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MORTGAGE AND SECURITY AGREEMENT

Property of Cook County Clerk's Office

Prepared by and mail to:

Richard L. Ingram
 Shefsky Froelich & Devine Ltd.
 444 North Michigan Avenue
 Suite 2500
 Chicago, IL 60611

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MORTGAGE AND SECURITY AGREEMENT

(Old Orchard)

THIS MORTGAGE AND SECURITY AGREEMENT ("Mortgage") made this 31st day of January, 1996, by LASALLE NATIONAL TRUST, N.A., not personally but solely as successor Trustee, to ~~EXCHANGE NATIONAL BANK OF CHICAGO~~, as Trustee under Trust Agreement dated August 30, 1976 and known as Trust No. 10-31607-09 (herein, whether one or more, and if more than one jointly and severally, called the "Mortgagor"), whose address is

LaSalle National Trust, N.A.
135 South LaSalle Street
Chicago, Illinois 60603

to Sun Life Assurance Company of Canada, a Canadian corporation (herein, together with its successors and assigns, including each and every from time to time holder of the Note hereinafter referred to, called the "Mortgagee"), whose address is

One Sun Life Executive Park
Wellesley Hills, MA 02181
Attn: Property Investment Department

WHEREAS, the Mortgagor and Old Orchard Office Court Joint Venture, an Illinois joint venture ("Old Orchard") have, concurrently herewith, executed and delivered to the Mortgagee, that certain installment note (herein called the "Note") dated the date hereof, in the principal sum of Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000) bearing interest at the rate specified therein, due in installments and in any event on January 31, 2006, payable to the order of the Mortgagee, and otherwise in the form of the Note attached hereto as Exhibit A and incorporated herein and made a part hereof by this reference with the same effect as if set forth at length; and

WHEREAS, the indebtedness evidenced by the Note, including the principal thereof and interest and premium, if any, thereon, and any extensions and renewals thereof, in whole or in part, and any and all other sums which may be at any time due or owing or required to be paid as herein or in the Note provided, are herein called the "Indebtedness Hereby Secured."

NOW, THEREFORE, THIS MORTGAGE WITNESSETH:

That to secure the payment of the principal of and interest and premium, if any, on the Note according to its tenor and effect and to secure the payment of all other Indebtedness Hereby Secured and the performance and observance of all the covenants, provisions and agreements herein and in the Note contained (whether or not the Mortgagor is personally liable for such payment, performance and observance) and in consideration of the premises and Ten Dollars (\$10) in hand paid by the Mortgagee to the Mortgagor, and for other good and valuable considerations, the receipt and sufficiency of all of which is hereby acknowledged by the Mortgagor, the Mortgagor does hereby GRANT, RELEASE, REMISE, ALIEN, MORTGAGE and CONVEY unto the Mortgagee all and sundry rights, interests and property hereinafter described (all herein together called the "Premises"):

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- (a) All of the real estate (herein called the "Real Estate") described in Exhibit B attached hereto and made a part hereof;
- (b) All buildings and other improvements now or at any time hereafter constructed or erected upon or located at the Real Estate, together with and including, but not limited to, all fixtures, equipment, machinery, appliances and other articles and attachments now or hereafter forming part of, attached to or incorporated in any such buildings or improvements (all herein generally called the "Improvements");
- (c) All privileges, reservations, allowances, hereditaments, tenements and appurtenances now or hereafter belonging or pertaining to the Real Estate or Improvements;
- (d) All leasehold estates, right, title and interest of Mortgagor in any and all leases, subleases, arrangements or agreements relating to the use and occupancy of the Real Estate and Improvements or any portion thereof, now or hereafter existing or entered into (all herein generally called "Leases"), together with all cash or security deposits, advance rentals and other deposits or payments of similar nature given in connection with any Leases;
- (e) All rents, issues, profits, royalties, income, avails and other benefits now or hereafter derived from the Real Estate and Improvements, under Leases or otherwise (all herein generally called "Rents"), subject to the right, power and authority given to the Mortgagor in the Assignment hereinafter referred to, to collect and apply the Rents;
- (f) All right, title and interest of Mortgagor in and to all options to purchase or lease the Real Estate or Improvements, or any portion thereof or interest therein, or any other rights, interests or greater estates in the rights and properties comprising the Premises, now owned or hereafter acquired by Mortgagor;
- (g) Any interests, estates or other claims, both in law and in equity, which Mortgagor now has or may hereafter acquire in the Real Estate and Improvements or other rights, interests or properties comprising the Premises now owned or hereafter acquired;
- (h) All right, title and interest of Mortgagor now owned or hereafter acquired in and to (i) any land or vaults lying within the right-of-way of any street or alley open or proposed, adjoining the Real Estate; (ii) any and all alleys, sidewalks, strips and gores of land adjacent to or used in connection with the Real Estate and Improvements; (iii) any and all rights and interests of every name or nature forming part of or used in connection with the Real Estate and/or the operation and maintenance of the Improvements; (iv) all easements, rights-of-way and rights used in connection with the Real Estate or Improvements or as a means of access thereto, and (v) all water rights and shares of stock evidencing the same;
- (i) All right, title and interest of Mortgagor in and to all tangible personal property (herein called "Personal Property"), owned by Mortgagor and now or at any time hereafter located in, on or at the Real Estate or Improvements or used or useful in connection therewith, (whether or not affixed thereto) including, but not limited to:

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- (i) all furniture, furnishings and equipment furnished by Mortgagor to tenants of the Real Estate or Improvements;
- (ii) all building materials and equipment located upon the Real Estate and intended to be incorporated in the Improvements now or hereafter to be constructed thereon, whether or not yet incorporated in such Improvements;
- (iii) all machines, machinery, fixtures, apparatus, equipment or articles used in supplying heating, gas, electricity, air-conditioning, water, light, power, sprinkler protection, waste removal, refrigeration and ventilation, and all fire sprinklers, alarm systems, electronic monitoring equipment and devices;
- (iv) all window or structural cleaning rigs, maintenance equipment and equipment relating to exclusion of vermin or insects and removal of dust, dirt, debris, refuse or garbage;
- (v) all lobby and other indoor and outdoor furniture, including tables, chairs, planters, desks, sofas, shelves, lockers and cabinets, wall beds, wall safes, and other furnishings;
- (vi) all rugs, carpets and other floor coverings, draperies, drapery rods and brackets, awnings, window shades, venetian blinds and curtains;
- (vii) all lamps, chandeliers and other lighting fixtures;
- (viii) all recreational equipment and materials;
- (ix) all office furniture, equipment and supplies;
- (x) all kitchen equipment, including refrigerators, ovens, dishwashers, range hoods and exhaust systems and disposal units;
- (xi) all laundry equipment, including washers and dryers;
- (xii) all tractors, mowers, sweepers, snow removal equipment and other equipment used in maintenance of exterior portions of the Real Estate and Improvements; and
- (xiii) all maintenance supplies and inventories;

provided that the enumeration of any specific articles of Personal Property set forth above shall in no way exclude or be held to exclude any items of property not specifically enumerated; but provided that there shall be excluded from and not included within the term "Personal Property" as used herein and hereby mortgaged and conveyed, any equipment, trade fixtures, furniture, furnishings or other property of tenants of the Premises;

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- (j) All the estate, interest, right, title or other claim or demand which Mortgagor now has or may hereafter have or acquire with respect to (i) the proceeds of insurance in effect with respect to the Premises, and (ii) any and all awards, claims for damages and other compensation made for or consequent upon the taking by condemnation, eminent domain or any like proceeding, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Premises, including, without limitation, any awards and compensation resulting from a change of grade of streets and awards and compensation for severance damages (all herein generally called "Awards").

TO HAVE AND TO HOLD all and sundry the Premises hereby mortgaged and conveyed or intended so to be, together with the rents, issues and profits thereof, unto the Mortgagee forever, free from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois (which rights and benefits are hereby expressly released and waived), for the uses and purposes herein set forth, together with a right to retain possession of the Premises after any default in the payment of all or any part of the Indebtedness Hereby Secured, or the breach of any covenant or agreement herein contained, or upon the occurrence of any Event of Default as hereinafter defined.

FOR THE PURPOSE OF SECURING:

- (a) Payment of the indebtedness with interest thereon evidenced by the Note and any and all modifications, extensions and renewals thereof, and all other Indebtedness Hereby Secured;
- (b) Performance and observance by Mortgagor of all of the terms, provisions, covenants and agreements on Mortgagor's part to be performed and observed under the other Loan Documents (as such term is defined in the Note);
- (c) Performance and observance by Mortgagor of all of the terms, provisions, covenants and agreements on Mortgagor's part to be performed and observed under the Assignment referred to in Section 26 hereof;
- (d) Performance by any Guarantor of its obligations under any Guaranty or other instrument given to further secure the payment of the Indebtedness Hereby Secured or the performance of any obligation secured hereby;

provided that the aggregate of the Indebtedness Hereby Secured shall at no time exceed \$100,000,000.

PROVIDED, NEVERTHELESS, and these presents are upon the express condition that if all of the Indebtedness Hereby Secured shall be duly and punctually paid and all the terms, provisions, conditions and agreements herein contained on the part of the Mortgagor to be performed or observed shall be strictly performed and observed, then this Mortgage and the estate, right and interest of the Mortgagee in the Premises shall cease and become void and of no effect.

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AND IT IS FURTHER AGREED THAT:

1. **Payment of Indebtedness.** The Mortgagor will duly and promptly pay each and every installment of the principal of and interest and premium, if any, on the Note, and all other Indebtedness Hereby Secured, as the same become due, and will duly perform and observe all of the covenants, agreements and provisions herein or in the Note provided on the part of the Mortgagor to be performed and observed.

2. **Maintenance, Repair, Restoration, Prior Liens, Parking.** The Mortgagor will:

- (a) Promptly repair, restore or rebuild any Improvements now or hereafter on the Premises which may become damaged or be destroyed, whether or not proceeds of insurance are available or sufficient for the purpose;
- (b) Keep the Premises in good condition and repair, without waste, and free from mechanics', materialmen's or like liens or claims or other liens or claims for lien not expressly subordinated to the lien hereof;
- (c) Pay when due any indebtedness which may be secured by a lien or charge on the Premises on a parity with or superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such lien to the Mortgagee;
- (d) Complete within a reasonable time any Improvements now or at any time in the process of erection upon the Premises;
- (e) Comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof;
- (f) Make no material alterations in the Premises, except as required by law or municipal ordinance;
- (g) Suffer or permit no change in the use or general nature of the occupancy of the Premises, without the Mortgagee's prior written consent;
- (h) Pay when due all operating costs of the Premises;
- (i) Initiate or acquiesce in no zoning reclassification with respect to the Premises, without the Mortgagee's prior written consent;
- (j) Provide, improve, grade, surface and thereafter maintain, clean, repair, mark, stripe, police and adequately light parking areas within the Premises of sufficient size to accommodate not less than 188 standard-size American-made automobiles, or as may be required by law, ordinance or regulation (whichever may be greater), together with any sidewalks, aisles, streets, driveways and sidewalk cuts and sufficient paved areas for ingress, egress and right-of-way to and from the adjacent public thoroughfares necessary or desirable for the use thereof;

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- (k) Reserve and use all such parking areas solely and exclusively for the purpose of providing ingress, egress and parking facilities for automobiles and other passenger vehicles of Mortgagor and tenants of the Premises and their invitees and licensees;
- (l) Not reduce, build upon, obstruct, redesignate or relocate any such parking areas, sidewalks, aisles, streets, driveways, sidewalk cuts or paved areas or rights-of-way, or lease or grant any rights to use the same to any other person except tenants and invitees of tenants of the Premises, without the prior written consent of the Mortgagee;
- (m) Cause the Premises at all times to be operated in compliance with that certain Environmental Covenants and Indemnity Agreement in favor of Mortgagee of even date herewith and otherwise in compliance with all federal, state, local and municipal environmental, health and safety laws, statutes, ordinances, rules and regulations (herein called "Environmental Regulations"), so that no cleanup, claim or other obligation or responsibility arises from a violation of any such laws, statutes, ordinances, rules and regulations;
- (n) From time to time at the direction of Mortgagee, obtain and furnish to Mortgagee at Mortgagor's expense, an environmental audit or survey from an expert satisfactory to Mortgagee with respect to the Premises, provided, however, that the foregoing shall not be required unless Mortgagee has reason to believe that an environmental hazard exists at the Premises.
- (o) Comply and cause the Premises to comply with all requirements and recommendations relating to compliance with Environmental Regulations and comply and cause the Premises to comply with the recommendations set forth in any environmental audit or survey with respect to the Premises, whether made or obtained by or at the request or direction of Mortgagee, Mortgagor or any federal, state or local governmental authority or agency, or otherwise; and
- (p) Comply and cause the Premises to comply with the provisions of the Americans With Disabilities Act.

3. **Taxes.** The Mortgagor will pay when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "Taxes"), whether or not assessed against the Mortgagor, if applicable to the Premises or any interest therein, or the Indebtedness Hereby Secured, or any obligation or agreement secured hereby; and Mortgagor will, upon written request, furnish to the Mortgagee duplicate receipts therefor; provided that (a) in the event that any law or court decree has the effect of deducting from the value of land for the purposes of taxation any lien thereon, or imposing upon the Mortgagee the payment in whole or any part of the Taxes 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 interest of the Mortgagee in the Premises or the manner of collection of Taxes, so as to affect this Mortgage or the Indebtedness Hereby Secured or the Holder thereof, then, and in any such event, the Mortgagor upon demand by the Mortgagee, will pay such Taxes, or reimburse the Mortgagee therefor; and (b) nothing in this Section 3 contained shall require the Mortgagor to pay any income, franchise or excise tax imposed upon the Mortgagee, excepting only such which may be levied against

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such income expressly as and for a specific substitute for Taxes on the Premises, and then only in an amount computed as if the Mortgagee derived no income from any source other than its interest hereunder.

