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~~COOK COUNTY RECORDER~~

## CONSTRUCTION MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

BY

ICE DEVELOPMENT, L.L.C.

Mortgagor,

TO

THE FIRST NATIONAL BANK OF CHICAGO,

Mortgagee,

Relating to Property in:

Chicago, Cook County, Illinois

DATED: as of <sup>August 5</sup> ~~July~~ 1997

This instrument was prepared by  
and when recorded should be returned to:

William J. Ralph, Esq.  
Winston & Strawn  
35 West Wacker Drive  
Chicago, Illinois 60601

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**BOX 333-CTI**

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## CONSTRUCTION MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

This Construction Mortgage, Security Agreement and Financing Statement (this "Mortgage") is made as of this <sup>August,</sup> 5<sup>th</sup> day of ~~July~~, 1997, by ICE DEVELOPMENT, L.L.C., an Illinois limited liability company (hereinafter called "Mortgagor"), with an office at 39 South LaSalle Street, Suite 210, Chicago, Illinois 60603, to THE FIRST NATIONAL BANK OF CHICAGO, a national banking association with its principal office at 20 North Clark Street, Chicago, Illinois 60690, as mortgagee, assignee and secured party, (hereinafter called "Mortgagee").

### RECITALS

WHEREAS, Mortgagor is: (1) the owner and holder of a leasehold estate in and to certain parcels of real estate located in Chicago, Cook County, Illinois, which real estate is more particularly described in Exhibit A-1, Exhibit A-2 and Exhibit A-3 attached hereto and made a part hereof (such parcels being hereinafter collectively called the "Land"); and, (2) the owner of certain equipment, furniture, furnishings and other personal property used in connection therewith (the "Personal Property"); and

WHEREAS, concurrently with the execution hereof, Mortgagor has entered into that certain Loan Agreement with Mortgagee (as the same may be amended, modified or otherwise supplemented from time to time, the "Loan Agreement"), providing for the making of loans by Mortgagee to Mortgagor for the purpose of developing, constructing and equipping new improvements on the Land; and

WHEREAS, as a condition to the Mortgagee executing the Loan Agreement and making the Loan, Mortgagee requires that Mortgagor grant to Mortgagee, a mortgage lien on the Property (as hereinafter defined; Capitalized terms not otherwise defined herein are defined in the Loan Agreement); and

WHEREAS, this Mortgage is being given by Mortgagor to secure (a) the performance of all of Mortgagor's obligations under the Loan Agreement and the performance of all terms, covenants, conditions, agreements and liabilities contained in this Mortgage and the other Loan Documents to be performed by Mortgagor (collectively, the "Secured Indebtedness"); and

WHEREAS, this Mortgage also secures the payment of and includes all amounts owing in respect of all future or further Advances made pursuant to the Loan Agreement

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as shall be made at all times, regardless of whether proceeds of the Loan have or shall be disbursed by Mortgagee herein or its successors or assigns, to and for the benefit of Mortgagor, its successors or assigns, to the same extent as if such future advances were made on the date of the execution of this Mortgage. The total amount of the Secured Indebtedness secured by this Mortgage may decrease or increase from time to time but the total unpaid principal balance so secured at any one time shall not exceed Forty Six Million and 00/100 Dollars (\$46,000,000.00) together with interest thereon and any and all disbursements made by Mortgagee for the payment of taxes, or insurance on the Property and for reasonable attorneys' fees, loan commissions, service charges, liquidated damages, expenses and court costs incurred in the collection of any or all of such sums of money. Such further or future advances shall be considered obligatory advances and the same shall bear interest at the same rate as specified in the Loan Agreement unless such interest rate shall be modified by subsequent agreement. The parties hereby acknowledge and intend that all Advances, including future advances whenever hereafter made, shall be secured by a lien from the time this Mortgage is recorded.

II

## THE GRANT

NOW, THEREFORE, in order to secure the Secured Indebtedness and the performance of all of the covenants, provisions, agreements and obligations contained in this Mortgage or in the Loan Documents on the part of Mortgagor to be performed, direct or contingent, that may now or hereafter become owing from Mortgagor to Mortgagee, and in consideration of Ten and No/100 Dollars (\$10.00) in hand paid by Mortgagee to Mortgagor, the Recitals above stated, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor GRANTS, BARGAINS, SELLS, ASSIGNS, RELEASES, ALIENS, TRANSFERS, WARRANTS, DEMISES, CONVEYS and MORTGAGES to Mortgagee and its successors and assigns forever, and hereby gives to Mortgagee a first mortgage lien on, and security interest in the leasehold estate of Mortgagor in and to the Land created pursuant to:

LaSalle National Bank, T/LUT

dated May 8, 1997, and (i) that certain lease dated July 25, 1997 by and known as between 97584080 ("Lessor") and Borrower, as lessee (the "Ryan Lease") relating to the real estate described in Exhibit A-1 attached hereto and made a part hereof (the "Leasehold Estate") which Lease is recorded with the Recorder of Deeds, Cook County, Illinois as Document No. 97584077;

