mortgagor shall transfer, convey, alien, pledge, hypothecate or mortgage the Premises or any part thereof or if Mortgagor shall contract for or commit to any of the foregoing; or

UNOFFICIAL COPY

Property of Cook County Clerk's Office

11/1/2023
11/1/2023

UNOFFICIAL COPY

(b) any Affiliated Party shall transfer, convey, alien, pledge, hypothecate or alter in any way an interest in the Mortgagor (whether in the form of a beneficial interest therein or otherwise) or in any entity which holds an interest in the Mortgagor (whether in the form of a beneficial interest thereon or otherwise); or

(c) Mortgagor or any Affiliated Party terminates its existence or merges into or consolidates with any other corporation, firm or association or conveys, transfers, leases or otherwise disposes of all or substantially all of its property, assets or business; or

(d) There is any change in control (by way of transfer of stock ownership, partnership interest, or otherwise) in any corporation or partnership (i) constituting or included within Borrower, or (ii) which directly or indirectly controls any corporation or partnership constituting or included in Borrower, that results in a material change in the identity of the person(s) in control of Borrower.

Any consent by the Mortgagee, or any waiver of an Event of Default, under this paragraph shall not constitute a consent to, or waiver of any right, remedy or power of the Mortgagee upon a subsequent Event of Default under this paragraph.

Captions

32. The captions and headings of various paragraphs of this Amended Mortgage are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Disbursement of Amended Loan Proceeds for Construction of Improvements

33. This is a construction mortgage, as said term is defined in Section 9-313(1)(c) of the Code (as hereinafter defined). Mortgagor further covenants and agrees that the Amended Loan secured hereby is a construction loan and that the proceeds of the Amended Loan secured hereby have been and are to be disbursed by Mortgagee to Mortgagor in accordance with the provisions contained in the Amended Loan Agreement (and in the "Prior Loan Agreements" which have been consolidated and restated by the Amended Loan Agreement). The Amended Loan Agreement is incorporated herein by express reference. Pursuant to and subject to the terms of the Prior Loan Agreements and the Amended Loan Agreement, Mortgagee has committed to advance or apply monies to or on behalf of Mortgagor, and the parties hereby acknowledge and intend that all such advances, whenever hereafter made, shall be a lien from the time the Prior Mortgages were recorded, as provided in Section 15-1302(b)(1) of the Act. All advances and indebtedness arising and accruing under the Amended Loan Agreement from time to time, whether or not the resulting indebtedness secured hereby may exceed the face amount of the Amended Notes, shall be secured hereby to the same extent as though said Amended Loan Agreement were fully incorporated in this Amended Mortgage, and the occurrence of any event of default under said Amended Loan Agreement shall constitute a default under this Amended Mortgage entitling Mortgagee to all of the rights and remedies conferred upon Mortgagee by the terms of this Amended Mortgage. In the event of any conflict or inconsistency between the terms of this Amended Mortgage and the Amended Loan

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Agreement, the terms and provisions of the Amended Loan Agreement shall in each instance govern and control.

It is understood and agreed, however, that with respect to subsequent purchasers and mortgagees without actual notice, none of the advances or indebtedness arising or accruing under the Amended Loan Agreement, shall result in an increase of the indebtedness secured and to be secured hereby over the face amount of the Amended Notes beyond one hundred percent (100%) of such face amount. In determining the amount of such increase there shall be excluded from any computation, all indebtedness which would constitute secured indebtedness under the terms of this Amended Mortgage had this Section 33 been omitted herefrom.

Security Agreement and Financing Statements

34. Mortgagor and Mortgagee agree: (i) that this Amended Mortgage shall constitute a Security Agreement within the meaning of the Uniform Commercial Code ("Code") of the state in which the Premises are located with respect to all sums on deposit with Mortgagee pursuant to Sections 3 and 4 hereof ("Deposits") and with respect to any property included in the definition herein of the word "Premises," which property may not be deemed to form a part of the real estate described in Exhibit A or may not constitute a "fixture" (within the meaning of Section 9-313 of the Code), and all replacements of such property, substitutions for such property, additions to such property, and the proceeds thereof (said property, replacements, substitutions, additions and the proceeds thereof being sometimes herein collectively referred to as the "Collateral"); and (ii) that a security interest in and to the Collateral and the Deposits is hereby granted to Mortgagee; and (iii) that the Deposits and all of Mortgagor's right, title and interest therein are hereby assigned to Mortgagee; all to secure payment of the indebtedness and to secure performance by Mortgagor of the terms, covenants and provisions hereof.

If an Event of Default occurs and is continuing under this Amended Mortgage, Mortgagee, pursuant to the appropriate provisions of the Code, shall have an option to proceed with respect to both the real property and Collateral in accordance with its rights, powers and remedies with respect to the real property, in which event the default provisions of the Code shall not apply. The parties agree that if Mortgagee shall elect to proceed with respect to the Collateral separately from the real property, Mortgagee shall have all remedies available to a secured party under the Code and ten (10) days' notice of the sale of the Collateral shall be reasonable notice. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by Mortgagee shall include, but not be limited to, attorneys' fees and legal expenses incurred by Mortgagee. Mortgagor agrees that, without the written consent of Mortgagee, Mortgagor will not remove or permit to be removed from the Premises any of the Collateral except that so long as the Mortgagor is not in default hereunder, Mortgagor shall be permitted to sell or otherwise dispose of the Collateral when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Premises, but only upon replacing the same or substituting for the same other Collateral at least equal in value and utility to the initial value and utility of that disposed of and in such a manner that said replacement or substituted Collateral shall be subject to the security interest created hereby and that the security interest of Mortgagee shall be perfected and first in priority, it being expressly understood

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

and agreed that all replacements, substitutions and additions to the Collateral shall be and become immediately subject to the security interest of this Amended Mortgage and covered hereby. Mortgagor covenants and represents that all Collateral now is, and that all replacements thereof, substitutions therefor or additions thereto, unless the Mortgagee otherwise consents, will be free and clear of liens, encumbrances, title retention devices and security interests of others.