4. **Insurance Coverage.** The Mortgagor will insure and keep insured the Premises and each and every part and parcel thereof against such perils and hazards as the Mortgagee may from time to time require, and in any event including:

- (a) Insurance against loss to the Improvements and Personal Property caused by fire, lightning and risks covered by the so-called "Extended Coverage" endorsement together with "vandalism and malicious mischief" and "sprinkler leakage" endorsements, or by the so-called "all perils" endorsement and such other risks as the Mortgagee may reasonably require, in amounts (but in no event less than the initial stated principal amount of the Note) equal to the full replacement value of the Improvements and Personal Property, plus the cost of debris removal, with full replacement cost endorsement, "agreed amount" endorsement, and "contingent liability from operations of building laws" endorsement;
- (b) Comprehensive general public liability insurance against bodily injury and property damage in any way arising in connection with the Premises with such limits as the Mortgagee may reasonably require and in any event not less than \$3,000,000 single limit coverage;
- (c) Rent and rental value insurance (or, at the discretion of Mortgagee, business interruption insurance) in amounts sufficient to pay during any period of up to one (1) year in which the Improvements may be damaged or destroyed (i) all projected annual rents derived from the Premises, and (ii) all amounts (including, but not limited to, all taxes, assessments, utility charges, operating expenses and insurance premiums) required herein to be paid by the Mortgagor or by tenants of the Premises;
- (d) Broad form boiler and machinery insurance on all equipment and objects customarily covered by such insurance (if any thereof are located at the Premises), providing for full repair and replacement cost coverage, and other insurance of the type and in amounts as the Mortgagee may reasonably require, but in any event not less than that customarily carried by persons owning or operating like properties;
- (e) During the making of any alterations or improvements to the Premises (i) insurance covering claims based on the owner's contingent liability not covered by the insurance provided in subsection (b) above, and (ii) Workmen's Compensation insurance covering all persons engaged in making such alterations or improvements;
- (f) Federal Flood Insurance in the maximum obtainable amount up to the amount of the Indebtedness Hereby Secured evidenced by the Note, if the Premises is in a "flood plain area" as defined by the Federal Insurance Administration pursuant to the Federal Flood Disaster Protection Act of 1973, as amended;
- (g) If any part of the Premises is now or hereafter used for the sale or dispensing of beer, wine, spirits or any other alcoholic beverages, so-called "dram shop" or "innkeeper's liability" insurance against claims or liability arising directly or indirectly to persons or property on account of such sale or dispensing of beer, wine, spirits or other alcoholic

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beverages, including in such coverage loss of means of support, all in amounts as may be required by law or as the Mortgagee may specify, but in no event less than \$3,000,000 single limit coverage;

- (h) Earthquake insurance, in an amount equal to the full replacement cost of the Premises plus the cost of debris removal, with full replacement cost endorsement, "agreed amount" endorsement, and "contingent liability from operations of building laws" endorsement but only if obtainable at reasonable cost;
- (i) Such other insurance of the types and in amounts as the Mortgagee may require, but in any event not less than the types and coverages of insurance customarily carried by persons owning and operating like properties;

and Mortgagor shall at its own expense furnish such insurance appraisals as may be required by Mortgagee from time to time (and in any event not less often than once every 5 years) to ascertain the full replacement cost of the improvements for the purposes of Subsection (a) above.

5. Insurance Policies. All policies of insurance to be maintained and provided as required by Section 4 hereof shall:

- (a) Be in forms, companies, and amounts satisfactory to Mortgagee, and all policies of casualty insurance shall have attached thereto mortgagee clauses or endorsements in favor of and with loss payable to Mortgagee;
- (b) Contain endorsements that no act or negligence of the insured or any occupant and no occupancy or use of the Premises for purposes more hazardous than permitted by the terms of the policies will affect the validity or enforceability of such policies as against Mortgagee;
- (c) Be written in amounts sufficient to prevent Mortgagor from becoming a co-insurer;
- (d) Provide for thirty (30) days' prior written notice of cancellation to Mortgagee;
- (e) Contain a deductible amount satisfactory to Mortgagee;
- (f) Provide that any waiver of the insured's subrogation rights shall not void coverage;

and Mortgagor will deliver all policies, including additional and renewal policies, to Mortgagee, and in case of insurance policies about to expire, the Mortgagor will deliver renewal policies not less than thirty (30) days prior to the respective dates of expiration. In addition, Mortgagor shall furnish to Mortgagee annually evidence satisfactory to Mortgagee that the Premises is insured to the sole satisfaction of Mortgagee.

6. Deposits for Taxes and Insurance Premiums. In order to assure the payment of Taxes and insurance premiums payable with respect to the Premises as and when the same shall become due and payable:

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- (a) The Mortgagor shall deposit with the Mortgagee on the first day of each and every month, commencing with the date the first payment of interest and/or principal and interest shall become due on the Indebtedness Hereby Secured, an amount equal to:
- (i) One-Twelfth (1/12) of the Taxes next to become due upon the Premises; provided that, in the case of the first such deposit, there shall be deposited in addition, an amount as estimated by Mortgagee which, when added to monthly deposits to be made thereafter as provided for herein, shall assure to Mortgagee's satisfaction that there will be sufficient funds on deposit to pay Taxes as they come due; plus
 - (ii) One-Twelfth (1/12) of the annual premiums on each policy of insurance upon the Premises; provided that, with the first such deposit there shall be deposited in addition, an amount equal to one-twelfth (1/12) of such annual insurance premiums multiplied by the number of months elapsed between the date premiums on each policy were last paid to and including the date of deposit;
- provided that the amount of such deposits (herein generally called "Tax and Insurance Deposits") shall be based upon Mortgagee's reasonable estimate as to the amount of Taxes and premiums of insurance next to be payable;
- (b) The aggregate of the monthly Tax and Insurance Deposits, together with monthly payments of interest and/or principal and interest payable on the Note, shall be paid in a single payment each month, to be applied to the following items in the order stated:
- (i) Taxes and insurance premiums;
 - (ii) Indebtedness Hereby Secured other than principal and interest on the Note;
 - (iii) Interest on the Note;
 - (iv) Amortization of the principal balance of the Note.
- (c) The Mortgagee will, out of the Tax and Insurance Deposits, upon the presentation to the Mortgagee by the Mortgagor of the bills therefor, pay the insurance premiums and Taxes or will, upon presentation of receipted bills therefor, reimburse the Mortgagor for such payments made by the Mortgagor; provided that (i) if the total Tax and Insurance Deposits on hand shall not be sufficient to pay all of the Taxes and insurance premiums when the same shall become due, then the Mortgagor shall pay to the Mortgagee on demand any amount necessary to make up the deficiency, and (ii) if the total of such Deposits exceed the amount required to pay the Taxes and insurance premiums, such excess shall be credited on subsequent payments to be made for such items;
- (d) In the event of a default in any of the provisions contained in this Mortgage, in the Note or in other Loan Documents, the Mortgagee, at its option, without being required so to do, may apply any Tax and Insurance Deposits on hand on any of the Indebtedness Hereby Secured, in such order and manner as the Mortgagee may elect, and in such case the Mortgagor will replenish any Tax and Insurance Deposits so applied within 5 days

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after Mortgagee's demand; provided that when the Indebtedness Hereby Secured has been fully paid, then any remaining Tax and Insurance Deposits shall be paid to the Mortgagor;

- (e) All Tax and Insurance Deposits are hereby pledged as additional security for the Indebtedness Hereby Secured, and shall be held in trust to be irrevocably applied for the purposes for which made as herein provided, and shall not be subject to the direction or control of the Mortgagor;
- (f) Notwithstanding anything to the contrary herein contained, the Mortgagee shall not be liable for any failure to apply to the payment of Taxes and insurance premiums any amounts deposited as Tax and Insurance Deposits unless the Mortgagor, while no default exists hereunder, and within a reasonable time prior to the due date, shall have requested the Mortgagee in writing to make application of such Deposits on hand to the payment of the particular Taxes or insurance premiums for the payment of which such Deposits were made, accompanied by the bills therefor;
- (g) All Tax and Insurance Deposits in the hands of Mortgagee shall be held without allowance of interest and need not be kept separate and apart but may be commingled with any funds of the Mortgagee until applied in accordance with the provisions hereof.
- (h) Notwithstanding the foregoing, initially, and until further notice from Mortgagee, no such deposits for hazard insurance premiums shall be required.

7. **Proceeds of Insurance.** The Mortgagor will give the Mortgagee prompt notice of any damage to or destruction of the Premises, and:

- (a) In case of loss covered by policies of insurance, the Mortgagee (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be) is hereby authorized at its option either (i) to settle and adjust any claim under such policies without the consent of the Mortgagor, or (ii) allow the Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss; provided that the Mortgagor may itself adjust losses aggregating not in excess of Twenty-Five Thousand Dollars (\$25,000); provided further that in any case the Mortgagee shall, and is hereby authorized to, collect and receipt for any such insurance proceeds; and the expenses incurred by the Mortgagee in the adjustment and collection of insurance proceeds shall be so much additional Indebtedness Hereby Secured, and shall be reimbursed to the Mortgagee upon demand;
- (b) In the event of any insured damage to or destruction of the Premises or any part thereof (herein called an "Insured Casualty") and if, in the reasonable judgment of the Mortgagee, the Premises can be restored prior to Loan maturity, to an architectural and economic unit of the same character and not less valuable than the same was prior to the Insured Casualty, and adequately securing the outstanding balance of the Indebtedness Hereby Secured, and the insurers do not deny liability to the insureds, then, if Leases demising less than ten percent (10%) (in terms of square feet) of the Premises are subject to termination on account of such casualty and if no Event of Default, as hereinafter defined, shall have occurred and be then continuing, and if there was no Event of Default, whether continuing or not, at the time of occurrence of damage or destruction, which resulted in

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said loss, the proceeds of insurance shall be applied to reimburse the Mortgagor for the cost of restoring, repairing, replacing or rebuilding (herein generally called "Restoring") the Premises or any part thereof subject to Insured Casualty, as provided for in Section 9 hereof;

- (c) Notwithstanding the foregoing, proceeds of rent and rental value insurance or business interruption insurance provided as set forth in section 4(c) hereof collected by the Mortgagee, shall be held and applied as follows:
- (i) So long as no Event of Default shall have occurred, such proceeds shall be applied in payment of periodic installments of principal and interest provided for in the Note and to payment of any Tax and Insurance Deposits required by Section 6 hereof, and any surplus shall be remitted to Mortgagor; and
 - (ii) Upon the occurrence of an Event of Default, such proceeds shall be applied as set forth in Subsection (e) below.
- (d) If, in the reasonable judgment of Mortgagee, the Premises cannot be restored to an architectural and economic unit as provided for in Subsection (b) above, then at any time from and after the Insured Casualty, upon thirty (30) days' written notice to Mortgagor, Mortgagee may declare the entire balance of the Indebtedness Hereby Secured to be, and at the expiration of such thirty (30) day period the Indebtedness Hereby Secured shall be and become, immediately due and payable;
- (e) Except as provided for in this Section 7, Mortgagee shall apply the proceeds of insurance (including amounts not required for Restoring effected in accordance with Subsection (b) above) consequent upon any Insured Casualty upon the Indebtedness Hereby Secured, in such order or manner as the Mortgagee may elect, provided that no premium or penalty shall be payable in connection with any prepayment of the Indebtedness Hereby Secured made out of insurance proceeds as aforesaid;
- (f) In the event that proceeds of insurance, if any, shall be made available to the Mortgagor for the Restoring of the Premises, Mortgagor hereby covenants to restore the same to be of at least equal value and of substantially the same character as prior to such damage or destruction; all to be effected in accordance with plans and specifications to be first submitted to and approved by the Mortgagee;
- (g) Any portion of insurance proceeds remaining after payment in full of the Indebtedness Hereby Secured shall be paid to Mortgagor or as ordered by a court of competent jurisdiction;
- (h) No interest shall be payable by Mortgagee on account of any insurance proceeds at any time held by Mortgagee;
- (i) Nothing contained in this Mortgage shall create any responsibility or liability upon the Mortgagee to (i) collect any proceeds of any policies of insurance, or (ii) Restore any portion of the Premises damaged or destroyed through any cause.

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8. **Condemnation.** The Mortgagor will give Mortgagee prompt notice of any proceedings, instituted or threatened, seeking condemnation or taking by eminent domain or any like process (herein generally called a "Taking"), of all or any part of the Premises, including damages to grade, and:

- (a) Mortgagor hereby assigns, transfers and sets over unto Mortgagee the entire proceeds of any Award consequent upon any Taking;
- (b) If, in the reasonable judgment of the Mortgagee, the Premises can be restored to an architectural and economic unit of the same character and not less valuable than the Premises prior to such Taking and adequately securing the outstanding balance of the Indebtedness Hereby Secured, then if no Event of Default, as hereinafter defined, shall have occurred and be then continuing, the Award shall be applied to reimburse Mortgagor for the cost of Restoring the portion of the Premises remaining after such Taking, as provided for in Section 9 hereof;
- (c) If, in the reasonable judgment of Mortgagee, the Premises cannot be restored to an architectural and economic unit as provided for in Subsection (b) above, then at any time from and after the Taking, upon thirty (30) days' written notice to Mortgagor, Mortgagee may declare the entire balance of the Indebtedness Hereby Secured to be, and at the expiration of such thirty (30) day period the Indebtedness Hereby Secured shall be and become, immediately due and payable;
- (d) Except as provided for in Subsection (b) of this Section 8, Mortgagee shall apply any Award (including the amount not required for Restoration effected in accordance with Subsection (b) above) upon the Indebtedness Hereby Secured in such order or manner as the Mortgagee may elect; provided that no premium or penalty shall be payable in connection with any prepayment of the Indebtedness Hereby Secured made out of any Award as aforesaid;
- (e) In the event that any Award shall be made available to the Mortgagor for Restoring the portion of the Premises remaining after a Taking, Mortgagor hereby covenants to Restore the remaining portion of the Premises to be of at least equal value and of substantially the same character as prior to such Taking, all to be effected in accordance with plans and specifications to be first submitted to and approved by the Mortgagee;
- (f) Any portion of any Award remaining after payment in full of the Indebtedness Hereby Secured shall be paid to Mortgagor or as ordered by a court of competent jurisdiction;
- (g) No interest shall be payable by Mortgagee on account of any Award at any time held by Mortgagor.

