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LEASEHOLD MORTGAGE AND  
SECURITY AGREEMENT

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COOK COUNTY RECORDER



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**BOX 333-CTI**

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LEASEHOLD MORTGAGE AND SECURITY AGREEMENT (RACINE)

dated as of August 1, 1996

among

WILMINGTON TRUST COMPANY,  
not in its individual capacity  
but solely as Equity Trustee under the  
Equity Trust Agreement (Racine), dated as of  
August 1, 1996 between  
BNY Leasing Corporation and  
Wilmington Trust Company

and

HOLLANDSCHE BANK-UNIE, N.V.

Relating to an Office Building located in Chicago, Illinois

This Instrument prepared by  
and after recording return to:

Susan Elliott, Esq.  
Jones, Day, Reavis & Pogue  
77 West Wacker Drive  
Chicago, Illinois 60601

P.I.N.: 17-08-331-023-0000  
P.I.N.: 17-08-435-001-0000  
P.I.N.: 17-08-435-003-0000  
P.I.N.: 17-08-435-008-0000  
P.I.N.: 17-08-435-010-0000

P.I.N.: 17-08-331-024-0000  
P.I.N.: 17-08-435-002-0000  
P.I.N.: 17-08-435-004-0000  
P.I.N.: 17-08-435-009-0000  
P.I.N.: 17-08-435-019-0000

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## LEASEHOLD MORTGAGE AND SECURITY AGREEMENT (RACINE)

**THIS LEASEHOLD MORTGAGE AND SECURITY AGREEMENT (RACINE)** ("Mortgage") is made as of this 1st day of August, 1996 by and between **WILMINGTON TRUST COMPANY**, not in its individual capacity but solely as Equity Trustee under the Equity Trust Agreement (Racine), dated as of August 1, 1996 between **BNY Leasing Corporation** and **Wilmington Trust Company** (as such trustee herein referred to as "Mortgagor"), and **HOLLANDSCHE BANK-UNIE, N.V.**, a Dutch banking corporation (herein referred to as "Mortgagee").

### RECITALS:

(A) Mortgagor and Mortgagee entered into that certain Loan and Security Agreement (Racine), dated as of August 1, 1996 (the "Loan Agreement") wherein Mortgagor and Mortgagee provided for the issuance of Loan Certificates, the proceeds of which are to be applied as provided in the Loan Agreement.

(B) Mortgagee has required, and Mortgagor has agreed, that Mortgagor shall grant to Mortgagee the lien and security interests herein to secure: (i) the prompt payment of the principal of and interest on, and all other amounts due with respect to, all Loan Certificates from time to time outstanding, (ii) the performance and observance by Mortgagor and the Equity Investor of all of the agreements, covenants and provisions in the Operative Documents for the benefit of the Lender, and (iii) the prompt payment of all other amounts due or to become due to the Lender under any of the Operative Documents (collectively, the "Obligations").

(C) Each capitalized term used herein, but not otherwise defined herein shall have the meaning ascribed to such term in Appendix A to the Loan Agreement.

**NOW, THEREFORE**, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to secure the payment of the Obligations, Mortgagor does hereby grant, convey, mortgage, warrant, assign, transfer, hypothecate, pledge, deliver, set over and confirm unto Mortgagee, its successors and assigns, and grant a security interest to Mortgagee, its successors and assigns, in and to the following described property:

### THE MORTGAGED PROPERTY

(A) All present and future estate, right, title and interest of Mortgagor which is created under or pursuant to or arises out of that certain Head Lease Agreement (Racine), dated as of August 1, 1996, between First Security Bank, National Association, not in its individual capacity but solely as Head Lessor Trustee under the Head Lessor Trust Agreement (Racine), dated as of August 1, 1996 between such trustee and the Chicago Transit Authority, as landlord, and Mortgagor, as tenant (the "Head Lease") with respect to all of the real and personal property described in such Head Lease, including, without

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limitation, the land described in Exhibit A attached to and made a part of this Mortgage (the "Leased Premises"). A Memorandum of the Head Lease, dated as of August 1, 1996, will be recorded with the Recorder of Cook County, Illinois prior to the recording of this Mortgage.