Mortgagor and Mortgagee agree, to the extent permitted by law, that: (i) all of the goods described within the definition of the word "Premises" herein are or are to become fixtures on the land described in Exhibit A; (ii) this instrument, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of Sections 9-313 and 9-402 of the Code; and (iii) Trustee is the record owner of the land described in Exhibit A. The addresses of Mortgagor and Mortgagee are set forth in the Amended Loan Agreement.

Mortgagor, upon request by Mortgagee from time to time, shall execute, acknowledge and deliver to Mortgagee, or cause any Affiliated Party to so execute, acknowledge and deliver to Mortgagee, a separate Security Agreement, Financing Statement or other similar security instruments, in form satisfactory to Mortgagee, covering all property of any kind whatsoever owned by Mortgagor or such Affiliated Party, as the case may be, which in the sole opinion of Mortgagee is essential to the operation of the Premises and which constitutes goods within the meaning of the Code or concerning which there may be any doubt whether the title to same has been conveyed by or security interest perfected by this Amended Mortgage under the laws of the state in which the Premises are located, and will further execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any financing statement, affidavit, continuation statement or certificate or other document as Mortgagee may request in order to perfect, preserve, maintain, continue and extend the security interest under and the priority of this Amended Mortgage and such security instrument. Mortgagor further agrees to pay to Mortgagee on demand all costs and expenses incurred by Mortgagee in connection with the preparation, execution, recording, filing and re-filing of any such document. Mortgagor shall from time to time but not more than one time in any calendar year, within thirty (30) days of Mortgagee's request, deliver to Mortgagee an inventory of the Collateral in reasonable detail.

Partial Invalidity: Maximum Allowable Rate of Interest

35. Mortgagor and Mortgagee intend and believe that each provision in this Amended Mortgage and the Amended Notes comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Amended Mortgage or the Amended Notes is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Amended Mortgage and the Amended Notes to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of Mortgagor and Mortgagee that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Amended Mortgage and the Amended Notes shall be construed as if such illegal, invalid,

93225400

UNOFFICIAL COPY

unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Mortgagor and Mortgagee under the remainder of this Amended Mortgage and the Amended Notes shall continue in full force and effect. All agreements herein and in the Amended Notes are expressly limited so that in no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof, acceleration of maturity of the unpaid principal balance of the Amended Notes, or otherwise, shall the amount paid or agreed to be paid to the Holders for the use, forbearance or detention of the money to be advanced hereunder exceed the highest lawful rate permissible under applicable usury laws. If, from any circumstances whatsoever, fulfillment of any provision hereof or of the Amended Notes or any other agreement referred to herein, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity and if from any circumstance the Holders shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due under the Amended Notes and not to the payment of interest.

Mortgagee's Lien for Service Charge and Expenses

36. At all times, regardless of whether any Amended Loan proceeds have been disbursed, this Amended Mortgage secures (in addition to any Amended Loan proceeds disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by Mortgagee in connection with the Amended Loan secured hereby; provided, however, that in no event shall the total amount of Amended Loan proceeds disbursed plus such additional amounts exceed two hundred percent (200%) of the total of the face amount of the Amended Notes.

Applicable Law

37. This Amended Mortgage shall be construed, interpreted and governed by the internal laws of the State of New York, except to the extent Illinois law shall govern the exercise of Mortgagee's remedies with respect to the Premises.

Declaration of Subordination

38. At the option of Mortgagee, this Amended Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any Condemnation Proceeds), to any and all leases of all or any part of the Premises upon the execution by Mortgagee and recording thereof, at any time hereafter in the appropriate official records of the County wherein the Premises are situated, of a unilateral declaration to that effect. Mortgagee agrees to execute upon request from Mortgagor a non-disturbance agreement for leases in effect on or before the date hereof, in form and substance satisfactory to Mortgagee. Mortgagee's execution of a non-disturbance agreement with regard to future leases shall be subject to Mortgagee's approval of such lease.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Waiver

39. MORTGAGOR HEREBY EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY MORTGAGEE ON THIS MORTGAGE, ANY AND EVERY RIGHT IT MAY HAVE TO (i) INJUNCTIVE RELIEF, (ii) A TRIAL BY JURY, (iii) INTERPOSE ANY COUNTERCLAIM THEREIN AND (iv) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING. NOTHING HEREIN CONTAINED SHALL PREVENT OR PROHIBIT MORTGAGOR FROM INSTITUTING OR MAINTAINING A SEPARATE ACTION AGAINST MORTGAGEE WITH RESPECT TO ANY ASSERTED CLAIM.

Exoneration

40. Notwithstanding anything contained herein to the contrary, Mortgagee agrees for itself and its successors and assigns that the liability of Borrower hereunder shall be limited to the extent provided in Section 18.20 of the Amended Loan Agreement.

Trustee Exculpation.