9. **Disbursement of Insurance Proceeds and Condemnation Awards.** In the event the Mortgagor is entitled to reimbursement out of insurance proceeds or any Award held by the Mortgagee, such proceeds shall be disbursed from time to time upon the Mortgagee being furnished with satisfactory evidence of the estimated cost of completion of the Restoring, with funds (or assurances satisfactory to the Mortgagee that such funds are available) sufficient in addition to the proceeds of insurance or Award, to complete the proposed Restoring, and with such architect's certificates, waivers of lien, contractor's sworn statements and such other evidence of costs and payments as the Mortgagee may reasonably require and approve; and

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the Mortgagee may, in any event, require that all plans and specifications for such Restoring be submitted to and approved by the Mortgagee prior to commencement of work, and in each case:

- (a) No payment made prior to the final completion of the Restoring shall exceed ninety percent (90%) of the value of the work performed from time to time;
- (b) Funds other than proceeds of insurance or the Award shall be disbursed prior to disbursement of such proceeds or Award; and
- (c) At all times the undisbursed balance of such proceeds or Award remaining in the hands of the Mortgagee, together with funds deposited for the purpose or irrevocably committed to the satisfaction of the Mortgagee by or on behalf of the Mortgagor for the purpose, shall be at least sufficient in the reasonable judgment of the Mortgagee to pay for the cost of completion of the Restoring, free and clear of all liens or claims for lien.

10. Stamp Tax. If, by the laws of the United States of America, or of any state having jurisdiction over the Mortgagor, any tax is due or becomes due in respect of the issuance of the Note, the Mortgagor shall pay such tax in the manner required by such law.

11. Prepayment Privilege. At such time as the Mortgagor is not in default under the terms of the Note, or under the terms of this Mortgage, the Mortgagor shall have the privilege of making prepayments on the principal of the Note (in addition to the required payments thereunder) in accordance with the terms and conditions, if any, set forth in the Note, but not otherwise.

12. Effect of Extensions of Time, Amendments on Junior Liens and Others. Mortgagor covenants and agrees that:

- (a) If the payment of the Indebtedness Hereby Secured, 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, if any, and the lien and all provisions hereof shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding any such extension, variation or release;
- (b) Any person, firm or corporation taking a junior mortgage or other lien upon the Premises or any interest therein, shall take such lien, subject to the rights of the Mortgagee to amend, modify and supplement this Mortgage, the Note, and the Assignment 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 the Indebtedness Hereby Secured, in each and every case without giving notice to, or obtaining the consent of, the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien;
- (c) Nothing in this Section contained shall be construed as waiving any provision of Section 17 hereof which provides, among other things, that it shall constitute an Event of Default if the Premises be sold, conveyed or encumbered.

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13. Effect of Changes in Tax Laws. In the event of the enactment after the date hereof by any legislative authority having jurisdiction of the Premises of any law deducting from the value of land for the purposes of taxation, any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by the 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 method of collecting taxes, so as to affect this Mortgage or the Indebtedness Hereby Secured, or the holder thereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee shall pay such taxes or assessments, or reimburse the Mortgagee therefor; provided that if in the opinion of counsel for the Mortgagee the payment by Mortgagor of any such taxes or assessments shall be unlawful, then the Mortgagee may, by notice to the Mortgagor, declare the entire principal balance of the Indebtedness Hereby Secured and all accrued interest to be due and payable on a date specified in such notice, not less than 180 days after the date of such notice, and the Indebtedness Hereby Secured and all accrued interest shall then be due and payable without premium or penalty on the date so specified in such notice.

14. Mortgagee's Performance of Mortgagor's Obligations. In case of default therein, the Mortgagee, either before or after acceleration of the Indebtedness Hereby Secured or the foreclosure of the lien hereof, and during the period of redemption, if any, may, but shall not be required to, make any payment or perform any act herein or in any other Loan Documents required of the Mortgagor (whether or not the Mortgagor is personally liable therefor) in any form and manner deemed expedient to the Mortgagee; and in connection therewith:

- (a) The Mortgagee may, but shall not be required to, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien, title, or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises, or contest any tax, assessment, lien or claim;
- (b) Mortgagee may, but shall not be required to, complete construction, furnishing and equipping of the Improvements upon the Premises and rent, operate and manage the Premises and such Improvements and pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Premises, Improvements and Personal Property shall be operational and usable for their intended purposes;
- (c) All monies paid for any of the purposes herein authorized or authorized by any other instrument evidencing or securing the Indebtedness Hereby Secured, and all expenses paid or incurred in connection therewith, including attorney's fees and any other monies advanced by the Mortgagee to protect the Premises and the lien hereof, or to complete construction, furnishing and equipping, or to rent, operate and manage the Premises and such Improvements, or to pay any such operating costs and expenses thereof, or to keep the Premises, Improvements and Personal Property operational and usable for their intended purposes, shall be so much additional Indebtedness Hereby Secured, whether or not they exceed the amount of the Note, and shall become immediately due and payable without notice, and with interest thereon at the Default Rate specified in the Note (herein called the "Default Rate");
- (d) Inaction of the Mortgagee shall never be considered a waiver of any right accruing to it on account of any default on the part of the Mortgagor;

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- (e) The Mortgagee, in making any payment hereby authorized (i) relating to taxes and assessments, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof, (ii) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted, or (iii) in connection with the completion of construction, furnishing or equipping of the Improvements or the Premises or the rental, operation or management of the Premises or the payment of operating costs and expenses thereof, Mortgagee may do so in such amounts and to such persons as Mortgagee may deem appropriate, and may enter into such contracts therefor as Mortgagee may deem appropriate or may perform the same itself.

15. **Inspection of Premises.** The Mortgagee shall have the right to inspect the Premises at all reasonable times, and access thereto shall be permitted for that purpose.

16. **Financial Statements.** The Mortgagor will, within ninety (90) days after the end of each fiscal year of the Premises and of each guarantor, furnish to the Mortgagee at the place where interest thereon is then payable, financial and operating statements of the Premises and of each guarantor for such fiscal year, all in reasonable detail and in any event including such itemized statement of receipts and disbursements as shall enable Mortgagee to determine whether any default exists hereunder or under the Note; and in connection therewith:

- (a) Such financial and operating statements shall reflect the complete results of the operation of the Premises for the prior fiscal year and shall be prepared and certified by a firm of independent certified public accountants satisfactory to Mortgagee (or such other preparer as Mortgagee may approve in writing) at the expense of Mortgagor in such manner as may be acceptable to the Mortgagee; and
- (b) If such statements are prepared by other than certified public accountants, such statements shall be certified as to accuracy by an authorized joint venturer of Old Orchard; and
- (c) If the statements furnished shall not be prepared in accordance with generally accepted accounting principles consistently applied, or if Mortgagor fails to furnish the same when due, Mortgagee may audit or cause to be audited the books of the Premises and/or the Mortgagor and of each Guarantor, at Mortgagor's expense, and the costs of such audit shall be so much additional Indebtedness Hereby Secured bearing interest at the Default Rate until paid, and payable upon demand; and
- (d) Simultaneously with the foregoing financial statements, Mortgagor shall furnish to Mortgagee a certified statement in form acceptable to Mortgagee reflecting the complete rental status of the Premises showing the name of each tenant, the area in square feet occupied, the remaining term of the lease and the rental being paid; and
- (e) All financial and operating statements are to cover the operation of the Premises only.

17. **Restrictions on Transfer.** Subject to the provisions of Section 18 hereof, it shall be an immediate Event of Default hereunder if, without the prior written consent of the Mortgagee, any of the following shall occur, and in any event Mortgagee may condition its consent upon such increase in rate of interest

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payable upon the Indebtedness Hereby Secured, change in monthly payments thereon, change in maturity thereof and/or the payment of a fee, all as Mortgagee may in its sole discretion require:

- (a) If the Mortgagor shall create, effect, contract for, commit to or consent to or shall suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of the Premises or any part thereof, or interest therein, excepting only (i) those matters listed on Exhibit C attached hereto ("Permitted Exceptions"), and (ii) sales or other dispositions of Collateral as defined in Section 19 (herein called "Obsolete Collateral") no longer useful in connection with the operation of the Premises; provided that prior to the sale or other disposition thereof, such Obsolete Collateral shall have been replaced by Collateral, subject to the first and prior lien hereof, of at least equal value and utility;
- (b) If the Mortgagor is a trustee, then if any beneficiary of the Mortgagor shall create, effect, contract for, commit to or consent to, or shall suffer or permit, any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of such beneficiary's beneficial interest in the Mortgagor;
- (c) If the Mortgagor is a corporation, or if any corporation is a beneficiary of a trustee mortgagor, then if any shareholder of such corporation shall create, effect, contract for, commit to or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage security interest or other encumbrance or alienation of any such shareholder's shares in such corporation; provided that if such corporation is a corporation whose stock is publicly traded on a national securities exchange or on the "Over The Counter" market, then this Section 17(c) shall be inapplicable;
- (d) If the Mortgagor is a partnership or joint venture, or if any beneficiary of a trustee Mortgagor is a partnership or joint venture, then if any general partner or joint venturer in such partnership or joint venture shall create, effect or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of any part of the partnership interest or joint venture interest, as the case may be, of such partner or joint venturer; or
- (e) If there shall be any change in control (by way of transfers of stock ownership, partnership interests or otherwise) in any general partner which directly or indirectly controls or is a general partner of a partnership or joint venture beneficiary as described in Subsection 17(d) above,

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided that provisions of this Section 17 shall be operative with respect to, and shall be binding upon, any persons who, in accordance with the terms hereof or otherwise, shall acquire any part of or interest in or encumbrance upon the Premises, or such beneficial interest in, share of stock of or partnership or joint venture interest in the Mortgagor or any beneficiary of a Trustee Mortgagor; and provided further that no consent by Mortgagee to, or any waiver of, any event or condition which would otherwise constitute an Event of Default under this Section 17, shall constitute a consent to or a waiver of any other or subsequent such event or condition or a waiver of any right, remedy or power of Mortgagee consequent thereon.

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18. Permitted Transfers. The provisions of Section 17 hereof shall not apply to any of the following:

- (a) Liens securing the Indebtedness Hereby Secured;
- (b) The lien of current real estate taxes and assessments not in default;
- (c) Transfers of joint venture interests in Old Orchard by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate, personal representatives and/or committee;
- (d) Transfers of joint venture interests in Old Orchard among existing joint venturers of Old Orchard;
- (e) Transfers of joint venture interests in Old Orchard for estate planning purposes;

provided that with respect to subsections (c), (d) and (e), above, Mortgagee is in each such instances given prompt written notice (in reasonable detail) of such transfer; and

- (f) A one-time transfer of the entire Premises on an arms-length basis to an independent third party, so long as the transferee is acceptable to Mortgagee in its sole and absolute discretion, provided that (i) no other such transfer shall be permitted during the remaining term of the Loan; (ii) Mortgagee is paid a transfer fee equal to one percent (1%) of the remaining outstanding principal balance of the Note at the time of said transfer; and (iii) such transfer is accomplished pursuant to documentation reasonably acceptable to Mortgagee.

19. Uniform Commercial Code. This Mortgage constitutes a Security Agreement under the Uniform Commercial Code of the State in which the Premises is located (herein called the "Code") with respect to any part of the Premises which may or might now or hereafter be or be deemed to be personal property, fixtures or property other than real estate (all herein called "Collateral"); all of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this Section 19 shall not limit the generality or applicability of any other provision of this Mortgage, but shall be in addition thereto:

- (a) The Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof;
- (b) The Collateral is to be used by the Mortgagor solely for business purposes, being installed upon the Premises for Mortgagor's own use or as the equipment and furnishings furnished by Mortgagor, as landlord, to tenants of the Premises;
- (c) The Collateral will be kept at the Real Estate and will not be removed therefrom without the consent of the Mortgagee (being the Secured Party as that term is used in the Code) by Mortgagor or any other person; and the Collateral may be affixed to the Real Estate but will not be affixed to any other real estate;

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- (d) The only persons having any interest in the Premises are the Mortgagor, Mortgagee and persons occupying the Premises as tenants only;
- (e) No Financing Statement covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor will at its own cost and expense, upon demand, furnish to the Mortgagee such further information and will execute and deliver to the Mortgagee such financing statement and other documents in form satisfactory to the Mortgagee, and will do all such acts and things as the Mortgagee may at any time or from time to time reasonably request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness Hereby Secured, subject to no adverse liens or encumbrances; and the Mortgagor will pay the cost of filing the same or filing or recording such financing statements or other documents, and this instrument, in all public offices whenever filing or recording is deemed by the Mortgagee to be necessary or desirable;
- (f) Upon the occurrence of any Event of Default hereunder (regardless of whether the Code has been enacted in the jurisdiction where rights or remedies are asserted) and at any time thereafter (such Event of Default not having previously been cured), the Mortgagee at its option may declare the Indebtedness Hereby Secured immediately due and payable, all as more fully set forth in Section 20 hereof, and thereupon Mortgagee shall have the remedies of a secured party under the Code, including without limitation the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as the Mortgagor can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code);
- (g) The Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral, subject to the Mortgagor's right of redemption, if any, in satisfaction of the Mortgagor's obligations as provided in the Code; provided that (i) the Mortgagee without removal may render the Collateral unusable and dispose of the Collateral on the Premises, and (ii) the Mortgagee may require the Mortgagor to assemble the Collateral and make it available to the Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties;
- (h) The Mortgagee will give Mortgagor at least five (5) days' notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is made and the requirements of reasonable notice shall be met if such notice is mailed, by certified mail or equivalent, postage prepaid, to the address of the Mortgagor determined as provided in Section 42 hereof, at least five (5) days before the time of the sale or disposition;
- (i) The Mortgagee may buy at any public sale and if the Collateral is a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, Mortgagee may buy at any private sale, and any such sale may be held as part of and in conjunction with any foreclosure sale of the Real Estate comprised