(B) All of the estate, right and title of Mortgagor as lessee under the Head Lease in and to all the buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Leased Premises including, without limitation, the Improvements, and all fixtures, machinery, appliances, equipment, furniture, and personal property of every nature whatsoever now or hereafter owned by Mortgagor (or in which Mortgagor has an interest) and located in or on, or attached to, and used or intended to be used in connection with, or with the operation of, the Leased Premises, or the Improvements, or in connection with any construction being conducted or which may be conducted thereon, and all extensions, additions, improvements, betterments, renewals, substitutions and replacements to the foregoing, and all of the right, title and interest of Mortgagor in and to any such personal property or fixtures which, to the fullest extent permitted by law, shall be conclusively deemed fixtures and a part of the real property encumbered hereby.

(C) All the estate, right, and title of Mortgagor as lessee under the Head Lease in and to all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, licenses, privileges, liberties, tenements, hereditments and appurtenances whatsoever, in any way belonging, relating or appertaining to, the Leased Premises or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor.

(D) All other estate, right, title and interest now held or hereafter acquired by Mortgagor in and to the Facility, and all replacements thereof, accessions thereto and substitutions therefor to which Mortgagor may from time to time acquire an interest therein as provided in that certain Lease Agreement (Racine) (the "Lease"), dated as of August 1, 1996, between Mortgagor, as Lessor, and First Security Bank, National Association, not in its individual capacity, but solely as Lessee Trustee under the Lessee Trust Agreement (Racine), dated as of August 1, 1996, between such trustee and the Chicago Transit Authority, as Lessee.

(E) (i) all the estate, right, title and interest now held or hereafter acquired of Mortgagor of, in, to and under the Lease, the Sublease, the Guaranty, the Participation Agreement, and the Payment Undertaking (collectively, the "Collateral Documents"), including all amounts of Fixed Rent, Stipulated Loss Value, Termination Value, Fair Market Sales Value (if payable under the Lease), Burdensome Buy-out Value, Special Termination Value, insurance proceeds, and condemnation, requisition and other awards and payments of any kind for or with respect to Mortgagor's leasehold interest in the Facility under the Head Lease (including proceed and payments received pursuant to any sale of Mortgagor's

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leasehold interest in the Facility under the Head Lease pursuant to the exercise of remedies provided in Section 15 of the Lease).

(F) All rights of Mortgagor with respect to or arising out of any Collateral Document to exercise any election or option or to give or receive any notice, consent, waiver or approval or to take any other action under any Collateral Document or to accept any surrender or redelivery of the Facility or any part thereof, as well as all rights, powers and remedies of Mortgagor whether acting under any Collateral Document or by statute or at law or in equity or otherwise, arising out of any Lease Event of Default.

(G) All moneys and securities relating to or arising out of the Collateral Documents that are now or thereafter required to be paid to, or deposited with, Mortgagee by or for the account of Mortgagor, the Equity Investor or the Lessee pursuant to the terms of any Operative Document other than Excepted Property.

(H) All other property of every kind and description and interests therein now held or hereafter acquired by Mortgagor pursuant to any terms of any Collateral Document, wherever located and subjected to the lien of the Loan Agreement by a supplement hereto, and Mortgagee is hereby authorized to receive any such property subject to and in accordance with the terms of the Loan Agreement as then supplemented.

(I) All proceeds of the foregoing of whatever kind or nature, including all claims against third parties for destruction, loss or damage to any of the foregoing or otherwise.

All of the mortgaged property described above, is herein referred to collectively as the "Mortgaged Property".

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

And Mortgagor and Mortgagee further covenant and agree:

## ARTICLE 1

### COVENANTS AND REPRESENTATIONS OF MORTGAGOR

**1.1 Incorporation of Representations and Covenants.** Each and all of the representations, warranties, terms, provisions, restrictions, covenants and agreements of Mortgagor and Mortgagee set forth in the Loan Agreement and the Collateral Documents, and in each and every supplement thereto or amendment thereof which may at any time or from time to time be executed and delivered by the parties thereto or their successors and

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assigns, are incorporated herein by reference to the same extent as though each and all of said representations, warranties, terms, provisions, restrictions, covenants and agreements were fully set out herein and as though any amendment or supplement to the Loan Agreement and any of the Collateral Documents were fully set out in an amendment or supplement to this Mortgage; and Mortgagor hereby covenants and agrees well and truly to abide by, perform and be governed and restricted by each and all of the matters provided for by the Loan Agreement and the Collateral Documents on its part to be performed to the same extent and with the same force and effect as if each and all of said representations, warranties, terms, provisions, restrictions, covenants and agreements were set out and repeated herein at length.