41. This Amended Mortgage is executed by LaSalle National Trust, N.A., not personally, but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee, and it is expressly understood and agreed that nothing herein or in the Amended Notes contained shall be construed as creating any liability on Trustee, personally to pay the Amended Notes or any interest that may accrue thereon, or any indebtedness accruing thereunder, or to perform any covenant either express or implied herein contained (it being understood and agreed that each of the provisions hereof shall constitute a condition and not a covenant or agreement, regardless of whether the same may be couched in language of a promise or covenant or agreement), all such liability, if any, being expressly waived by Mortgagee and by every person now or hereafter claiming any right or security hereunder, and that so far as Trustee is and its successors concerned, the Holders and the owner or owners of any indebtedness accruing hereunder shall look solely to any one or more of: (1) the Premises and the rents, issues and profits thereof, for the payment thereof, by the enforcement of the lien hereby created, in the manner herein and in the Amended Notes provided; (2) assets of the Trust Estate held under the Trust Agreement; (3) any other security given to secure said indebtedness; or (4) the personal liability of the guarantors and indemnitors under the Amended Loan Documents; but this shall not be construed in any way so as to affect or impair the lien of this Mortgage or Mortgagee's right to the foreclosure thereof, or construed in any way so as to limit or restrict any of the rights or remedies of Mortgagee in any such foreclosure proceeding or other enforcement of the payment of the indebtedness secured hereby out of and from the security given therefor in the manner herein and in the Note provided (including the right of Mortgagee to obtain a deficiency judgment against Trustee), nor shall it be construed in any way so as to limit the personal liability of any guarantors hereof or indemnitors.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor has caused these presents to be signed as of the day and year first above written.

LASALLE NATIONAL TRUST, N.A., not personally, but as successor trustee as aforesaid

ATTEST:

[Signature]
Secretary
Notar Public

By: [Signature]
Its _____

BENEFICIARY:

HIGGINS-MANNHEIM PROPERTIES, an Illinois general partnership

By: Rosemont Associates Limited Partnership, an Illinois limited partnership, its general partner

By: Simon Rosemont, Inc., Its General Partner

By: _____
Its _____

By: HMP Developers Limited Partnership, an Illinois limited partnership, its general partner

By: Rosemont Associates Limited Partnership, an Illinois limited partnership, its general partner

By: Simon Rosemont, Inc., Its General Partner

By: _____
Its _____

Consented to as of the _____ day of March, 1993,

THE CHASE MANHATTAN BANK, N.A.

By: _____
Its _____

This instrument was prepared by:

mail to
Dustin E. Neumark, Esq.
SONNENSCHN NATH & ROSENTHAL
8000 Sears Tower
Chicago, Illinois 60606

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor has caused these presents to be signed as of the day and year first above written.

LASALLE NATIONAL TRUST, N.A., not personally, but as successor trustee as aforesaid

ATTEST:

Secretary

By: _____

Its _____

BENEFICIARY:

HIGGINS-MANNHEIM PROPERTIES, an Illinois general partnership

By: Rosemont Associates Limited Partnership, an Illinois limited Partnership, its general partner

By: Simon Rosemont, Inc., Its General Partner

By: _____

Its _____

David Simon
Vice President

By: HMP Developers Limited Partnership, an Illinois limited partnership, its general partner

By: Rosemont Associates Limited Partnership, an Illinois limited partnership, its general partner

By: Simon Rosemont Inc., Its General Partner

By: _____

Its _____

David Simon

Consented to as of the _____ day of March, 1993,

THE CHASE MANHATTAN BANK, N.A.

By: _____

Its _____

This instrument was prepared by:

Dustin E. Neumark, Esq.
SONNENSCHN NATH & ROSENTHAL
8000 Sears Tower
Chicago, Illinois 60606

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor has caused these presents to be signed as of the day and year first above written.

LASALLE NATIONAL TRUST, N.A., not personally, but as successor trustee as aforesaid

ATTEST:

Secretary

By: _____
Its _____

BENEFICIARY:

HIGGINS-MANNHEIM PROPERTIES, an Illinois general partnership

By: Rosemont Associates Limited Partnership, an Illinois limited Partnership, its general partner

By: Simon Rosemont, Inc., Its General Partner

By: _____
Its _____

By: HMP Developers Limited Partnership, an Illinois limited partnership, its general partner

By: Rosemont Associates Limited Partnership, an Illinois limited partnership, its general partner

By: Simon Rosemont, Inc., Its General Partner

By: _____
Its _____

Consented to as of the 25th day of March, 1993,

THE CHASE MANHATTAN BANK, N.A.

By: [Signature]
Its Vice President

This instrument was prepared by:

Dustin E. Neumark, Esq.
SONNENSCHN NATH & ROSENTHAL
8000 Sears Tower
Chicago, Illinois 60606

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

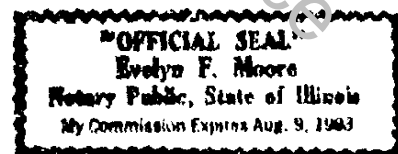
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, CHRISTINE MOORE, a Notary Public
in and for said County, in the State aforesaid, DO HEREBY
CERTIFY, that Rosemary Collins of LaSalle National Trust, N.A. and
William H. Ditty of said Association who are
personally known to me to be the same persons whose names are
subscribed to the foregoing instrument as such ASSOCIATE SECRETARIES
and ASSOCIATE SECRETARIES, respectively, appeared
before me this day in person 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 Association, as
Trustee as aforesaid, for the uses and purposes therein set
forth; and the said ASSOCIATE SECRETARIES then and there
acknowledged that he, as custodian of the corporate seal of said
Association, did affix the corporate seal of said Association to
said instrument as his, her own free and voluntary act and as the
free and voluntary act of said Association, as Trustee as
aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 24 day of
March, 1993.

Evelyn F. Moore
Notary Public

My Commission Expires:

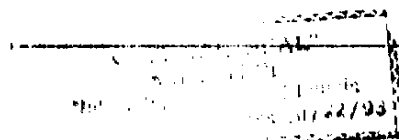


STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

GIVEN under my hand and Notarial Seal this 24th day of
March, 1993.