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within the Premises, the Collateral and Real Estate to be sold as one lot if Mortgagee so elects;

- (j) The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling or the like, and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied in satisfaction of the Indebtedness Hereby Secured; and the Mortgagee will account to the Mortgagor for any surplus realized on such disposition;
- (k) The remedies of the Mortgagee hereunder are cumulative and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of any of the other remedies of the Mortgagee, including having the Collateral deemed part of the realty upon any foreclosure thereof, so long as any part of the Indebtedness Hereby Secured remains unsatisfied;
- (l) The terms and provisions contained in this Section 19 shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

20. Events of Default. If one or more of the following events (herein called "Events of Default") shall occur:

- (a) If default is made in the due and punctual payment of the Note or any installment thereof, either principal or interest, as and when the same is due and payable, or if default is made in the making of any payment of any other monies required to be made hereunder or under the Note, and any applicable period of grace specified in the Note shall have elapsed; or
- (b) If an Event of Default pursuant to Section 17 hereof shall occur and be continuing without notice or grace of any kind; or
- (c) If default is made in the maintenance and delivery to Mortgagee of insurance required to be maintained and delivered hereunder, without notice or grace of any kind; or
- (d) If (and for the purpose of this Section 20(d) only, the term Mortgagor shall mean and include not only Mortgagor but any beneficiary of a Trustee Mortgagor and each person who, as guarantor, co-maker or otherwise shall be or become liable for or obligated upon all or any part of the Indebtedness Hereby Secured or any of the covenants or agreements contained herein or in the other Loan Documents),
 - (i) The Mortgagor shall file a petition in voluntary bankruptcy under the Bankruptcy Code of the United States or any similar law, state or federal, now or hereafter in effect, or
 - (ii) The Mortgagor shall file an answer admitting insolvency or inability to pay its debts, or

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- (iii) Within sixty (60) days after the filing against Mortgagor of any involuntary proceedings under such Bankruptcy Code or similar law, such proceedings shall not have been vacated or stayed, or
- (iv) The Mortgagor shall be adjudicated a bankrupt, or a trustee or receiver shall be appointed for the Mortgagor or for all or the major part of the Mortgagor's property or the Premises, in any involuntary proceeding, or any court shall have taken jurisdiction of all or the major part of the Mortgagor's property or the Premises in any involuntary proceeding for the protection, reorganization, dissolution, liquidation or winding up of the Mortgagor, and such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within sixty (60) days, or
- (v) The Mortgagor shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due or shall consent to the appointment of a receiver or trustee or liquidator of all or the major part of its property, or the Premises; or
- (e) If any default shall exist under the provisions of Section 26 hereof, or under the Assignment referred to therein; or
- (f) If any default shall exist beyond any applicable notice and cure period, if any, under the provisions of the other Loan Documents; or
- (g) If any representation made by or on behalf of Mortgagor in connection with the Indebtedness Hereby Secured shall prove untrue in any material respect; or
- (h) If default shall continue for 15 days after notice thereof by Mortgagee to Mortgagor in the due and punctual performance or observance of any other agreement or condition herein or in the Note contained; provided that if such default is not susceptible of cure within such 15-day period, such 15-day period shall be extended to the extent necessary to permit such cure if, but only if, (i) Mortgagor shall commence such cure within such 15-day period and shall thereafter prosecute such cure to completion, diligently and without delay, and (ii) no other Event of Default shall occur; or
- (i) If the Premises shall be abandoned;

then the Mortgagee is hereby authorized and empowered, at its option, and without affecting the lien hereby created or the priority of said lien or any right of the Mortgagee hereunder, to declare, without further notice all Indebtedness Hereby Secured to be immediately due and payable, whether or not such default is thereafter remedied by the Mortgagor, and the Mortgagee may immediately proceed to foreclose this Mortgage and/or exercise any right, power or remedy provided by this Mortgage, the Note, the Assignment or any of the other Loan Documents or by law or in equity conferred.

21. Foreclosure. When the Indebtedness Hereby Secured, or any part thereof, shall become due, whether by acceleration or otherwise, the Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof and:

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- (a) In any suit or proceeding to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale, all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for attorneys' fees, appraisers' 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, as the Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Premises; and
- (b) All expenditures and expenses of the nature in this Section mentioned, and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by the Mortgagee in any litigation or proceedings affecting this Mortgage, the Note or the Premises or the rights of Mortgagee hereunder or as to which Mortgagee may be made a party by virtue of its interest in the Premises pursuant to this Mortgage or otherwise, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall constitute so much additional Indebtedness Hereby Secured, and shall be immediately due and payable by the Mortgagor, with interest thereon at the Default Rate.

22. Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Section 21 hereof; Second, all other items which, under the terms hereof, constitute Indebtedness Hereby Secured additional to that evidenced by the Note, with interest on such items as herein provided; Third, to interest remaining unpaid upon the Note; Fourth, to the principal remaining unpaid upon the Note; and lastly, any overplus to the Mortgagor, and its successors or assigns, as their rights may appear.

23. Receiver. Mortgagor consents and agrees that:

- (a) 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 Premises;
- (b) Such appointment may be made either before or after sale, without notice, without regard to solvency or insolvency of the Mortgagor at the time of application for such receiver, and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not; and the Mortgagee hereunder, or any holder of the Note, may be appointed as such receiver;
- (c) Such receiver shall have the power 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, if any, whether there be a redemption or not, as well as during any further times when the Mortgagor, except for the intervention of such receiver, would be entitled to collection of such Rents and 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 said period;

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- (d) The court may, from time to time, authorize the receiver to apply the net income from the Premises in his hands in payment in whole or in part of:
- (i) The Indebtedness Hereby Secured or the indebtedness secured by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or such decree, provided such application is made prior to the foreclosure sale; or
 - (ii) The deficiency in case of a sale and deficiency.

24. Insurance Upon Foreclosure. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in Restoring the Improvements, as aforesaid, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct; and:

- (a) In the case of foreclosure of this Mortgage, the court, in its decree, may provide that the Mortgagee's clause attached to each of the casualty insurance policies may be canceled and that the purchaser, at foreclosure sale may cause a new loss clause to be attached to each of said casualty insurance policies making the loss thereunder payable to said purchaser and any such foreclosure decree may further provide that in case of a redemption under said decree as provided by statute, such redemption may cause the preceding loss clause attached to each casualty insurance policy to be canceled and a new loss clause to be attached thereto, making the loss thereunder payable to such redeemer; and
- (b) In the event of foreclosure sale, the Mortgagee is hereby authorized, without the consent of the Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as the Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies.

25. Waiver. The Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner whatever claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor claim, take or insist upon the benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or, after such sale or sales, claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof; and without limiting the foregoing:

- (a) The Mortgagor hereby expressly waives any and all rights of redemption from sale, if any, under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of redemption of the Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Chapter 110, Para. 12-124, Para. 12-125 and Para. 15-1601 of the Illinois Statutes or other applicable law or replacement statutes;

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- (b) The Mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power or remedy herein or otherwise granted or delegated to the Mortgagee but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted; and
- (c) If the Mortgagor is a trustee, Mortgagor represents that the provisions of this Section (including the waiver of redemption rights) were made at the express direction of Mortgagor's beneficiaries and the persons having the power of direction over Mortgagor, and are made on behalf of the Trust Estate of Mortgagor and all beneficiaries of Mortgagor, as well as all other persons mentioned above.

26. Assignment. As further security for the Indebtedness Hereby Secured, the Mortgagor has, concurrently herewith, executed and delivered to the Mortgagee a separate instrument (herein called the "Assignment") dated as of the date hereof, wherein and whereby, among other things, the Mortgagor has assigned to the Mortgagee all of the rents, issues and profits, and/or any and all Leases and/or the rights of management of the Premises, all as therein more specifically set forth, which said Assignment is hereby incorporated herein by reference as fully and with the same effect as if set forth herein at length; and in connection with the foregoing:

- (a) The Mortgagor agrees that it will duly perform and observe all of the terms and provisions on its part to be performed and observed under the Assignment;
- (b) The Mortgagor agrees that it will duly perform and observe all of the terms and provisions on lessor's part to be performed and observed under any and all Leases to the end that no default on the part of lessor shall exist thereunder; and
- (c) Nothing herein contained shall be deemed to obligate the Mortgagee to perform or discharge any obligation, duty or liability of lessor under any Lease; and the Mortgagor shall and does hereby indemnify and agree to defend and hold the Mortgagee harmless of and from any and all liability, loss or damage which the Mortgagee may or might incur under any Lease or by reason of the Assignment; and any and all such liability, loss or damage incurred by the Mortgagee, together with the costs and expenses, including reasonable attorneys' fees, incurred by the Mortgagee in the defense (including preparation for defense) of any claims or demands therefor (whether successful or not), shall be so much additional Indebtedness Hereby Secured, and the Mortgagor shall reimburse the Mortgagee therefor on demand, together with interest thereon at the Default Rate from the date of demand to the date of payment.

27. Priorities With Respect to Leases. If the Mortgagee shall execute and record (or register) in the public office wherein this Mortgage was recorded (or registered) a unilateral declaration that this Mortgage shall be subject and subordinate, in whole or in part, to any Lease, then upon such recordation (or registration), this Mortgage shall become subject and subordinate to such Lease to the extent set forth in such instrument; provided that such subordination shall not extend to or affect the priority of entitlement to insurance proceeds or any Award unless such instrument shall specifically so provide.

28. Mortgagee in Possession. Nothing herein contained shall be construed as constituting the Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises by the Mortgagee.

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29. **Business Loan.** Mortgagor represents and agrees that the loan evidenced by the Note and secured hereby is a business loan within the purview of Section 6404 of Chapter 17 of Illinois Revised Statutes (or any substitute, amended, or replacement statutes) and is transacted solely for the purpose of carrying on or acquiring the business of the Mortgagor or, if the Mortgagor is a trustee, for the purpose of carrying on or acquiring the business of the beneficiaries of the Mortgagor as contemplated by said Section.

30. [INTENTIONALLY OMITTED].

31. **Contests.** Notwithstanding anything to the contrary herein contained, Mortgagor shall have the right to contest by appropriate legal proceedings diligently prosecuted any Taxes imposed or assessed upon the Premises or which may be or become a lien thereon and any mechanics', materialmen's or other liens or claims for lien upon the Premises (all herein called "Contested Liens"), and no Contested Lien shall constitute an Event of Default hereunder, if, but only if:

- (a) Mortgagor shall forthwith give notice of any Contested Lien to Mortgagee at the time the same shall be asserted;
- (b) Mortgagor shall deposit with Mortgagee the full amount (herein called the "Lien Amount") of such Contested Lien or which may be secured thereby, together with such amount as Mortgagee may reasonably estimate as interest or penalties which might arise during the period of contest; provided that in lieu of such payment Mortgagor may furnish to Mortgagee a bond or title indemnity in such amount and form, and issued by a bond or title insuring company, as may be satisfactory to Mortgagee;
- (c) Mortgagor shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Premises, and shall permit Mortgagee to be represented in any such contest and shall pay all expenses incurred by Mortgagee in so doing, including fees and expenses of Mortgagee's counsel (all of which shall constitute so much additional Indebtedness Hereby Secured bearing interest at the Default Rate until paid, and payable upon demand);
- (d) Mortgagor shall pay such Contested Lien and all Lien Amounts together with interest and penalties thereon if and to the extent that any such Contested Lien shall be determined adverse to Mortgagor, or (ii) forthwith upon demand by Mortgagee if, in the opinion of Mortgagee, and notwithstanding any such contest, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed; provided that if Mortgagor shall fail so to do, Mortgagee may, but shall not be required to, pay all such Contested Liens and Lien Amounts and interest and penalties thereon and such other sums as may be necessary in the judgment of the Mortgagee to obtain the release and discharge of such liens; and any amount expended by Mortgagee in so doing shall be so much additional Indebtedness Hereby Secured bearing interest at the Default Rate until paid, and payable upon demand; and provided further that Mortgagee may in such case use and apply for the purpose monies deposited as provided in Subsection 31 (b) above and may demand payment upon any bond or title indemnity furnished as aforesaid.

32. **Indemnification.** Mortgagor does hereby covenant and agree that:

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- (a) Mortgagee shall have no responsibility for the control, care, management or repair of the Premises and shall not be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Premises resulting in loss, injury or death to any tenant, licensee, immediate stranger or other person;
- (b) No liability shall be asserted or enforced against Mortgagee in the exercise of the rights and powers hereby granted to the Mortgagee; and Mortgagor hereby expressly waives and releases any such liability;
- (c) Mortgagor shall and does hereby indemnify and hold Mortgagee harmless from any liability, loss or damage which Mortgagee may or might incur by reason of (i) exercise by Mortgagee of any right hereunder, and (ii) any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of any violation of, or liability under any Environmental Regulation (other than due solely to an act or omission of Mortgagee after obtaining possession or control of the Premises) or of any alleged obligation or undertaking on Mortgagee's part to perform or discharge any of the terms, covenants or agreements contained herein or in any instrument evidencing, securing or relating to the Indebtedness Hereby Secured or in any contracts, agreements or other instruments relating to or affecting the Premises; any and all such liability, loss or damage incurred by the Mortgagee, together with the costs and expenses, including reasonable attorneys' fees incurred by Mortgagee in the defense (including preparation for defense) of any claims or demands therefor (whether successful or not) shall be so much additional Indebtedness Hereby Secured, and the Mortgagor shall reimburse the Mortgagee therefor on demand, together with interest thereon at the Default Rate from the date of demand to the date of payment. Notwithstanding the foregoing the indemnification set forth in this Subsection shall not apply to the tortious acts of Mortgagee.