**1.2 Further Assurances: After-Acquired Property.** (a) Mortgagor will execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such agreements supplemental hereto and all such further acts, deeds, conveyances, mortgages, assignments, instruments, transfers and assurances as Mortgagee reasonably may require for the better assuring, transferring, mortgaging, conveying, pledging, assigning and confirming unto Mortgagee all and singular the Mortgaged Property as now or hereafter constituted.

(b) All right, title and interest of Mortgagor in and to all improvements, betterments, renewals, substitutions and replacements of the Mortgaged Property or any part thereof hereafter constructed or acquired by Mortgagor, immediately upon such construction or acquisition, and without any further mortgaging, conveyance or assignment, shall become and be part of the Mortgaged Property and shall be subject to the lien and security interest of this Mortgage as fully and completely and with the same effect as though now owned by Mortgagor, but at any and all times Mortgagor will execute and deliver to Mortgagee all such further assurances, mortgages, conveyances or assignments therefor and other instruments with respect thereto as Mortgagee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien and security interest of this Mortgage.

**1.3 Maintenance of Lien: Recording.** (a) Except as otherwise provided in the Participation Agreement, Mortgagor will, at its own expense, take all necessary action to maintain and preserve the lien and security interest of this Mortgage so long as the any of the Obligations are outstanding.

(b) Except as otherwise provided in the Participation Agreement, Mortgagor will, forthwith after the execution and delivery of this Mortgage and thereafter from time to time, cause this Mortgage (including any amendments thereto and supplements thereof) and any financing statements in respect thereof to be filed, registered and recorded in such manner and in such places as may be required by law in order to publish notice of and fully to perfect and protect the lien and security interest hereof upon, and the title of Mortgagor to, the Mortgaged Property, and from time to time will perform or cause to be performed any other act as provided by law and will execute or cause to be executed any and all continuation statements and further instruments that may be requested by Mortgagee for such

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publication, perfection and protection. Except to the extent it is exempt therefrom, Mortgagor will pay or cause to be paid all filing, registration and recording fees incident to such filing, registration and recording, and all expenses incident to the preparation, execution and acknowledgment of such instruments of further assurance, and all federal and state fees and other similar fees, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage and such instruments of further assurance.

**1.4 Priority of Lien.** It is further made an express condition and covenant hereof, that while this Mortgage is in effect, the lien of this Mortgage shall extend to any and all improvements and fixtures leased or owned, if any, by Mortgagor, now or hereafter on the Mortgaged Property, prior to any other lien thereon that may be claimed by any person, so that subsequently accruing claims for lien on the Mortgaged Property shall be junior to this Mortgage, except for Permitted Encumbrances.

**1.5 Security Agreement and Financing Statements.** (a) Mortgagor (as debtor) and Mortgagee agree: (i) that this Mortgage shall constitute a Security Agreement within the meaning of the Uniform Commercial Code (the "Code") of the State of Illinois with respect to Mortgagor's leasehold interest in any property included in the definition herein of the words "Mortgaged Property", 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) (said property, replacements, substitutions, additions and the proceeds thereof being sometimes herein collectively referred to as the "Collateral" and the balance of the Mortgaged Property being sometimes herein referred to as the "Real Property"); and (ii) that a security interest in and to the Collateral is hereby granted to Mortgagee; and (iii) that all of Mortgagor's right, title and interest therein are hereby assigned to Mortgagee; all to secure payment of the Obligations and to secure performance by Mortgagor of the terms, covenants and provisions hereof.

(b) If an Event of Default occurs under this Mortgage, Mortgagee, pursuant to the appropriate provisions of the Code, shall have an option to proceed with respect to both the real property described in Exhibit A and the Collateral in accordance with its rights, powers and remedies with respect to the real property described in Exhibit A, 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 described in Exhibit A, 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 shall not remove or permit to be removed from the Mortgaged Property any of the Collateral except that so long as no Event of Default hereunder shall have occurred and be continuing, Mortgagor, any Permitted Lessee or Permitted Sublessee shall be permitted to sell or otherwise dispose of the Collateral in accordance with the Sublease, Lease and Head Lease,

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

(c) Mortgagor and Mortgagee agree, to the extent permitted by law, that:

(i) all of the goods described within the definition of the word "Mortgaged Property" herein are or are to become fixtures on the real property 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) Mortgagor is the owner of the leasehold interest in the real property described in Exhibit A. Mortgagor agrees that the filing of a Financing Statement in the records normally having to do with personal property shall never be construed as in any way derogating from or impairing the express declaration and intention of the parties hereto, hereinabove stated, that everything used in connection with the production of income from the Mortgaged Property and/or adapted for use therein and/or which is described or reflected in this Mortgage is, and at all times and for all purposes and in all proceedings, legal or equitable, shall be regarded as part of the real estate encumbered by this Mortgage irrespective of whether (i) any such item is physically attached to the Leased Premises or Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Mortgagee, or (iii) any such item is referred to or reflected in any such Financing Statement so filed at any time. Similarly, the mention in any such Financing Statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) Mortgagor's interest as lessor in any present or future leases or subleases or rights to rents growing out of the use and/or occupancy of the Mortgaged Property, whether pursuant to lease or otherwise, shall never be construed as in any way altering any of the rights of Mortgagee as determined by this instrument or impugning the priority of Mortgagee's lien granted hereby or by any other recorded document, but such mention in the Financing Statement is declared to be for the protection of Mortgagee in the event any court or judge shall at any time hold with respect to (1), (2) or (3) that notice of Mortgagee's priority of interest to be effective against a particular class of persons, including, but not limited to, the federal government and any subdivision or entity of the federal government, must be filed in the Code records.

(d) Mortgagor, upon request by Mortgagee from time to time, shall 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 leased or owned, if any, by Mortgagor, which in the sole and exclusive opinion of Mortgagee is essential to the operation of the Mortgaged Property 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

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this Mortgage under the laws of the State of Illinois, and shall 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 Mortgage and such security instrument. Except as provided in Section 12 of the Participation Agreement, 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 documents. Mortgagor shall from time to time, on request of Mortgagee, use reasonable efforts to cause Lessee to deliver to Mortgagee an inventory of the Collateral in reasonable detail.

## ARTICLE 2

### DEFAULTS

**2.1 Event of Default.** Any Loan Event of Default shall be an "Event of Default" hereunder.

## ARTICLE 3

### REMEDIES

**3.1 Remedies in Loan Agreement.** Upon the occurrence of any Event of Default hereunder, Lender shall have all remedies described in the Loan Agreement, all remedies set forth in this Mortgage and all other remedies available at law and in equity.

**3.2 Mortgagee's Power of Enforcement.** If an Event of Default shall have occurred, Mortgagee may, either with or without entry or taking possession as hereinafter provided or otherwise, and without regard to whether or not the Obligations shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure or any other action for any Event of Default existing at the time such earlier action was commenced, proceed by any appropriate action or proceeding: (a) to enforce payment of the monies due under the Loan Agreement and/or the other Obligations or the performance of any term hereof or any other right; (b) to foreclose this Mortgage and to have sold, as an entirety the Mortgaged Property; and (c) to pursue any other remedy available to it under any of the Loan Agreement and other Security Documentation, or at law or in equity. Subject to Section 18 of the Participation Agreement and Section 4(b) of the Lease, Mortgagee shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as Mortgagee may determine.

**3.3 Purchase by Mortgagee.** Upon any foreclosure sale, Mortgagee may bid for and purchase all or any portion of the Mortgaged Property and, upon compliance with the

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terms of sale and applicable law, may hold, retain and possess and dispose of such Mortgaged Property in its own absolute right without further accountability.

**3.4 Application of Indebtedness Toward Purchase Price.** Upon any foreclosure sale, Mortgagee may apply any or all of the Obligations toward the purchase price.