Ray S. [Signature]
Notary Public

My Commission Expires:



2025 RELEASE UNDER E.O. 14176

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF Indiana,
COUNTY OF Marion) SS.

I, Kimmi R. O'Bryan, a Notary Public in and for said County, in the State aforesaid, DO HEREDY CERTIFY that David Simon, Vice President of Simon Rosemont, Inc., an Indiana corporation ("SRI"), SRI being the general partner of Rosemont Associates Limited Partnership, an Illinois limited partnership ("RALP"), RALP being a general partner of Higgins-Mannheim Properties, an Illinois general partnership ("Higgins") and also the general partner of HMP Developers Limited Partnership, an Illinois limited partnership ("HMP"), HMP being the other general partner of Higgins, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Vice President, appeared before me this day in person and acknowledged that he signed and delivered said instrument as such officer of said corporation, as his own free and voluntary act and as the free and voluntary act of the corporation in said corporation's capacity as general partner of RALP, in its capacity as general partners of both HMP and Higgins, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 20th day of March, 1993.

Kimmi R. O'Bryan
Notary Public

My Commission Expires:

KIMMI R. O'BRYAN Notary Public
County of Residence: Marion
My Commission Expires Dec. 6, 1996

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

PARCEL 4:

THAT PART OF THE SOUTHWEST 1/4 OF SECTION 33, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF A LINE 50.00 FEET, AS MEASURED AT RIGHT ANGLES, NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTHWEST 1/4, WITH A LINE 449.69 FEET, AS MEASURED AT RIGHT ANGLES, EAST OF AND PARALLEL WITH THE WEST LINE OF SAID SOUTHWEST 1/4 (THE WEST LINE OF SAID SOUTHWEST 1/4 HAVING AN ASSUMED BEARING OF NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST FOR THIS LEGAL DESCRIPTION); THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG SAID LAST DESCRIBED PARALLEL LINE, 169.49 FEET TO AN INTERSECTION WITH THE SOUTHERLY LINE OF LAND CONDEMNED FOR THE WIDENING OF HIGGINS ROAD IN CASE NO. 65L8179, IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS; THENCE SOUTH 72 DEGREES 34 MINUTES 18 SECONDS EAST ALONG SAID LAST DESCRIBED SOUTHERLY LINE AND ALONG THE SOUTHERLY LINE OF LAND CONDEMNED FOR THE WIDENING OF HIGGINS ROAD IN SAID CASE NO. 65L7109 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, 18.61 FEET TO THE EAST LINE OF LAND CONDEMNED FOR HIGGINS ROAD IN SAID CASE NUMBER 65L7109; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG THE SAID LAST DESCRIBED EAST LINE, 6.29 FEET TO AN INTERSECTION WITH THE SOUTHERLY LINE OF HIGGINS ROAD, BEING A LINE 50.00 FEET, AS MEASURED AT RIGHT ANGLES, SOUTHERLY OF AND PARALLEL WITH THE CENTER LINE OF SAID HIGGINS ROAD; THENCE SOUTH 72 DEGREES 34 MINUTES 18 SECONDS EAST ALONG SAID LAST DESCRIBED SOUTHERLY LINE, 36.19 FEET; THENCE SOUTH 39 DEGREES 39 MINUTES 24 SECONDS WEST, 27.09 FEET TO AN INTERSECTION WITH A LINE 484.69 FEET, AS MEASURED AT RIGHT ANGLES, EAST OF AND PARALLEL WITH THE WEST LINE OF SAID SOUTHWEST 1/4; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST ALONG SAID LAST DESCRIBED PARALLEL LINE, 837.28 FEET TO AN INTERSECTION WITH A LINE 50.00 FEET, AS MEASURED AT RIGHT ANGLES, NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTHWEST 1/4; THENCE SOUTH 87 DEGREES 39 MINUTES 06 SECONDS WEST ALONG SAID LAST DESCRIBED PARALLEL LINE, 35.03 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS

PARCEL 5:

THAT PART OF THE SOUTHWEST 1/4 OF SECTION 33, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF A LINE 50.00 FEET, AS MEASURED AT RIGHT ANGLES, NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTHWEST 1/4 WITH A LINE 444.69 FEET, AS MEASURED AT RIGHT ANGLES, EAST OF AND PARALLEL WITH THE WEST LINE OF SAID SOUTHWEST 1/4 (THE WEST LINE OF SAID SOUTHWEST 1/4 HAVING AN ASSUMED BEARING OF NORTH 00 DEGREES, 00 MINUTES, 00 SECONDS EAST FOR THIS LEGAL DESCRIPTION); THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG SAID LAST DESCRIBED PARALLEL LINE, 153.00 FEET TO A POINT FOR A PLACE OF BEGINNING; THENCE CONTINUING NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG SAID LAST DESCRIBED PARALLEL LINE, 274.26 FEET; THENCE NORTH 90 DEGREES, 00 MINUTES, 00 SECONDS EAST 219.46 FEET; THENCE SOUTH 00 DEGREES, 00 MINUTES, 00 SECONDS WEST, 191.06 FEET; THENCE SOUTH 45 DEGREES, 00 MINUTES, 00 SECONDS WEST, 60.13 FEET; THENCE SOUTH 9 DEGREES, 00 MINUTES, 00 SECONDS WEST, 44.23 FEET; THENCE NORTH 00 DEGREES, 00

93225400

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

MINUTES, 00 SECONDS EAST, 8.00 FEET; THENCE SOUTH 90 DEGREES, 00 MINUTES, 00 SECONDS WEST, 43.53 FEET; THENCE SOUTH 00 DEGREES, 00 MINUTES, 00 SECONDS WEST, 48.68 FEET; THENCE SOUTH 90 DEGREES, 00 MINUTES, 00 SECONDS WEST, 89.18 FEET; TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS

PARCEL 6:

THAT PART OF THE SOUTHWEST 1/4 OF SECTION 33, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

CONCERNING AT THE INTERSECTION OF A LINE 50.00 FEET, AS MEASURED AT RIGHT ANGLES, NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTHWEST 1/4 WITH A LINE 484.69 FEET, AS MEASURED AT RIGHT ANGLES, EAST OF AND PARALLEL WITH THE WEST LINE OF SAID SOUTHWEST 1/4 (THE WEST LINE OF SAID SOUTHWEST 1/4 HAVING AN ASSUMED BEARING OF NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST FOR THIS LEGAL DESCRIPTION); THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG SAID LAST DESCRIBED PARALLEL LINE, 427.26 FEET TO A POINT FOR A PLACE OF BEGINNING; THENCE CONTINUING NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG SAID LAST DESCRIBED PARALLEL LINE, 251.92 FEET; THENCE NORTH 45 DEGREES 00 MINUTES 00 SECONDS EAST, 32.33 FEET; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST, 53.70 FEET; THENCE SOUTH 72 DEGREES 34 MINUTES 18 SECONDS EAST, 149.63 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST, 230.31 FEET; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, 219.46 FEET; TO THE POINT OF BEGINNING IN COOK COUNTY, ILLINOIS.

PARCEL 7:

THAT PART OF THE SOUTHWEST 1/4 OF SECTION 33, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF A LINE 50.00 FEET, AS MEASURED AT RIGHT ANGLES, NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTHWEST 1/4 WITH A LINE 484.69 FEET, AS MEASURED AT RIGHT ANGLES, EAST OF AND PARALLEL WITH THE WEST LINE OF SAID SOUTHWEST 1/4 (THE WEST LINE OF SAID SOUTHWEST 1/4 HAVING AN ASSUMED BEARING OF NORTH 00 DEGREES, 00 MINUTES, 00 SECONDS EAST FOR THIS LEGAL DESCRIPTION); THENCE NORTH 00 DEGREES, 00 MINUTES, 00 SECONDS EAST ALONG SAID LAST DESCRIBED PARALLEL LINE, 153.00 FEET; THENCE NORTH 90 DEGREES, 00 MINUTES, 00 SECONDS EAST, 89.18 FEET; THENCE NORTH 00 DEGREES, 00 MINUTES, 00 SECONDS EAST, 48.68 FEET; THENCE NORTH 90 DEGREES, 00 MINUTES, 00 SECONDS EAST, 43.53 FEET; THENCE SOUTH 00 DEGREES, 00 MINUTES, 00 SECONDS EAST, 8.00 FEET; THENCE NORTH 90 DEGREES, 00 MINUTES, 00 SECONDS EAST, 40.23 FEET; THENCE NORTH 45 DEGREES, 00 MINUTES, 00 SECONDS EAST, 60.13 FEET; THENCE NORTH 00 DEGREES, 00 MINUTES, 00 SECONDS EAST, 141.06 FEET TO A POINT 447.18 FEET NORTH AND 704.15 FEET EAST OF THE SOUTHWEST CORNER OF THE SOUTHWEST 1/4 OF SAID SECTION 33, AS MEASURED ALONG THE WEST LINE OF SAID SOUTHWEST 1/4 AND ALONG A LINE AT RIGHT ANGLES THERETO; THENCE NORTH 90 DEGREES, 00 MINUTES, 00 SECONDS EAST, 260.00 FEET TO THE WESTERLY RIGHT OF WAY LINE OF THE MINNEAPOLIS ST. PAUL AND SAULT STE. MARIE RAILROAD (FORMERLY THE CHICAGO AND WISCONSIN RAILROAD); THENCE SOUTH 14 DEGREES, 51 MINUTES, 36 SECONDS EAST ALONG SAID LAST DESCRIBED WESTERLY LINE, 365.99 FEET TO AN INTERSECTION WITH A LINE 50.00 FEET, AS MEASURED AT RIGHT ANGLES, NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTHWEST 1/4; THENCE SOUTH 87 DEGREES, 39 MINUTES, 06 SECONDS WEST ALONG SAID LAST DESCRIBED PARALLEL LINE, 573.81 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS

93225400

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

PARCEL 8:

EASEMENT FOR THE BENEFIT OF PARCELS 4, 5, 6, 7, AND 9 AFORESAID AS CREATED BY GRANT FROM THE UNITED STATES OF AMERICA, ACTING BY AND THROUGH THE SECRETARY OF THE AIR FORCE, TO LASALLE NATIONAL BANK, A NATIONAL BANKING ASSOCIATION, AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 7, 1983 AND KNOWN AS TRUST NUMBER 107291 DATED APRIL 11, 1985 AND RECORDED APRIL 18, 1985 AS DOCUMENT 27516767 FOR A RIGHT OF WAY FOR A ROAD OR STREET FOR A TERM OF 50 YEARS COMMENCING APRIL 11, 1985 OVER, ACROSS, IN, AND UPON LANDS OF THE UNITED STATES DESCRIBED AS FOLLOWS:

TRACT NO. 208:

THE SOUTH 50 FEET OF THE WEST 467.84 FEET OF THE SOUTHWEST 1/4 OF SECTION 33, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS;

TRACT NO. 209:

THE SOUTH 50 FEET, LYING WEST OF THE WEST LINE OF THE RIGHT OF WAY OF THE MINNEAPOLIS, ST. PAUL AND SAULT STE. MARIE RAILROAD, OF THAT PART OF THE SOUTHWEST 1/4 OF SECTION 33, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, LYING SOUTH OF THE CENTER LINE OF HIGGINS ROAD AND WEST OF A LINE DRAWN PARALLEL TO AND 1064 FEET WEST OF (AS MEASURED ALONG THE SOUTH LINE OF SAID SOUTHWEST 1/4 SECTION 33,) THE EXTENSION NORTH OF THE EAST LINE OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 4, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND EAST OF THE EXTENSION NORTH OF THE WEST LINE OF THE EAST 1360.82 FEET OF SAID NORTHWEST FRACTIONAL QUARTER, EXCEPT THE RIGHT OF WAY OF THE MINNEAPOLIS, ST. PAUL AND SAULT STE. MARIE RAILROAD;

ALSO

THE SOUTH 50 FEET OF THE SOUTHWEST 1/4 OF SECTION 33, LYING WEST OF THE WEST LINE, EXTENDED NORTH TO THE CENTER LINE OF HIGGINS ROAD, OF THE EAST 20.62 CHAINS OF THE NORTHWEST 1/4 OF SECTION 4, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPT THE WEST 467.84 FEET THEREOF, IN COOK COUNTY, ILLINOIS.

PARCEL 9:

THAT PART OF THE SOUTHWEST 1/4 OF SECTION 33, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF A LINE 50.00 FEET, AS MEASURED AT RIGHT ANGLES, NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTHWEST 1/4 WITH A LINE 484.69 FEET, AS MEASURED AT RIGHT ANGLES, EAST OF AND PARALLEL WITH THE WEST LINE OF SAID SOUTHWEST 1/4 (THE WEST LINE OF SAID SOUTHWEST 1/4 HAVING AN ASSUMED BEARING OF NORTH: 00 DEGREES, 00 MINUTES, 00 SECONDS EAST FOR THIS LEGAL DESCRIPTION); THENCE NORTH 00 DEGREES, 00 MINUTES, 00 SECONDS EAST ALONG SAID LAST DESCRIBED PARALLEL LINE, 153.00 FEET; THENCE NORTH 90 DEGREES, 00 MINUTES, 00 SECONDS EAST, 89.18 FEET; THENCE NORTH 00 DEGREES, 00 MINUTES, 00 SECONDS EAST, 48.68 FEET; THENCE NORTH 90 DEGREES, 00 MINUTES, 00 SECONDS EAST, 43.53 FEET; THENCE SOUTH 00 DEGREES, 00 MINUTES, 00 SECONDS EAST, 8.00 FEET; THENCE NORTH 90 DEGREES, 00 MINUTES 00 SECONDS EAST, 44.23 FEET; THENCE NORTH 45 DEGREES, 00 MINUTES, 00 SECONDS EAST, 60.13 FEET; THENCE NORTH 00

93225400

UNOFFICIAL COPY

Property of Cook County Clerk's Office

EXHIBIT A

DEGREES, 00 MINUTES, 00 SECONDS EAST, 141.06 FEET TO A POINT FOR A PLACE OF BEGINNING, SAID POINT BEING 447.18 FEET NORTH AND 704.15 FEET EAST OF THE SOUTHWEST CORNER OF THE SOUTHWEST 1/4 OF SAID SECTION 33, AS MEASURED ALONG THE WEST LINE OF SAID SOUTHWEST 1/4 AND ALONG A LINE AT RIGHT ANGLES THERETO; THENCE NORTH 00 DEGREES, 00 MINUTES, 00 SECONDS EAST, 280.11 FEET; THENCE NORTH 72 DEGREES, 34 MINUTES, 18 SECONDS WEST, 149.63 FEET; THENCE SOUTH 90 DEGREES, 00 MINUTES, 00 SECONDS WEST, 53.70 FEET; THENCE SOUTH 45 DEGREES, 00 MINUTES, 00 SECONDS WEST, 32.53 FEET; TO A POINT ON A LINE 204.69 FEET, AS MEASURED AT RIGHT ANGLES, EAST OF AND PARALLEL WITH THE WEST LINE OF SAID SOUTHWEST 1/4, SAID POINT BEING 679.18 FEET, AS MEASURED ALONG SAID PARALLEL LINE, NORTH OF THE AFORESAID POINT OF COMMENCEMENT; THENCE NORTH 00 DEGREES, 00 MINUTES, 00 SECONDS EAST ALONG SAID LAST DESCRIBED PARALLEL LINE, 158.10 FEET; THENCE NORTH 39 DEGREES, 39 MINUTES, 24 SECONDS EAST, 27.09 FEET TO AN INTERSECTION WITH THE SOUTHERLY LINE OF HIGGINS ROAD, BEING A LINE 50.00 FEET, AS MEASURED AT RIGHT ANGLES, SOUTHERLY OF AND PARALLEL WITH THE CENTER LINE OF SAID ROAD; THENCE SOUTH 72 DEGREES, 34 MINUTES, 18 SECONDS EAST ALONG SAID LAST DESCRIBED SOUTHERLY LINE, 382.55 FEET TO AN INTERSECTION WITH THE WESTERLY RIGHT OF WAY LINE OF THE MINNEAPOLIS, ST. PAUL AND SALT STE. MARIE RAILROAD (FORMERLY THE CHICAGO AND WISCONSIN RAILROAD); THENCE SOUTH 19 DEGREES, 51 MINUTES, 36 SECONDS EAST ALONG SAID LAST DESCRIBED WESTERLY LINE, 378.37 FEET; THENCE SOUTH 90 DEGREES, 00 MINUTES, 00 SECONDS WEST, 260.00 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS

PARCEL 10:

EASEMENT FOR THE BENEFIT OF PARCELS 4, 5, 6, 7 AND 9 AS SET FORTH IN THE EASEMENT AGREEMENT DATED NOVEMBER 7, 1984 AND RECORDED NOVEMBER 27, 1984 AS DOCUMENT 27360220 MADE BY AND BETWEEN LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 7, 1983 AND KNOWN AS TRUST NUMBER 107291 ("DEVELOPER"), LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 27, 1984 AND KNOWN AS TRUST NUMBER 108833 ("ADJOINING OWNER"), HOLIDAY INNS, INC. (EMBASSY SUITES DIVISION), A TENNESSEE CORPORATION ("HOLIDAY") AND LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 1, 1984 AND KNOWN AS TRUST NUMBER 104520 ("HOLIDAY'S ASSIGNEE") AND AS CREATED BY RECIPROCAL EASEMENT AGREEMENT DATED MARCH 1, 1985 AND RECORDED MAY 29, 1985 AS DOCUMENT 85038533 MADE BY AND BETWEEN LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 7, 1983 AND KNOWN AS TRUST NUMBER 107291 ("DEVELOPER"), LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 27, 1984 AND KNOWN AS TRUST NUMBER 108833 ("ADJOINING OWNER") AND LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 1, 1984 AND KNOWN AS TRUST NUMBER 104520 ("HOLIDAY'S ASSIGNEE") TO CONSTRUCT, INSTALL, USE, MAINTAIN, REPAIR AND REPLACE SUCH WATER AND GAS MAINS, SANITARY SEWER AND STORM SEWER LINES, LATERALS, FEEDERS AND BASINS, LIGHTING POLES AND APPARATUS, ELECTRICAL CONDUITS AND TRANSFORMERS AND THE ACCESSORY FACILITIES RELATING TO ALL OF THE FOREGOING AS SHALL BE NECESSARY OR REQUIRED BY LAW TO SERVE PARCELS 4, 5, 6, 7 AND 9 WITH WATER, SEWER, GAS, ELECTRICAL, TELEPHONE COMMUNICATION AND OTHER UTILITY SERVICES IN, UNDER, OVER AND UPON A 20 FOOT STRIP CONTIGUOUS TO THE PERIMETER OF THE LAND HERETOFORE DESCRIBED.

THAT PART OF THE SOUTHWEST 1/4 OF SECTION 33, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE EAST LINE OF MANNHEIM ROAD, BEING A LINE 33.0 FEET, AS MEASURED AT RIGHT ANGLES, EAST OF AND PARALLEL WITH THE WEST LINE OF SAID SOUTHWEST 1/4, WITH A LINE 50.0 FEET, AS MEASURED AT RIGHT ANGLES, NORTH OF AND

93225400

UNOFFICIAL COPY

EXHIBIT A

PARALLEL WITH THE SOUTH LINE OF SAID SOUTHWEST 1/4 (THE WEST LINE OF SAID SOUTHWEST 1/4 HAVING AN ASSUMED BEARING OF NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST FOR THIS LEGAL DESCRIPTION); THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG SAID EAST LINE OF MANNHEIM ROAD, 276.87 FEET TO AN INTERSECTION WITH THE SOUTH LINE OF LAND CONDEMNED FOR THE WIDENING OF MANNHEIM ROAD IN CASE NO. 65L7109, CIRCUIT COURT OF COOK COUNTY, ILLINOIS; THENCE NORTH 87 DEGREES 35 MINUTES 51 SECONDS EAST ALONG SAID LAST DESCRIBED SOUTH LINE, 11.01 FEET TO THE EAST LINE OF LAND CONDEMNED FOR THE WIDENING OF MANNHEIM ROAD IN SAID CASE NO. 65L7109; THENCE NORTH 00 DEGREES 13 MINUTES 18 SECONDS EAST ALONG SAID LAST DESCRIBED LINE, 248.60 FEET TO A POINT ON A LINE 575.0 FEET, AS MEASURED AT RIGHT ANGLES, NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTHWEST 1/4, SAID POINT BEING 45.0 FEET EAST OF THE INTERSECTION OF SAID LAST DESCRIBED PARALLEL LINE WITH THE WEST LINE OF SAID SOUTHWEST 1/4; THENCE NORTH 01 DEGREES 36 MINUTES 37 SECONDS EAST ALONG THE EAST LINE OF THE LAND CONDEMNED FOR THE WIDENING OF MANNHEIM ROAD IN CASE NO. 65L8179, CIRCUIT COURT OF COOK COUNTY, ILLINOIS, 25.86 FEET TO A POINT FOR A PLACE OF BEGINNING; THE FOLLOWING FOUR COURSES ARE ALONG THE EAST, SOUTH EAST OR SOUTHWESTERLY LINE OF LAND CONDEMNED FOR THE WIDENING OF HIGGINS ROAD AND MANNHEIM ROAD IN SAID CASE NO. 65L8179; THENCE NORTH 01 DEGREES 36 MINUTES 37 SECONDS EAST, 253.41 FEET; THENCE NORTH 03 DEGREES 40 MINUTES 18 SECONDS EAST, 187.38 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, 48.26 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY ALONG A CURVED LINE CONVEX NORTHWESTERLY, HAVING A RADIUS OF 50.0 FEET AND BEING TANGENT TO SAID LAST DESCRIBED LINE AT SAID LAST DESCRIBED POINT, AN ARC DISTANCE OF 93.75 FEET TO A POINT OF TANGENCY (THE CHORD OF SAID ARC BEARS NORTH 52 DEGREES 42 MINUTES 51 SECONDS EAST, 80.61 FEET); THENCE SOUTH 72 DEGREES 34 MINUTES 18 SECONDS EAST, 338.24 FEET TO AN INTERSECTION WITH A LINE 449.69 FEET, AS MEASURED AT RIGHT ANGLES, EAST OF AND PARALLEL WITH THE WEST LINE OF SAID SOUTHWEST 1/4; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST ALONG SAID LAST DESCRIBED PARALLEL LINE, 335.0 FEET; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, 404.0 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 11:

EASEMENT FOR THE BENEFIT OF PARCELS 4, 5, 6, 7 AND 9 AFORESAID AS CREATED BY EASEMENT AGREEMENT DATED NOVEMBER 7, 1984 AND RECORDED NOVEMBER 27, 1984 AS DOCUMENT 27380220 MADE BY AND BETWEEN LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 7, 1983 AND KNOWN AS TRUST NUMBER 107291 ("DEVELOPER"), LA SALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 27, 1984 AND KNOWN AS TRUST NUMBER 108833 ("ADJOINING OWNER"), HOLIDAY INNS, INC. (EMBASSY SUITES DIVISION), A TENNESSEE CORPORATION ("HOLIDAY") AND LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 1, 1984 AND KNOWN AS TRUST NUMBER 108520 ("HOLIDAY'S ASSIGNEE") FOR INGRESS AND EGRESS OF VEHICULAR AND PEDESTRIAN TRAFFIC OVER AND UPON ALL ROADS, STREETS, SIDEWALKS, WALKWAYS AND OTHER RIGHTS OF WAY FROM TIME TO TIME DESIGNED OR INTENDED FOR VEHICULAR AND/OR PEDESTRIAN TRAFFIC NOW OR HEREAFTER INSTALLED OR CONSTRUCTED WITHIN ANY PART OF THE FOLLOWING DESCRIBED PARCEL OF LAND, TO WIT:

THAT PART OF THE SOUTHWEST 1/4 OF SECTION 33, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE EAST LINE OF MANNHEIM ROAD, BEING A LINE 33.0 FEET, AS MEASURED AT RIGHT ANGLES, EAST OF AND PARALLEL WITH THE WEST LINE OF SAID SOUTHWEST 1/4, WITH A LINE 50.0 FEET, AS MEASURED AT RIGHT ANGLES, NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTHWEST 1/4 (THE WEST LINE OF SAID SOUTHWEST

93225400

“

Figure 1

UNOFFICIAL COPY

EXHIBIT A

1/4 HAVING AN ASSUMED BEARING OF NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST FOR THIS LEGAL DESCRIPTION); THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG SAID EAST LINE OF MANNHEIM ROAD; 276.87 FEET TO AN INTERSECTION WITH THE SOUTH LINE OF LAND CONDEMNED FOR THE WIDENING OF MANNHEIM ROAD IN CASE NO. 65L7109, CIRCUIT COURT OF COOK COUNTY, ILLINOIS; THENCE NORTH 87 DEGREES 35 MINUTES 31 SECONDS EAST ALONG SAID LAST DESCRIBED SOUTH LINE, 11.01 FEET TO THE EAST LINE OF LAND CONDEMNED FOR THE WIDENING OF MANNHEIM ROAD IN CASE NO. 65L7109; THENCE NORTH 00 DEGREES 12 MINUTES 16 SECONDS EAST ALONG SAID LAST DESCRIBED LINE, 248.60 FEET TO A POINT ON A LINE 875.0 FEET, AS MEASURED AT RIGHT ANGLES, NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTHWEST 1/4, SAID POINT BEING 45.0 FEET EAST OF THE INTERSECTION OF SAID LAST DESCRIBED PARALLEL LINE WITH THE WEST LINE OF SAID SOUTHWEST 1/4; THENCE NORTH 01 DEGREES 36 MINUTES 37 SECONDS EAST ALONG THE EAST LINE OF LAND CONDEMNED FOR THE WIDENING OF MANNHEIM ROAD IN CASE NO. 65L8179, CIRCUIT COURT OF COOK COUNTY, ILLINOIS; 25.86 FEET TO A POINT FOR A PLACE OF BEGINNING; THE FOLLOWING FOUR COURSES ARE ALONG THE EAST, SOUTHEAST OR SOUTHWESTERLY LINE OF LAND CONDEMNED FOR THE WIDENING OF HIGGINS ROAD AND MANNHEIM ROAD IN SAID CASE NO. 65L8179; THENCE NORTH 01 DEGREES 36 MINUTES 37 SECONDS EAST, 753.41 FEET; THENCE NORTH 03 DEGREES 40 MINUTES 18 SECONDS EAST, 187.38 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, 48.26 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY ALONG A CURVED LINE CONVEX NORTHWESTERLY, HAVING A RADIUS OF 50.0 FEET AND BEING TANGENT TO SAID LAST DESCRIBED LINE AT SAID LAST DESCRIBED POINT, AN ARC DISTANCE OF 93.75 FEET TO A POINT OF TANGENCY (THE CHORD OF SAID ARC BEARS NORTH 55 DEGREES 42 MINUTES 51 SECONDS EAST, 80.61 FEET); THENCE SOUTH 72 DEGREES 34 MINUTES 23 SECONDS EAST, 338.24 FEET TO AN INTERSECTION WITH A LINE 449.69 FEET, AS MEASURED AT RIGHT ANGLES, EAST OF AND PARALLEL WITH THE WEST LINE OF SAID SOUTHWEST 1/4; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST ALONG SAID LAST DESCRIBED PARALLEL LINE, 335.0 FEET; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, 404.0 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

09-33-311-048-0000

09-33-311-049-0000

10275 W Higgins

Rosemont, IL

UNOFFICIAL COPY

Property of Cook County Clerk's Office