33. Mortgagor Not a Joint Venturer or Partner. Mortgagor and Mortgagee acknowledge and agree that in no event shall Mortgagee be deemed to be a partner or joint venturer with Mortgagor or any beneficiary of Mortgagor; and without limiting the foregoing, Mortgagee shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document evidencing or securing any of the Indebtedness Hereby Secured, or otherwise.

34. Subrogation. To the extent that Mortgagee, on or after the date hereof, pays any sum due under or secured by any Senior Lien as hereinafter defined, or Mortgagor or any other person pays any such sum with the proceeds of the Indebtedness Hereby Secured:

- (a) Mortgagee shall have and be entitled to a lien on the Premises equal in priority to the Senior Lien discharged, and Mortgagee shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such Senior Lien, which shall remain in existence and benefit Mortgagee in securing the Indebtedness Hereby Secured; and
- (b) Notwithstanding the release of record of Senior Liens (as hereinafter defined) Mortgagee shall be subrogated to the rights and liens of all mortgages, trust deeds, superior titles, vendors' liens, mechanics' liens, or liens, charges, encumbrances, rights and equities on the Premises having priority to the lien of this Mortgage (herein generally called "Senior

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Liens"), to the extent that any obligation secured thereby is directly or indirectly paid or discharged with proceeds of disbursements or advances of the Indebtedness Hereby Secured, whether made pursuant to the provisions hereof or of the Note or any document or instrument executed in connection with the Indebtedness Hereby Secured.

35. Title In Mortgagor's Successors. In the event that the ownership of the Premises or any part thereof becomes vested in a person or persons other than the Mortgagor (a) the Mortgagee may, without notice to the Mortgagor, deal with such successor or successors in interest of the Mortgagor with reference to this Mortgage and the Indebtedness Hereby Secured in the same manner as with the Mortgagor; and (b) the Mortgagor will give immediate written notice to the Mortgagee of any conveyance, transfer or change of ownership of the Premises; but nothing in this Section 35 contained shall vary or negate the provisions of Section 17 hereof.

36. Rights Cumulative. Each right, power and remedy herein conferred upon the Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of the Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

37. Successors and Assigns. This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon the Mortgagor and its successors and assigns (including, without limitation, each and every from time to time record owner of the Premises or any other person having an interest therein) and shall inure to the benefit of the Mortgagee and its successors and assigns and (a) wherever herein the Mortgagee is referred to, such reference shall be deemed to include the holder from time to time of the Note, whether so expressed or not; and (b) each such from time to time holder of the Note shall have and enjoy all of the rights, privileges, powers, options, benefits and security afforded hereby and hereunder, and may enforce every and all of the terms and provisions hereof, as fully and to the same extent and with the same effect as if such from time to time holder was herein by name specifically granted such rights, privileges, powers, options, benefits and security and was herein by name designated the Mortgagee.

38. Provisions Severable. The unenforceability or invalidity of any provision or provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid.

39. Waiver of Defense. 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 the same in an action at law upon the Note.

40. Captions and Pronouns. The captions and headings of the various sections of this Mortgage are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof; and whenever the context requires or permits, the singular number shall include the plural, the plural shall include the singular and the masculine, feminine and neuter genders shall be freely interchangeable.

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41. **Commitment.** Mortgagor represents and agrees that the Indebtedness Hereby Secured represented by the Note represents the proceeds of a loan made and to be made by Mortgagee to Mortgagor pursuant to Commitment dated December 4, 1995, from Mortgagee to Old Orchard (herein, together with any Application for Loan referred to therein, being called the "Commitment"); and in connection herewith:

- (a) The Commitment is hereby incorporated herein by reference as fully and with the same effect as if set forth herein at length;
- (b) If the Commitment runs to any person other than Mortgagor, Mortgagor hereby adopts and ratifies the Commitment and the Application referred to therein as its own act and agreement;
- (c) Mortgagor hereby covenants and agrees to duly and punctually do and perform and observe all of the terms, provisions, covenants and agreements to be done, performed or observed by the Mortgagor (or borrower) pursuant to the Commitment (and the Application forming a part thereof) and further represents that all of the representations and statements of or on behalf of Mortgagor (or borrower) in the Commitment (and the Application forming a part thereto and in any documents and certificates delivered pursuant thereto are true and correct.

42. **Addresses and Notices.** Any notice which any party hereto may desire or may be required to give to any other party shall be in writing, and the personal delivery thereof or electronic, facsimile transmission thereof, or the passage of three days after the mailing thereof by registered or certified mail, return receipt requested, or upon the next business day after timely and proper deposit, charges paid, with any overnight carrier with respect to next day service, to the addresses initially specified in the introductory paragraph hereof, or to such other place or places as any party hereto may by notice in writing designate, shall constitute service of notice hereunder. A copy of all notices directed to Mortgagee also shall be delivered to Thomas I. Matyas, Shesky Froelich & Devine Ltd., 444 North Michigan Avenue, Suite 2500, Chicago, Illinois 60611. A copy of all notices directed to Mortgagor also shall be directed to Joseph Real Estate Services, Ltd., 666 Dundee Road, No. 303, Northbrook, Illinois 60062.

43. **Mortgagor Will Not Discriminate.** Mortgagor covenants and agrees at all times to be in full compliance with provisions of law prohibiting discrimination on the basis of race, color, creed or national origin including, but not limited to, the requirements of Title VIII of the 1968 Civil Rights Act, or any substitute, amended or replacement Acts.

44. **Interest at the Default Rate.** Without limiting the generality of any provision herein or in the Note contained, from and after the occurrence of any Event of Default hereunder, all of the Indebtedness Hereby Secured shall bear interest at the Default Rate.

45. **Time.** Time is of the essence hereof and of the Note, Assignment, Construction Loan Agreement and all other instruments or Loan Documents delivered in connection with the Indebtedness Hereby Secured.

46. **Applicable Law.** This Document shall be construed in accordance with the laws of the State in which the Premises are located.

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47. **Trustee Exculpation.** This Mortgage is executed by the undersigned, 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 said Trustee hereby warrants in its individual capacity that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on said Trustee personally to pay the Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant, representation, agreement or condition, either express or implied herein contained, or with regard to any warranty contained in this Mortgage except the warranty made in this Section, all such liability, if any, being expressly waived by Mortgagee and by every person now or hereafter claiming any right or security hereunder; provided that nothing herein contained shall 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 and remedies of Mortgagee in any such foreclosure proceedings or other enforcement of the payment of the Indebtedness Hereby Secured out of and from the security given therefor in the manner provided herein, or construed in any way so as to limit or restrict any of the rights and remedies of Mortgagee under any other document or instrument evidencing, securing or guaranteeing the Indebtedness Hereby Secured.

IN WITNESS WHEREOF, LaSalle National Trust, N.A., not personally but as Trustee as aforesaid, has caused these presents to be signed by one of its Vice Presidents or Assistant Vice Presidents and its corporate seal to be hereunto affixed and attested by its Assistant Secretary, all, as of this day, month and year first above written.

MORTGAGOR:

LASALLE NATIONAL TRUST, N.A., not personally
but solely as Trustee as aforesaid

By

Rosmarie Caccini
Assistant Vice President

ATTEST:

Nancy A. Stahl
Assistant Secretary

THIS INSTRUMENT WAS PREPARED BY:

Richard L. Ingram
Shelsky Froelich & Devine Ltd.
444 North Michigan Avenue
Suite 2500
Chicago, Illinois 60611

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JOINDER

(Old Orchard)

The undersigned, Old Orchard Office Court Joint Venture, an Illinois joint venture ("Old Orchard"), Richard D. Miller, Lawrence K. Joseph, Donald R. Joseph, Lawrence Sharken, Donald S. Kovar, Shauna Joseph, Thomas A. Joseph, The Investment Trust Under the Will of Richard S. Joseph, The Leonard Miller Discretionary Trust for Richard U/A/D 1/19/77, The Leonard Miller Family Trust for Richard U/A/D 1/19/77, The Leonard Miller Discretionary Trust for Diana U/A/D 1/19/77, and The Leonard Miller Family Trust for Diana U/A/D 1/19/77, all being substantially financially or otherwise interested in the beneficiary of the Mortgage, and as a material inducement for Mortgagee to disburse the proceeds of the Note, hereby jointly and severally with Mortgagee and with each other agree that they shall be personally responsible for the payment and/or performance by Mortgagee of the following sums and/or obligations:

(i) any rents, issues, profits or income of the Premises which have been prepaid more than thirty (30) days in advance; (ii) any rents, issues, profits or income of the Premises which have been collected by the Borrower (or any beneficiary, member, partner, shareholder, agent or representative of Borrower) with respect to the Premises after the occurrence of a default or an Event of Default hereunder, under the Mortgage, the Assignment of Lease, or any other Loan Document; (iii) security deposits paid by tenants of the Premises; (iv) insurance proceeds and condemnation awards and payments not applied as required by this Mortgage or the other Loan Documents; (v) damages sustained by Mortgagee as the direct or indirect result of fraud, bad faith or material misrepresentation by the Borrower (as defined in the Note) (or by any beneficiary, member, partner, shareholder, agent or representative of Borrower); (vi) the terms of the Environmental Indemnity Agreement of even date herewith; (vii) the costs associated with repair of the Premises as a result of a casualty not reimbursed by insurance proceeds to the extent such insurance is required by the Loan Documents; (viii) the non-payment or delinquency of real estate taxes or assessments; and (ix) non-compliance with the Americans with Disabilities Act, provided, however, that nothing herein contained shall affect limit or impair the liability or obligation of any guarantor or other person who, by separate instrument, shall be or become liable upon any of the Indebtedness Hereby Secured.

This Joinder may be executed in multiple counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. In addition, this Joinder may contain more than one counterpart of the signature page, and this Joinder may be executed by the affixing of the signatures of each of the parties to this Joinder to one or more of such counterpart signature pages; all of such counterpart signature and notary pages shall be read as though one, and they shall have the same force and effect as though all the signers have signed a single signature page.

Old Orchard Office Court Joint Venture, an
Illinois joint venture


Richard D. Miller

By: _____
Its: _____

[SIGNATURES CONTINUE ON NEXT PAGE]

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JOINDER

(Old Orchard)

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(i) any rents, issues, profits or income of the Premises which have been prepaid more than thirty (30) days in advance; (ii) any rents, issues, profits or income of the Premises which have been collected by the Borrower (or any beneficiary, member, partner, shareholder, agent or representative of Borrower) with respect to the Premises after the occurrence of a default or an Event of Default hereunder, under the Mortgage, the Assignment of Leases or any other Loan Document; (iii) security deposits paid by tenants of the Premises; (iv) insurance proceeds and condemnation awards and payments not applied as required by this Mortgage or the other Loan Documents; (v) damages sustained by Mortgagee as the direct or indirect result of fraud, bad faith or material misrepresentation by the Borrower (as defined in the Note) (or by any beneficiary, member, partner, shareholder, agent or representative of Borrower); (vi) the terms of the Environmental Indemnity Agreement of even date herewith; (vii) the costs associated with repair of the Premises as a result of a casualty not reimbursed by insurance proceeds to the extent such insurance is required by the Loan Documents; (viii) the non-payment or delinquency of real estate taxes or assessments; and (ix) non-compliance with the Americans with Disabilities Act, provided, however, that nothing herein contained shall affect limit or impair the liability or obligation of any guarantor or other person who, by separate instrument, shall be or become liable upon any of the Indebtedness Hereby Secured.

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Old Orchard Office Court Joint Venture, an
Illinois joint venture

Richard D. Miller

By: [Signature]
As: [Signature]

[SIGNATURES CONTINUE ON NEXT PAGE]

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[CONTINUATION OF SIGNATURES FROM PREVIOUS PAGE]

Lawrence K. Joseph

The Investment Trust Under the Will of Richard S. Joseph

Donald R. Joseph

By: Theodore S. Joseph, Co-Trustee

Lawrence Sharken

By: Sally J. Mackler, Co-Trustee

Donald S. Kovar

The Leonard Miller Discretionary Trust for Richard U/A/D 1/19/77; The Leonard Miller Family Trust for Richard U/A/D 1/19/77; The Leonard Miller Discretionary Trust for Diana U/A/D 1/19/77; and The Leonard Miller Family Trust for Diana U/A/D 1/19/77

Shauna Joseph

by: Richard D. Miller, Trustee of each of the aforesaid Trusts


Thomas A. Joseph

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Lawrence Sharken

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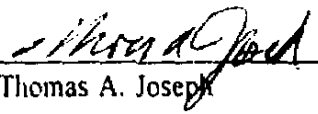
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Theodore S. Joseph, Co-Trustee

Lawrence Sharken

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Thomas A. Joseph

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STATE OF Illinois
COUNTY OF Cook SS

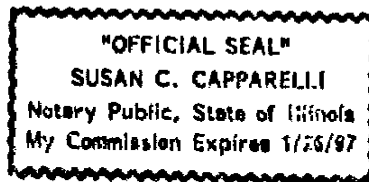
Susan Capparelli a Notary Public in and for the County in the State aforesaid, do hereby certify that Richard D. Miller, the Partner of Old Orchard Office Court Joint Venture, an Illinois joint venture, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that as such Partner, he/she signed and delivered the said instrument as his/her free and voluntary act and as the free and voluntary act of said Partner for the uses and purposes therein set forth.

Given under my hand and notarial seal this 3rd day of January, 1996.

Susan Capparelli
Notary Public

My Commission Expires:

1-26-97



STATE OF Illinois
COUNTY OF Cook SS

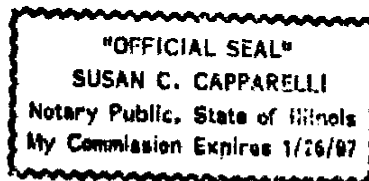
Susan Capparelli a Notary Public in and for the County in the State aforesaid, do hereby certify that Richard D. Miller, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 3rd day of January, 1996.