**3.5 Partial Foreclosure.** It is further agreed that upon the occurrence of an Event of Default, as an alternative to the right of foreclosure for the full amount of the Obligations after acceleration thereof, Mortgagee shall have the right to institute partial foreclosure proceedings with respect to the portion of said Obligations so in default, as if under a full foreclosure, and without declaring all of the Obligations due (such proceeding being hereinafter referred to as a "partial foreclosure"), and provided that if such partial foreclosure sale is made because of an Event of Default of a part of the Obligations, such sale may be made subject to the continuing lien of this Mortgage for the unmatured part of the Obligations; and it is agreed that such sale pursuant to a partial foreclosure, if so made, shall not in any manner affect the unmatured part of the Obligations, but as to such unmatured part, this Mortgage and the lien thereof shall remain in full force and effect just as though no foreclosure sale had been made under the provisions of this Section. Notwithstanding the filing of any partial foreclosure or entry of a decree of sale therein, Mortgagee may elect at any time prior to such partial foreclosure sale pursuant to such decree, to discontinue such partial foreclosure and to accelerate the Obligations by reason of any Event of Default upon which such partial foreclosure was predicated or by reason of any other Event of Default or condition which with the passage of time or giving of notice would be an Event of Default, 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 Obligations, it being the purpose to provide for a partial foreclosure sale of the Obligations for any matured portion of the Obligations without exhausting the power to foreclose and to sell the Mortgaged Property pursuant to any such partial foreclosure for any other part of the Obligations whether matured at the time or subsequently maturing, and without exhausting any right of acceleration and full foreclosure.

**3.6 Expenses of Enforcement.** In connection with any foreclosure of the lien hereof or any action to enforce any other remedy of Mortgagee under this Mortgage, the Loan Agreement or any of the other Security Documentation (whether or not such enforcement includes the filing of a lawsuit), Mortgagor agrees to pay all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title and value as Mortgagee may reasonably deem necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Mortgaged Property and the right to such fees and expenses shall be

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deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment. All expenditures and expenses of the nature in this Section mentioned, and such reasonable expenses and fees as may be incurred in the protection of the Mortgaged Property and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Loan Agreement, any of the Security Documentation, the Mortgaged Property or any part thereof (including, without limitation, the occupancy thereof or any construction work performed thereon), including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding whether or not an action is actually commenced, shall be immediately due and payable by Mortgagor.

**3.7 Application of Proceeds of Foreclosure Sale.** The proceeds of any foreclosure sale of the Mortgaged Property shall be distributed and applied in the order of priority described in the Loan Agreement.

**3.8 Appointment of Receiver.** Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Mortgaged Property. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Mortgaged Property or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder may be appointed as such receiver. Such receiver shall have power: (a) to collect the rents during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents; (b) except with respect to the Lease or Head Lease 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 Obligations 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 Mortgaged Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Obligations, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; and (c) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Mortgaged Property during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (a) the Obligations, or to any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become on a parity with or superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; and (b) the deficiency in case of a sale and deficiency.

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**3.9 Mortgagee's Right of Possession in Case of Default.** Subject to Section 18 of the Participation Agreement and Section 4(b) of the Lease, in any case in which under the provisions of this Mortgage, Mortgagee has a right to institute foreclosure proceedings, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, Mortgagor shall forthwith, upon demand of Mortgagee, surrender to Mortgagee and Mortgagee shall be entitled to take actual possession of, the Mortgaged Property or any part thereof, personally, or by its agent or attorneys. Subject to Section 18 of the Participation Agreement and Section 4(b) of the Lease, in such event Mortgagee in its discretion may, with or without force and with process of law, as permitted by law, enter upon and take and maintain possession of all or any part of said Mortgaged Property, together with all documents, books, records, papers and accounts of Mortgagor or the then owner of the Mortgaged Property relating thereto, and may exclude Mortgagor and each of 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 Mortgaged Property and conduct the business, if any, thereof, either personally or by its agents, 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 rents, 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 for any cause or on any ground which would entitle Mortgagor to cancel the same; (b) to elect to disaffirm any lease which is then subordinate to the lien hereof; (c) to extend or modify any then existing leases other than the Lease 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 date which the Obligations are due and payable 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 Mortgaged Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Obligations, 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 Mortgaged Property; (e) to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Mortgaged Property 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 rents; 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.

Notwithstanding the foregoing, 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 lease.

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**3.10 Waiver of Statutory Rights.** To the full extent permitted by law, Mortgagor hereby agrees that it shall 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 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 Mortgaged Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety. To the full extent permitted by law, Mortgagor hereby waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on its behalf and on behalf of each and every person, except decree or judgment creditors of Mortgagor, acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage.