Susan Capparelli
Notary Public

My Commission Expires:

1-26-97



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STATE OF Illinois
COUNTY OF Cook SS

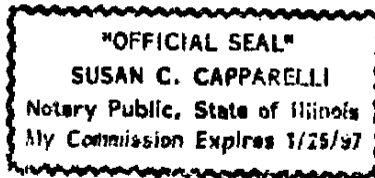
Susan Capparelli, a Notary Public in and for the County in the State aforesaid, do hereby certify that **Lawrence K. Joseph**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 3rd day of January, 1996.

Susan Capparelli
Notary Public

My Commission Expires:

1-26-97



STATE OF Illinois
COUNTY OF Cook SS

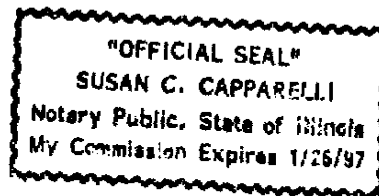
Susan Capparelli, a Notary Public in and for the County in the State aforesaid, do hereby certify that **Donald R. Joseph**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 3rd day of January, 1996.

Susan Capparelli
Notary Public

My Commission Expires:

1-26-97



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STATE OF Illinois
COUNTY OF Cook SS

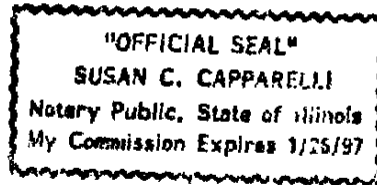
I, Susan Capparelli, a Notary Public in and for the County in the State aforesaid, do hereby certify that Lawrence Sharken, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 3rd day of January, 1996.

Susan Capparelli
Notary Public

My Commission Expires:

1-26-97



STATE OF Illinois
COUNTY OF Cook SS

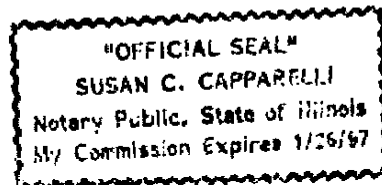
I, Susan Capparelli, a Notary Public in and for the County in the State aforesaid, do hereby certify that Donald S. Kovar, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 3rd day of January, 1996.

Susan Capparelli
Notary Public

My Commission Expires:

1-26-97



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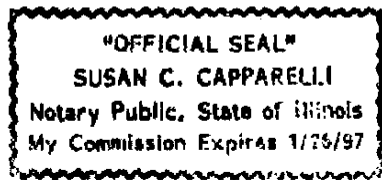
STATE OF Illinois
COUNTY OF Cook SS

Susan Capparelli, a Notary Public in and for the County in the State aforesaid, do hereby certify that **Shauna Joseph**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that she signed, sealed and delivered the said instrument as her free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 3rd day of January, 1996.

Susan Capparelli
Notary Public

My Commission Expires:
1-26-97



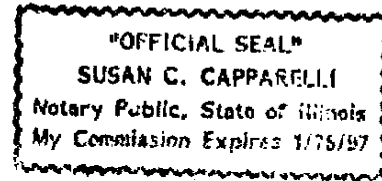
STATE OF Illinois
COUNTY OF Cook SS

Susan Capparelli, a Notary Public in and for the County in the State aforesaid, do hereby certify that **Thomas A. Joseph**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 3rd day of January, 1996.

Susan Capparelli
Notary Public

My Commission Expires:
1-26-97



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STATE OF Illinois
COUNTY OF Cook SS

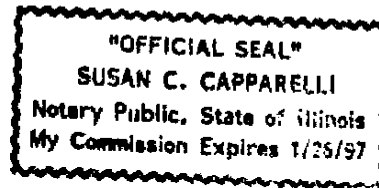
I, Susan Capparelli a Notary Public in and for the County in the State aforesaid, do hereby certify that **Theodore S. Joseph**, not personally, but as Co-Trustee of **The Investment Trust Under the Will of Richard S. Joseph**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 31st day of January, 1996.

Susan Capparelli
Notary Public

My Commission Expires:

1-26-97



STATE OF Illinois
COUNTY OF Cook SS

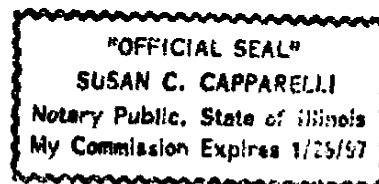
I, Susan Capparelli a Notary Public in and for the County in the State aforesaid, do hereby certify that **Sally J. Mackler**, not personally, but as Co-Trustee of **The Investment Trust Under the Will of Richard S. Joseph**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 31st day of January, 1996.

Susan Capparelli
Notary Public

My Commission Expires:

1-26-97



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STATE OF Illinois

COUNTY OF DeKalb

SS

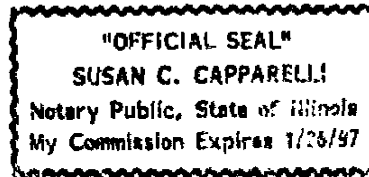
I, Susan Capparelli a Notary Public in and for the County in the State aforesaid, do hereby certify that Richard D. Miller, not personally, but as Trustee of The Leonard Miller Discretionary Trust for Richard U/A/D 1/19/77; The Leonard Miller Family Trust for Richard U/A/D 1/19/77; The Leonard Miller Discretionary Trust for Diana U/A/D 1/19/77; and The Leonard Miller Family Trust for Diana U/A/D 1/19/77, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 3rd day of January, 1996.

Susan Capparelli
Notary Public

My Commission Expires:

1-26-97



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EXHIBIT A

PROMISSORY NOTE

(Old Orchard)

\$2,250,000.00

January 31, 1996

1. Agreement to Pay. FOR VALUE RECEIVED, the undersigned, LASALLE NATIONAL TRUST N.A., not personally but solely as Successor Trustee to Exchange National Bank as Trustee under Trust Agreement dated August 30, 1976 and known as Trust No. 10-31607-09 (the "Trustee") and OLD ORCHARD OFFICE COURT JOINT VENTURE, an Illinois joint venture ("Old Orchard") (Trustee and Old Orchard are collectively referred to herein as the "Borrower"), promises to pay to the order of SUN LIFE ASSURANCE COMPANY OF CANADA, a Canadian Corporation (herein, together with each successive owner and holder of this Note, called "Holder") in the manner provided for herein and in the Mortgage hereinafter referred to, the principal sum of Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000.00) or so much as may from time to time remain unpaid hereunder, together with interest on the balance of principal remaining from time to time unpaid at the rates provided for in Sections 2 and 3 hereof from and after the date ("Disbursement Date") that all or any portion of the proceeds of the loan evidenced hereby shall have been initially disbursed.

2. Interest Rate Prior to Default. The principal balance hereof outstanding from time to time shall bear interest prior to default at the rate (herein called "Regular Rate") equal to Eight and One-Eighth Percent (8.125%) per annum.

3. Interest Rate After Default. In the event that there shall occur any default specified in Section 10 hereof or upon the maturity of the indebtedness evidenced hereby, whether by passage of time, acceleration or otherwise, then and in any such event, the entire principal balance hereof and all indebtedness secured by the Mortgage shall thereafter bear interest at a rate equal to the Regular Rate plus Five Percent (5%) per annum (herein called the "Default Rate") for each day all or any part of the principal balance hereof shall remain outstanding or until the default shall be cured, whichever shall first occur. As a condition to curing any such default, however, Borrower shall pay all amounts in default together with interest charged at the Default Rate.

4. Late Charge. Without limiting the provisions of Section 3 hereof, in the event any installment of interest and/or principal and interest is not received by Lender on or before the date due, the undersigned promises to pay a late charge of THREE PERCENT (3%) of the amount due to defray the expense incident to handling any such delayed payment or payment.

5. Payment of Principal and Interest. Interest shall be paid in arrears and shall be computed daily on the basis of a three hundred sixty (360) day year for each day or portion

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thereof that all or any part of the principal balance hereof shall remain outstanding. Prior to maturity (by passage of time, acceleration or otherwise) principal and interest at the Regular Rate upon this Note shall be paid on the first day of each month as follows:

(a) If the Disbursement Date occurs after the first (1st) day of the month, Borrower shall pay interest, only, on the first (1st) day of the month following the Disbursement Date. On the first (1st) day of each month thereafter, Borrower shall pay principal and interest in the amount provided for in subsection (b) hereof;

(b) Borrower agrees to pay principal and interest in the amount of Eighteen Thousand Nine Hundred Ninety-Five and 32/100 Dollars (\$18,995.32) on the first (1st) day of each month, which monthly payment amount represents the level monthly payment of principal and interest at the Regular Rate then required to fully retire the outstanding principal balance over a twenty (20) year amortization term. If the Disbursement Date is on the first (1st) day of the month, the first such payment shall be on the first (1st) day of the month following the Disbursement Date. If the Disbursement Date is after the first (1st) day of the month, the first full payment of principal and interest shall be on the first (1st) day of the second (2nd) month following the Disbursement Date;

(c) The monthly payment shall be allocated between principal and interest on the basis of a twenty (20) year self-amortizing amortization schedule;

(d) On the last day of the tenth (10th) Loan Year, as defined in Section 6 hereof (herein called the "Maturity Date") the entire outstanding principal balance of this Note, together with all accrued and unpaid interest thereon and other charges evidenced hereby, shall be due and payable;

(e) THIS IS A BALLOON NOTE and on the Maturity Date a substantial portion of the principal amount of this Note will remain unpaid by the monthly payments above required.

6. Prepayment Privilege. Payments upon the indebtedness evidenced hereby, other than the regularly scheduled monthly payments of principal and interest required to be made hereon, may be made only in accordance with the provisions and conditions of this Section 6, and not otherwise:

(a) Except as provided for in Section 6(c) hereof, prepayment is not permitted prior to the end of the fourth (4th) Loan Year;

(b) Prepayment shall be permitted in full, but not in part, after the end of the fourth (4th) Loan Year, provided that (i) there is no uncured default or Event of Default under the Mortgage or other Loan Documents, and (ii) Borrower shall first give Holder not less than thirty (30) days notice of Borrower's intention to prepay, which notice shall be given at the place where monthly payments are made and shall specify the date of

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which the prepayment shall occur and (iii) concurrent with such prepayment Borrower shall pay a prepayment premium on the principal amount so prepaid equal to the greater of: (a) one percent (1%) of the then outstanding loan balance or (b) a "Discounted Yield Maintenance Prepayment Fee" computed as follows: the proceeds of the prepayment will be assumed to be immediately reinvested in a United States Treasury Security having a coupon interest rate and maturity most closely equivalent to the Maturity Date of this Note. If the yield on that certain United States Treasury Security, as published in the *Wall Street Journal* on the fifth business day prior to the date of prepayment is:

(i) less than the interest rate of the Note, Borrower will pay to Lender a fee equal to the positive difference between the two interest rates, divided by 12 and multiplied by the then outstanding balance of the loan to arrive at the monthly payment differential. The present value of the series of the monthly payment differentials for the number of whole and partial months from the prepayment date to the Maturity Date using the Treasury Yield as the discount rate compounding monthly shall then be calculated. The resulting sum of the discounted monthly prepayment differentials will be the Discounted Yield Maintenance Prepayment Fee; or,

(ii) greater than or equal to the interest rate on the Note, then prepayment fee shall be 1% of the then outstanding loan balance.

There shall be no premium if prepayment is made after the end of the eighth (8th) month in the tenth (10th) Loan Year;

(c) Prepayments may be made hereon at any time without premium if the prepayment is a consequence of (i) a casualty loss or condemnation and Lender shall not allow the proceeds to be used for the repair or reconstruction of the Premises and, at the time of such casualty or filing of condemnation proceedings, there is no Event of Default under the Mortgage, or (ii) a change in the law pursuant to Section 13 of the Mortgage;

(d) In the event that maturity of this Note shall be accelerated on account of a default, and the Note shall not have been reinstated, then it is understood and agreed that Holder will sustain damages due to loss of investment that are not presently capable of determination. Accordingly, in such instance and in addition to any other sums due and payable under the Note, Mortgage or other Loan Documents, Borrower agrees to pay as liquidated damages an acceleration premium of the greater of Three Percent (3%) of the then outstanding balance or a Reinvestment Formula Amount calculated as follows: the proceeds of the prepayment will be assumed to be immediately reinvested in a United States Treasury Security having a coupon interest rate and maturity most closely equivalent to that of the Note. If the yield on that certain United States Treasury Security, as published in the *Wall Street Journal* on the fifth (5th) business day prior to the date of prepayment, is:

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(i) less than the interest rate of the Note, calculate the positive difference between the two interest rates, divide by twelve (12) and multiply by the then outstanding balance of the loan to arrive at the monthly payment differential. Then calculate the present value of the series of monthly payment differentials for the number of whole or partial months remaining from the prepayment date until the Maturity Date using the Treasury Yield as the discount rate compounding monthly. The resulting sum of the discounted monthly payment differentials will be the Reinvestment Formula Amount, or,

(ii) greater than or equal to the interest rate on the Note, then the prepayment fee shall be Three Percent (3%) of the then outstanding loan balance; and

(e) Unless otherwise agreed to by the parties, no partial prepayment made hereon shall operate to defer or reduce the scheduled monthly payments provided for herein, and each and every such scheduled monthly payment shall be paid in full when due until this Note shall have been paid in full. This paragraph shall not be construed so as to permit partial prepayments other than permitted in Section 6(c) hereof without the prior written consent of Holder.

The term "Loan Year" as used in this Note shall mean the period commencing with the earlier to occur of (i) the first (1st) day of the month after the Disbursement Date or (ii) February 1, 1996 and ending on the last day of January, 1997, and each period of twelve (12) consecutive months thereafter.