**3.11 Remedies Not Exclusive.** Mortgagee shall be entitled to enforce payment and performance of any of the Obligations secured hereby and to exercise all rights and powers under this Mortgage or other agreement or any laws now or hereafter in force, notwithstanding some or all of the said Obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or other powers contained herein, 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 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, including, without limitation, non-judicial foreclosure to the extent permitted by law. To the full extent of law, 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 Event of Default or of any condition which with the passage of time or the giving of notice would constitute an Event of Default, of Mortgagor hereunder shall be implied from any delay or omission by Mortgagee to take any action on account of such Event of Default if such Event of Default persists or be repeated, and no express waiver shall affect any Event of Default other than the Event of 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 applicable rate from the date of delinquency, together with any required late charge, shall constitute a waiver of the right of Mortgagee at any time thereafter to demand and collect payment of interest at such late charges or interest, if any.

**3.12 Suits to Protect the Mortgaged Property.** Mortgagee shall have the power and authority (but not the duty) to institute and maintain any suits and proceedings as Mortgagee may reasonably deem advisable (a) to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or which violate the terms of this Mortgage,

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(b) to preserve or protect its interest in the Mortgaged Property, or (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Mortgagee's interest.

**3.13 Proofs of Claim.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding affecting Mortgagor, to the extent permitted by law, Mortgagee shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have its claim allowed in such proceedings for the entire amount due and payable by Mortgagor under the Loan Agreement, this Mortgage and any other Collateral Document at the date of the institution of such proceedings, and for any amounts which may become due and payable by Mortgagor, as the case may be, after such date.

**3.14 Discontinuance of Proceedings, Position of Parties Restored.** If Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceeding shall have been discontinued or abandoned for any reason, or such proceedings shall have resulted in a final determination adverse to Mortgagee, then and in every such case Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceedings had occurred or had been taken.

**3.15 Release.** If Mortgagor shall fully pay all monies due under the terms of the Loan Agreement, including, without limitation, all interest, and all of the other Obligations secured hereby and comply with all of the other terms and provisions hereof to be performed and complied with by Mortgagor, then this Mortgage shall be released. Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon Mortgagor's payment and discharge of all of the Obligations secured hereby and Mortgagor's payment of any filing fee in connection with such release.

## ARTICLE 4

### MISCELLANEOUS PROVISIONS

**4.1 Successors and Assigns.** This 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 Mortgagee and the successors and assigns of Mortgagee. The word "Mortgagor" when used herein shall include: (a) the original Mortgagor named in the preambles hereof; (b) all said original Mortgagor's successors and assigns; and (c) all owners from time to time of Mortgagor's interest in the Mortgaged Property. The words "Mortgagee" when used herein shall include (a) the original Mortgagee named in the preambles hereof; and (b) all of said original Mortgagee's successors and assigns.

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**4.2 Giving of Notice.** Unless otherwise expressly specified or permitted by the terms of the Loan Agreement, any notice, consent, demand, request and other communication required or permitted hereunder will be given as provided in Section 20(a) of the Participation Agreement. A copy of each communication given to Mortgagor shall also be given to the Equity Investor.

**4.3 Severability.** Any provision of this Mortgage which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**4.4 Applicable Law.** This Mortgage has been delivered in, and shall in all respects be governed by and construed in accordance with the laws of the State of New York applicable to agreements made and to be performed entirely within such state, except as to matters relating to the creation, perfection and enforcement of liens and security interests relating to real property and the exercise of remedies with respect thereto, which shall be governed by, and construed in accordance with, the laws of the State of Illinois.

**4.5 Mortgagee's Powers.** Without affecting the liability of any other person liable for the payment of any obligation herein mentioned, and without affecting the lien or charge of this Mortgage upon any portion of the Mortgaged Property not then or theretofore released as security for the full amount of all of the Obligations, Mortgagee from time to time and without notice may (i) release any person so liable, (ii) extend the time period in which to pay the Obligations or alter any of the terms of any such obligation, (iii) grant other indulgences, (iv) release or reconvey, or cause to be released or reconveyed at any time at Mortgagee's option any parcel, portion or all of the Mortgaged Property, (v) take or release any other additional security for any obligation herein mentioned, or (vi) make compositions or other arrangements with debtors in relation thereto. If the payment of the Obligations secured by this 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 Mortgaged Property, shall be held to have assented 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.

**4.6 Amendments.** This Mortgage, nor any of the terms hereof, may be terminated, amended, supplemented, waived or modified, orally, but only by an instrument in writing signed by the party against whom the enforcement of any termination, amendment, supplement, waiver or modification.

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**4.7 Interpretation.** In this Mortgage the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

**4.8 Counterparts.** This Mortgage may be executed and acknowledged in separate counterparts, each of which when so executed and acknowledged counterparts shall be an original, but all such counterparts shall together constitute but one and the same Mortgage.

**4.9 Time is of the Essence.** It is specifically agreed that time is of the essence of this Mortgage.

**4.10 Statute of Limitations.** The pleading of any statute of limitations as a defense to any obligation evidenced or secured by this Mortgage is hereby waived to the full extent permitted by law.

**4.11 Waiver of Jury Trial.** EACH OF MORTGAGEE AND MORTGAGOR IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING WITH RESPECT TO THIS MORTGAGE.

**4.12 Business Loan.** Mortgagor represents, acknowledges and agrees that the financial accommodations and loans made pursuant to the Loan Agreement constitutes a business loan within the meaning of subparagraph (1)(c) of Section 4 of Chapter 17, Paragraph 6404 of the Illinois Revised Statutes.

**4.13 Merger.** So long as any of the Obligations shall remain unpaid, unless Mortgagor shall otherwise in writing consent, the fee title and leasehold estate in the Leased Premises shall not merge but shall always be kept separate and distinct, notwithstanding the union of said estates either in the lessor or in the lessee, or in a third party, by purchase or otherwise; and Mortgagor covenants and agrees that if it shall acquire the fee, or any other estate, title or interest in the Leased Premises covered by the Head Lease, all of said estate, right, title and interest, shall be considered mortgaged, assigned and conveyed to Mortgagor pursuant to this Mortgage and the lien hereof spread to cover such estate, right, title and interest with the same force and effect as though specifically herein mortgaged, assigned and conveyed and spread. The provisions of this Section 4.13 shall not apply if the holder of the Obligations acquires the fee interest in the Leased Premises unless Mortgagor shall so elect.

**4.14 Limitation on Mortgagor's Liability.** The provisions of Section 1.02 of the Loan Agreement are incorporated by reference in this Mortgage as if fully rewritten here.

[signature page follows]

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

WILMINGTON TRUST COMPANY,  
not in its individual capacity but solely as  
Trustee under the Equity Trust Agreement  
dated as of August 1, 1996 with the Equity  
Investor

By: 

Name:

Title:

SHARON M. BRENDLE  
Administrative Account Manager

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Leasehold Mortgage, Security Agreement and  
Assignment of Rents

(Racine)

96725953

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STATE OF Delaware )  
                          ) ss  
COUNTY OF New Castle )

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Sharon M. Brendle, personally known to me to be the ~~Administrative Account Manager~~ of the WILMINGTON TRUST COMPANY, not individually, but solely as Equity Trustee under that certain Equity Trust Agreement (Skokie), dated as of August 1, 1996, between such trustee and BNY Leasing Corporation appeared before me this day in person and acknowledged that she signed and delivered the said instrument as a free and voluntary act and deed, and the free and voluntary act and deed of the aforesaid corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this 16<sup>th</sup> day of September 1996.

  
Notary Public

My Commission Expires:

KATHLEEN A. PEDELINI  
NOTARY PUBLIC  
My Commission expires October 31, 1998

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## EXHIBIT A Legal Description

### PARCEL 1:

LOTS 1, 2, (EXCEPT THE NORTH 35 FEET OF SAID LOTS) AND LOTS 10, 11, 16, 17, 25 AND 26 IN S. S. HAYES' SUBDIVISION OF BLOCK 1 OF WRIGHT ADDITION TO CHICAGO; ALSO LOTS 1 TO 16 IN ASSESSOR'S DIVISION OF LOTS 1 TO 6 INCLUSIVE IN W. H. BROWN'S SUBDIVISION OF BLOCK 45 OF CARPENTERS ADDITION TO CHICAGO, ALL IN SECTION 8, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ALSO VACATED ALLEYS LYING WITHIN SAID BLOCK, IN COOK COUNTY, ILLINOIS.

### PARCEL 2:

LOTS 7 THROUGH 10 AND 23 THROUGH 26 (EXCEPT THE NORTH 35 FEET OF LOTS 23 THROUGH 26 FOR STREET PURPOSES) IN WILLIAM H. BROWN'S SUBDIVISION OF BLOCK 44 IN CARPENTERS ADDITION TO CHICAGO IN THE SOUTH EAST 1/4 OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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