7. Application of Payments. All payments on account of the indebtedness evidenced by this Note shall be applied (i) first to indebtedness secured by the Mortgage, the Assignment and other Loan Documents other than the principal hereof and interest hereon charged at the Regular Rate, and specifically including but without limitation late charges and interest, if any, charged at the difference between the Regular Rate and the Default Rate, and prepayment premiums, then (ii) current interest on the unpaid principal balance hereof at the applicable Regular Rate, then (iii) the remainder shall be applied to reduce the outstanding principal balance; provided that from and after the occurrence of a default as specified in Sections 10(a) and/or 10(b) hereof, Holder shall have the right, and shall be authorized, to apply payments made hereunder against any or all amounts payable hereunder or under the Mortgage or any of the Loan Documents, in such order or manner as Holder may in its sole discretion elect. Funds paid hereunder shall be deemed received on the next business day if not received by 2:00 p.m. local time at the location where payments hereunder are to be made.

8. Method and Place of Payment. Payments upon this Note shall be made in lawful money of the United States of America which shall be legal tender for public and private debts at the time of payment, and shall be made at such place as Holder may from time to time in writing appoint, provided that in the absence of such appointment all payments hereon shall be

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made c/o Julian, Toft and Downey, Three First National Plaza, 56th Floor, Chicago, Illinois 60602.

9. Security. This Note is given to evidence an actual loan in the above amount, and is the Note referred to in and secured by:

(a) A Mortgage (herein called the "Mortgage") from Borrower, as mortgagor, to Holder, as mortgagee, bearing even date herewith, encumbering real estate (herein called the "Premises") owned by the Borrower in Skokie, Cook County, Illinois; and

(b) An Assignment of Rents and Leases (herein called the "Assignment") bearing even date herewith, made by Borrower, as assignor, assigning to Holder all of the leases, rents, issues and profits of and from the Premises;

(this Note, the Mortgage, the Assignment and any commitment, letter of credit agreements, escrow agreement and other agreements in effect with respect to the indebtedness evidenced hereby and other instruments governing, securing or guaranteeing the indebtedness evidenced hereby or now or hereafter delivered to Holder in connection therewith, being herein generally called the "Loan Documents"); and reference is hereby made to the Loan Documents, which are hereby incorporated herein by this reference as fully and with the same effect as if set forth herein at length, for a description of the Premises, a statement of the covenants and agreements of the Borrower, as mortgagor and assignor, a statement of the rights, remedies and security afforded thereby, and all other matters therein contained.

10. Default and Acceleration. At the election of Holder and without notice, the principal sum remaining unpaid hereon, together with accrued interest thereon, shall be and become at once due and payable at the place herein provided for payment: (a) in the case of default in the payment of principal or interest hereon, or (b) upon the occurrence of any Event of Default under the Mortgage or the occurrence of an Event of Default under any of the other Loan Documents, whereupon Holder may proceed to foreclose the Mortgage, to exercise any other rights and remedies available to Holder under any of the Loan Documents and to exercise any other rights and remedies against Borrower or the Premises or with respect to this Note or the other Loan Documents which Holder may have at law, in equity or otherwise.

11. Usury. It is the intent of the Borrower and Holder to comply with the laws of Illinois with regard to the rate or interest charged hereunder, and accordingly, notwithstanding any provision to the contrary in this Note, the Mortgage, or any of the Loan Documents, no such provision in any such instrument, including without limitation any provision of this Note providing for the payment of interest or other charges and any provision of the Loan Documents providing for the payment of interest, fees, costs or other charges, shall require the payment or permit the collection of any amount (herein called "Excess Interest") in excess of the maximum amount of interest permitted by law to be charged for the use, detention, or forbearance in the collection, of all or any portion of the indebtedness evidenced by this Note; provided that if any

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Excess Interest is provided for, or is adjudicated as being provided for, in this Note, the Mortgage or any of the Loan Documents, then in such event:

- (a) The provisions of this Section shall govern and control;
- (b) Borrower shall not be obligated to pay any Excess Interest;
- (c) Any Excess Interest that Holder may have received hereunder shall, at the option of Holder, be (i) applied as a credit against the then outstanding principal balance due under this Note, or accrued and unpaid interest thereon, not to exceed the maximum amount permitted by law, or both, (ii) refunded to the payor thereof, or (iii) any combination of the foregoing;
- (d) The applicable interest rate or rates shall be automatically subject to reduction to the maximum lawful rate allowed to be contracted for in writing under the applicable usury laws of Illinois as at the date of disbursement of the indebtedness evidenced hereby; and this Note and all other Loan Documents shall be deemed to have been, and shall be, reformed and modified to reflect such reductions in such interest rate or rates; and
- (e) Neither the Borrower nor any other person shall have any action or remedy against Holder for any damages whatsoever or any defense to enforcement of any of the Loan Documents arising out of the payment or collection of any Excess Interest.

12. Costs of Enforcement. In the event that this Note is placed in the hands of an attorney-at-law for collection after maturity or upon default or to enforce any of the rights, requirements or remedies contained herein or in the other Loan Documents, or in the event that proceedings at law, in equity, or bankruptcy, receivership or other legal proceedings are instituted or threatened in connection herewith, or if Holder or its servicing agent is made a party to any such proceeding, or in the event that this Note is placed in the hands of an attorney-at-law following a default hereunder or under the Mortgage or other Loan Documents to enforce or interpret any of the rights or requirements contained herein or in the Mortgage or Assignment or other Loan Documents given as security for, or related to, the indebtedness evidenced hereby, Borrower hereby agrees to pay all costs of collecting or attempting to collect this Note, or protecting, interpreting or enforcing such rights, including, without limitation, reasonable attorneys' fees (whether or not suit is brought), in addition to all principal, interest and other amounts payable hereunder; all of which shall be secured by the Loan Documents.

13. Notices. All notices required or permitted to be given hereunder shall be given in the manner and to the place as provided in the Mortgage for notices to the party to whom such notice is given.

14. Time. Time is of the essence of this Note and each of the provisions hereof and of the Mortgage, Assignment and other Loan Documents.

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15. Captions. The captions to the sections of this Note are for convenience only and shall not be deemed part of the text of the respective Sections and shall not vary, by implication or otherwise, any of the provisions of this Note.

16. Disbursement to Escrow. Funds representing the proceeds of the indebtedness evidenced hereby which are disbursed by Holder by wire transfer or other delivery to the Borrower or at Borrower's direction, to escrows or otherwise for the benefit of the Borrower, for all purposes, shall be deemed outstanding hereunder and to have been received by Borrower as of the date of such wire transfer or other delivery, and interest shall accrue and be payable upon such funds from and after the date of such wire transfer, mailing or delivery and until repaid, notwithstanding the fact that such funds may not at any time have been received by Borrower, remitted by such escrows to Borrower or otherwise applied for its benefit.

17. Governing Law. This Note shall be governed by the laws of the State of Illinois.

18. Waivers. The Borrower, each endorser, surety or guarantor hereof, and any and all others who are now or may become liable for all or part of the obligations of the Borrower under this Note or any of the Loan Documents (all of the foregoing being herein collectively called "Obligors") agree to be jointly and severally bound hereby and jointly and severally, to the fullest extent permitted by law:

(a) Waive and renounce any and all redemption and exemption rights and the benefit of all valuation and appraisal privileges against the indebtedness evidenced by this Note or by any extension or renewal hereof;

(b) Waive all notices in connection with the delivery and acceptance hereof and all other notices in connection with the performance, default or enforcement of the payment hereof or hereunder;

(c) Waive any and all demand, presentment for payment, notice of non-payment, protest and notice of protest, notice of dishonor and all lack of diligence and delays in the enforcement of the payment hereof;

(d) Agree that the liability of each or any Obligor shall be unconditional and without regard to the liability of any other person or entity for the payment hereof, and shall not in any manner be affected by an indulgence or forbearance granted or consented to by Holder to any of them with respect hereto;

(e) Consent to any and all extensions of time, renewals, waivers or modifications that may be granted by Holder with respect to the payment or other provisions hereof, and to the release of any security at any time given for the payment hereof, or any part thereof, with or without substitution, and to the release of any person or entity liable for the payment hereof; and

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(f) Consent to the addition of any and all other makers, endorsers, guarantors and other Obligor for the payment hereof, and to the acceptance of any and all other security for the payment hereof, and agree that the addition of any such Obligor or security shall not affect the liability of any of the Obligor for the payment hereof.

19. Exculpation. This Note is executed by LaSalle National Trust, N.A., not personally but solely as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee, and so far as the undersigned Trustee is concerned, is payable only out of the property specifically described in the Mortgage, by the enforcement of the provisions contained in the Loan Documents and out of any other property, security or guaranties given for the indebtedness evidenced hereby; and accordingly:

(a) Except as otherwise provided in this Note or the other Loan Documents, no personal liability shall be asserted or be enforceable against the Trustee, Old Orchard or its venturers personally or against their respective successors or assigns because of or in respect of this Note, or the making, issue or transfer thereof, all such liability, if any, being expressly waived by each taker and Holder;

(b) Except as otherwise provided in this Note or the other Loan Documents, in case of default in the payment of this Note, or any installment thereof, the sole remedies of Holder so far as the undersigned Trustee and Old Orchard are concerned, shall be (i) foreclosure of the Mortgage in accordance with the terms and provisions in the Mortgage set forth, (ii) enforcement of the Assignment and other Loan Documents, (iii) enforcement of or realization upon any other property and security given for such indebtedness, and/or (iv) enforcement of any obligation or liabilities of the Borrower under any separate agreement;

(c) Nothing herein contained shall be deemed a waiver by any Holder of any right which such Holder may have pursuant to Sections 503(a), 506(b), 1111 (b) or any other provision of the Bankruptcy Code of the United States to file a claim for the full amount of the indebtedness evidenced hereby or to require that all collateral or security for the indebtedness evidenced hereby shall continue to secure the entire amount of the indebtedness evidenced hereby in accordance with the Loan Documents;

(d) Nothing herein contained shall affect or impair the liability or obligation of any guarantor, co-maker or other person who by separate instrument shall be or become liable upon or obligated for any of the indebtedness evidenced hereby or any of the covenants or agreements contained in the Loan Documents.

20. Personal Liability. Notwithstanding anything to the contrary in this Note, Old Orchard agrees to be personally liable for, and personal liability may be asserted or be enforceable against Old Orchard or its successors or assigns, and Holder's remedies are not limited for losses, costs or damages incurred by Holder arising from (i) any rents, issues, profits or income of the Premises which have been prepaid more than thirty (30) days in advance; (ii)

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any rents, issues, profits or income of the Premises which have been collected by the Borrower (or any beneficiary, member, partner, shareholder, agent or representative of Borrower) with respect to the Premises after the occurrence of a default or an Event of Default hereunder, under the Mortgage, the Assignment of Leases or any other Loan Document; (iii) security deposits paid by tenants of the Premises; (iv) insurance proceeds and condemnation awards and payments not applied as required by the Loan Documents; (v) damages sustained by Holder as the direct or indirect result of fraud, bad faith or material misrepresentation by the Borrower (or by any beneficiary, member, partner, shareholder, agent or representative of Borrower); (vi) the terms of the Environmental Indemnity Agreement of even date herewith; (vii) the costs associated with repair of the Premises as a result of a casualty not reimbursed by insurance proceeds to the extent such insurance is required by the Loan Documents; (viii) the non-payment or delinquency of real estate taxes or assessments; and (ix) non-compliance with the Americans with Disabilities Act. Further, nothing herein contained shall affect limit or impair the liability or obligation of any guarantor or other person who, by separate instrument, shall be or become liable upon any of the indebtedness evidenced hereby.

21. Holder's Actions. The remedies of Holder as provided herein or in any of the Loan Documents shall be cumulative and concurrent, and may be pursued singularly, successively or together, at the sole discretion of Holder, and may be exercised as often as occasion therefore shall arise; and in connection therewith:

(a) Failure of Holder, for any period of time or on more than one occasion, to exercise its option to accelerate the Maturity Date of this Note shall not constitute a waiver of the right to exercise the same at any time thereafter or in the event of any subsequent default;

(b) No act of omission or commission of Holder, including specifically and without limitation any failure to exercise any right, remedy or recourse, shall be deemed to be a waiver or release of the same and any such waiver or release may be effected only through a written document executed by Holder and then only to the extent specifically recited therein;

(c) A waiver of release with reference to any one event shall not be construed as a waiver or release of any subsequent event, similar or dissimilar, or as a bar to any subsequent exercise of Holder's rights or remedies hereunder; and

(d) Except as otherwise specifically required herein, no notice to the Borrower or any other person of the exercise of any right or remedy granted to Holder by this Note shall be required.

22. Severability. The unenforceability or invalidity of any provision or provisions hereof shall not render any other provision or provisions hereof unenforceable or invalid.

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IN WITNESS WHEREOF, the undersigned have caused this Promissory Note to be duly executed and attested to by its corporate officers thereunto duly authorized, all on and as the date first written above.

ATTEST:

LASALLE NATIONAL TRUST, N.A., not personally but solely as Trustee as aforesaid

By: _____
Its: _____

OLD ORCHARD OFFICE COURT JOINT VENTURE, an Illinois joint venture

By: _____
Its: _____

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LEGAL DESCRIPTION

(Old Orchard)

PARCEL 1:

A TRACT OF LAND SITUATED IN THE NORTH EAST QUARTER OF THE SOUTH WEST QUARTER OF SECTION 9, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS INCLUDING A PORTION OF CERTAIN LOTS, ALLEYS AND STREETS INCLUDED IN A PLAT OF VACATION DATED MARCH 3, 1954 AND RECORDED JULY 12, 1955 AS DOCUMENT 16296348 BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE EAST LINE OF CHICAGO NORTH SHORE AND MILWAUKEE RAILROAD WITH THE SOUTH LINE OF HARRISON STREET, THENCE EAST ALONG THE SOUTH LINE OF HARRISON STREET, A DISTANCE OF 245.17 FEET TO THE NORTH WEST CORNER OF LOT 18 IN BLOCK 1 IN SKOKIE RAPID TRANSIT PARK FIRST ADDITION, BEING A SUBDIVISION OF THAT PART OF THE NORTH EAST QUARTER OF THE SOUTH WEST QUARTER (EXCEPT THE SOUTH 40 FEET OF THE NORTH 70 FEET THEREOF) OF SECTION 9, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF THE EASTERLY LINE OF RIGHT OF WAY OF CHICAGO NORTH SHORE AND MILWAUKEE RAILROAD, THENCE SOUTH ALONG THE WEST LINE OF LOT 18 AFORESAID AND SAID WEST LINE EXTENDED A DISTANCE OF 124 FEET TO THE SOUTH LINE OF AN ALLEY; THENCE EAST ALONG THE SOUTH LINE OF SAID ALLEY, A DISTANCE OF 100 FEET TO THE EAST LINE EXTENDED SOUTH OF LOT 15 IN BLOCK 1 IN SKOKIE RAPID TRANSIT PARK ADDITION AFORESAID; THENCE NORTH ALONG THE EAST LINE EXTENDED OF SAID LOT 15 A DISTANCE OF 16 FEET TO THE SOUTH EAST CORNER OF SAID LOT 15, THENCE EAST ALONG THE NORTH LINE OF VACATED PART OF SAID ALLEY, A DISTANCE OF 8 FEET TO A POINT IN A LINE WHICH IS 408 FEET WEST OF AND PARALLEL TO THE EAST LINE OF LARAMIE AVENUE, THENCE SOUTH ALONG SAID PARALLEL LINE TO THE SOUTH LINE OF SAID VACATED COLFAX STREET, THENCE WEST ALONG THE SOUTH LINE OF SAID VACATED COLFAX STREET AND SAID SOUTH LINE EXTENDED WEST TO THE EAST LINE OF CHICAGO, NORTH SHORE AND MILWAUKEE RAILROAD, THENCE NORTH WESTERLY ALONG THE EAST LINE OF SAID RAILROAD, THENCE NORTH WESTERLY ALONG THE EAST LINE OF SAID RAILROAD TO POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THE WEST 8 FEET OF LOT 14 AND ALL OF LOTS 15 AND 16 IN BLOCK 1 IN SKOKIE RAPID TRANSIT FIRST ADDITION, BEING A SUBDIVISION OF THAT PART OF THE NORTH EAST QUARTER OF THE SOUTH WEST QUARTER (EXCEPT THE SOUTH 40 FEET OF THE NORTH 70 FEET THEREOF) OF SECTION 9, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF THE EASTERLY LINE OF THE RIGHT OF WAY OF THE CHICAGO NORTH SHORE AND MILWAUKEE RAILROAD, IN COOK COUNTY, ILLINOIS.

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PARCEL 3:

LOTS 17 AND 18 IN BLOCK 1 IN SKOKIE RAPID TRANSIT FIRST ADDITION, BEING A SUBDIVISION OF THAT PART OF THE NORTH EAST QUARTER OF THE SOUTH WEST QUARTER (EXCEPT THE SOUTH 40 FEET OF THE NORTH 70 FEET THEREOF) OF SECTION 9, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF THE EASTERLY LINE OF THE RIGHT OF WAY OF THE CHICAGO NORTH SHORE AND MILWAUKEE RAILROAD, IN COOK COUNTY, ILLINOIS.

PARCEL 4:

THAT PART OF THE VACATED EAST-WEST 16 FOOT ALLEY LYING SOUTH OF LOTS 15 TO 18 IN BLOCK 1 IN SKOKIE RAPID TRANSIT PARK FIRST ADDITION, BEING A SUBDIVISION OF PART OF THE NORTH EAST QUARTER OF THE SOUTH WEST QUARTER OF SECTION 9, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, BEING MORE PARTICULARLY DESCRIBED AS A TRACT OF LAND SITUATED IN THE NORTH EAST QUARTER OF THE SOUTH WEST QUARTER OF SECTION 9, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, BEING A PORTION OF A CERTAIN VACATED ALLEY BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE EAST LINE OF CHICAGO NORTH SHORE AND MILWAUKEE RAILROAD WITH THE SOUTH LINE OF HARRISON STREET, THENCE EAST ALONG THE SOUTH LINE OF HARRISON STREET, A DISTANCE OF 245.17 FEET TO THE NORTH WEST CORNER OF LOT 18 IN BLOCK 1 IN SKOKIE RAPID TRANSIT PARK FIRST ADDITION, BEING A SUBDIVISION OF THAT PART OF THE NORTH EAST QUARTER OF THE SOUTH WEST QUARTER (EXCEPT THE SOUTH 40 FEET OF THE NORTH 70 FEET THEREOF) OF SECTION 9, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF THE EASTERLY LINE OF RIGHT OF WAY OF CHICAGO NORTH SHORE AND MILWAUKEE RAILROAD, THENCE SOUTH ALONG THE WEST LINE OF LOT 18 AFORESAID, AND SAID WEST LINE EXTENDED SOUTH A DISTANCE OF 124 FEET TO THE SOUTH LINE OF AN ALLEY, FOR A POINT OF BEGINNING; THENCE EAST ALONG THE SOUTH LINE OF SAID ALLEY, A DISTANCE OF 100 FEET TO THE EAST LINE EXTENDED SOUTH OF LOT 15 IN BLOCK 1 IN SKOKIE RAPID TRANSIT PARK FIRST ADDITION AFORESAID, THENCE NORTH ALONG THE EAST LINE EXTENDED OF SAID LOT 15, THENCE WEST ALONG THE SOUTH LINE OF LOTS 15, 16, 17 AND 18, A DISTANCE OF 100 FEET TO THE SOUTH WEST CORNER OF LOT 18, THENCE SOUTH A DISTANCE OF 16 FEET ALONG THE WEST LINE OF SAID LOT 18, EXTENDED SOUTH, TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

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PARCEL 5:

A PERPETUAL NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCELS 1, 2, 3, AND 4, AS CREATED BY EASEMENT AGREEMENT BETWEEN STANDARD RATE AND DATA SERVICE, INC., A CORPORATION OF ILLINOIS, AND FIRST NATIONAL BANK AND TRUST COMPANY OF EVANSTON, A NATIONAL BANKING ASSOCIATION, AS TRUSTEE UNDER TRUST AGREEMENT DATED MARCH 19, 1954 AND KNOWN AS TRUST NO. R-494, DATED DECEMBER 28, 1962 AND RECORDED JANUARY 30, 1963 AS DOCUMENT 18709083 OVER, THROUGH, ACROSS AND UPON A STRIP OF LAND 25 FEET WIDE ON THE WESTERLY BOUNDARY OF LAND DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT IN THE NORTH LINE OF THE VACATED ALLEY RUNNING EAST AND WEST THROUGH BLOCK 1 OF SKOKIE RAPID TRANSIT PARK FIRST ADDITION, NOW VACATED, SAID POINT BEING 33 FEET EAST OF THE INTERSECTION OF SAID NORTH LINE OF SAID VACATED ALLEY AND THE EAST LINE OF LOT 16 OF BLOCK 1 OF SAID SKOKIE RAPID TRANSIT PARK FIRST ADDITION; THENCE EAST ALONG THE NORTH LINE OF SAID VACATED ALLEY 408 FEET TO THE INTERSECTION OF SAID NORTH LINE OF SAID VACATED ALLEY WITH THE EAST LINE OF VACATED NORTH LARAMIE AVENUE; THENCE SOUTH ALONG THE EAST LINE OF VACATED NORTH LARAMIE AVENUE 17 FEET TO THE INTERSECTION OF SAID EAST LINE OF NORTH LARAMIE AVENUE WITH THE NORTH LINE OF THE VACATED ALLEY RUNNING EAST AND WEST THROUGH BLOCK 2, IN THE RESUBDIVISION OF LOTS 11 TO 25, BOTH INCLUSIVE, IN BLOCK 2, AND LOTS 21 TO 43, BOTH INCLUSIVE, IN BLOCK 3, IN SKOKIE RAPID TRANSIT PARK, NOW VACATED IN PART; THENCE EAST ALONG THE NORTH LINE OF SAID VACATED ALLEY TO THE INTERSECTION OF SAID NORTH LINE WITH THE WESTERLY LINE OF EDENS HIGHWAY; THENCE SOUTHERLY AND WESTERLY ALONG THE WESTERLY LINE OF EDENS HIGHWAY TO THE INTERSECTION OF THE WESTERLY LINE OF EDENS HIGHWAY WITH THE SOUTHERLY LINE OF VACATED COLFAX STREET, THENCE WESTERLY ALONG THE SOUTHERLY LINE OF VACATED COLFAX STREET A DISTANCE OF 400 FEET TO A POINT, THENCE NORTHERLY ALONG A STRAIGHT LINE TO THE POINT OF BEGINNING. ALSO LOT 14, EXCEPT THE WEST 8 FEET THEREOF AND LOT 13, EXCEPT THE EAST 17 FEET THEREOF IN BLOCK 1 IN SAID SKOKIE RAPID TRANSIT PARK ADDITION, FOR THE PURPOSE OF CONSTRUCTION, MAINTAINING, REPAIRING AND REPLACING A ROADWAY AS A RIGHT OF WAY FOR PURPOSES OF INGRESS AND EGRESS OF FOOT AND VEHICULAR TRAFFIC SERVING BOTH THE DOMINANT AND SERVIENT ESTATES, ALL IN COOK COUNTY, ILLINOIS.

P.I.N.: 10-09-305-046-0000
10-09-305-048-0000
10-09-305-050-0000
10-09-305-051-0000
10-09-305-052-0000
10-09-305-053-0000
10-09-305-054-0000
10-09-305-055-0000

Common Address: 5225 Old Orchard Road
Skokie, Illinois

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EXHIBIT C

PERMITTED EXCEPTIONS

(Old Orchard)

1. GENERAL REAL ESTATE TAXES WHICH ARE NOT YET DUE AND PAYABLE.
2. EXISTING UNRECORDED LEASES AS SET FORTH ON THE CERTIFIED RENT ROLL PREVIOUSLY DELIVERED TO MORTGAGEE IN CONNECTION HERewith AND ALL RIGHTS THEREUNDER OF THE LESSEES AS TENANTS ONLY AND OF ANY PERSON OR PARTY CLAIMING BY, THROUGH OR UNDER THE LESSEES
3. RIGHTS OF THE ILLINOIS BELL TELEPHONE COMPANY AND THE COMMONWEALTH EDISON COMPANY IN THE EASTERLY 10 FEET OF THE VACATED EAST AND WEST ALLEYS AND THE EASTERLY 10 FEET OF THE VACATED EAST AND WEST STREETS
4. PERPETUAL EASEMENT OVER, THROUGH, ACROSS AND UPON THE EAST 10 FEET OF PARCELS 1, 2 AND 4 FOR SEWER AND UTILITY PURPOSES AS PROVIDED FOR IN EASEMENT AGREEMENT RECORDED JANUARY 30, 1963 AS DOCUMENT 18709083
5. PROVISION FOR FUTURE EASEMENT OVER THE EAST LINE OF THE LAND FOR THE BENEFIT OF ANY ADDITIONAL LAND REQUIREMENTS OF THE 25 FOOT ROADWAY EASEMENT NOTED ABOVE AS DOCUMENT 18709083
(AFFECTS PARCELS 1, 2 AND 4)
6. GRANT OF EASEMENT FOR A SIDEWALK FOR PEDESTRIAN INGRESS AND EGRESS, CURBING, PAVING, FUTURE ROADWAYS AND UTILITIES FROM DANIEL F. MCCARTHY AND NORTHWESTERN UNIVERSITY RECORDED JUNE 14, 1974 AS DOCUMENT 22751843
7. TERMS, PROVISIONS AND CONDITIONS RELATING TO EASEMENT DESCRIBED AS PARCEL 5 CONTAINED IN THE INSTRUMENT CREATING SUCH EASEMENT
8. RIGHTS OF THE ADJOINING OWNER OR OWNERS TO THE CONCURRENT USE OF THE EASEMENT
9. 30 FOOT FRONT YARD SETBACK AS CREATED BY CONDITION OF ORDINANCE OF VACATION DATED AUGUST 16, 1976 AND RECORDED NOVEMBER 1, 1976 AS DOCUMENT 23694669
(AFFECTS PARCEL 4)
10. COVENANTS AND RESTRICTIONS CONTAINED IN ORDINANCE VACATING RIGHT OF WAY AND APPROVING SITE PLAN DATED AUGUST 16, 1976 AND RECORDED NOVEMBER 1, 1976 AS DOCUMENT 23694669
(AFFECTS PARCELS 1, 2 AND 3)
11. COVENANTS AND RESTRICTIONS CONTAINED IN ORDINANCE VACATING RIGHT OF WAY AND APPROVING SITE PLAN DATED AUGUST 16, 1976 AND RECORDED JANUARY 20, 1977 AS DOCUMENT 23794805
(AFFECTS PARCEL 2)
12. GRANT DATED MARCH 23, 1977 AND RECORDED MAY 10, 1977 AS DOCUMENT 23920330 TO THE ILLINOIS BELL TELEPHONE COMPANY AND THE COMMONWEALTH EDISON COMPANY FOR ELECTRIC AND TELEPHONE FACILITIES

** END **

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EXHIBIT C

PERMITTED EXCEPTIONS

(Old Orchard)

1. GENERAL REAL ESTATE TAXES WHICH ARE NOT YET DUE AND PAYABLE.
2. EXISTING UNRECORDED LEASES AS SET FORTH ON THE CERTIFIED RENT ROLL PREVIOUSLY DELIVERED TO MORTGAGEE IN CONNECTION HERewith AND ALL RIGHTS THEREUNDER OF THE LESSEES AS TENANTS ONLY AND OF ANY PERSON OR PARTY CLAIMING BY, THROUGH OR UNDER THE LESSEES
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** END **