LaSalle National Bank, T/LUT

dtd. May 8, 1997, (ii) that certain lease dated July 25, 1997 by and between 97584078 ("Lessor") and Borrower, as lessee (the "Western Lease") relating to the real estate described in Exhibit A-1 attached hereto and made a part hereof (the "Leasehold Estate") which Lease is recorded with the Recorder of Deeds, Cook County, Illinois as Document No. 97584077;

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"Leasehold Estate") which Lease is recorded with the Recorder of Deeds, Cook  
County, Illinois as Document No. 97584082," and

La Salle National Bank, T101T  
dated April 1, 1997, and (iii)  
Knipman as  
Tr. No.  
120884  
that certain lease dated July 25, 1997, by and between  
("Lessor") and Borrower, as lessee (the "Homan Lease") relating  
to the real estate described in Exhibit A-1 attached hereto and made a part hereof (the  
"Leasehold Estate") which Lease is recorded with the Recorder of Deeds, Cook  
County, Illinois as Document No. 97584076." [The Ryan Lease, the Western  
Lease and the Homan Lease are sometimes collectively referred to as the "Leases."]

and all of Borrower's estate, right, claim and interest therein, together with the following  
described property, all of which other property is pledged primarily on a parity with  
Borrower's interest in the Premises and not secondarily (the Borrower's interest in the  
Premises and the following described rights, interests, claims and property are collectively  
called the "Property"):

(a) all buildings, structures, fixtures and other improvements of  
every kind and description now or hereafter erected, situated, or placed upon the  
Premises (the "Improvements"), and all attachments now or hereafter owned by  
Mortgagor and located in or on, forming part of, attached to, used or intended to  
be used in connection with, or incorporated in any such Improvements, including  
all extensions of, additions to, betterments, renewals of, substitutions for and  
replacements for any of the foregoing, excluding, however, all Personal Property  
as defined below;

(b) all claim, demand, right, title and interest of Mortgagor now  
owned or hereafter acquired, including without limitation, any after-acquired title,  
franchise, license, remainder or reversion, in and to any and all (i) land or vaults  
lying within the right-of-way of any street, avenue, way, passage, highway, or  
alley, open or proposed, vacated or otherwise, adjoining the Premises; (ii) alleys,  
sidewalks, streets, avenues, strips and gores of land belonging, adjacent or  
pertaining to the Premises or the Improvements; (iii) storm and sanitary sewer,  
water, gas, electric, railway and telephone services relating to the Premises and  
the Improvements; (iv) development rights, air rights, water, water rights, water  
stock, gas, oil, minerals, coal and other substances of any kind or character  
underlying or relating to the Premises or any part thereof; and (v) easements,  
hereditaments, easements, appurtenances, other rights, liberties, reservations,  
allowances and privileges relating to the Premises or the Improvements or in any  
way now or hereafter appertaining thereto, including homestead and any other  
claims at law or in equity;

(c) all leasehold estates and right, title and interest of Mortgagor  
in any and all leases, subleases, management agreements, arrangements,  
concessions or agreements, written or oral, relating to the use and occupancy of

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the Premises or the Improvements or any portion thereof, now or hereafter existing or entered into;

(d) all rents, issues, profits, royalties, revenue, advantages, income, avails, claims against guarantors, all cash or security deposits, advance rentals, deposits or payments given and other benefits now or hereafter derived directly or indirectly from the Premises and Improvements;

(e) all right, title and interest of Mortgagor in and to all options to purchase or lease the Premises and the Improvements or any portion thereof or interest therein, or any other rights, interests or greater estates in the rights and properties comprising the Property now owned or hereafter acquired by Mortgagor;

(f) any interests, estates or other claims of every name, kind or nature, both in law and in equity, which Mortgagor now has or may acquire in the Premises and Improvements or other rights, interests or properties comprising the Property now owned or hereafter acquired;

(g) all rights of Mortgagor to any and all plans and specifications, designs, drawings and other matters prepared for any construction or installation of the Improvements;

(h) all rights of Mortgagor under any contracts executed by Mortgagor with any provider of goods or services for or in connection with any construction or installation undertaken or services performed or to be performed in connection with the Premises or the Improvements;

(i) all the estate, interest, right, title or other claim or demand which the Mortgagor now has or may hereafter have or acquire with respect to (i) proceeds of insurance in effect with respect to the Property and (ii) any and all awards, claims for damages, judgments, settlements 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 Property, including, without limitation, any awards and compensation resulting from a change of grade of streets and awards and compensation for severance damages (collectively "Awards"); and

(j) excluding, however, all right, title and interest of Mortgagor in and to all the following tangible personal property ("Personal Property") owned by Mortgagor and now or at any time hereafter located in, on or at the Premises or the Improvements and used or useful in connection therewith, unless and until there is a default under the Construction Loan beyond the applicable notice, grace and cure period:

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(1) all equipment located upon the Premises and intended to be installed in or to the Improvements now or hereafter to be constructed thereon, whether or not yet incorporated in such Improvements, (all of which shall be deemed to be included in the Property upon delivery thereto);

(2) all machines, machinery, fixtures, apparatus, equipment or other articles used in connection with the operation of the Premises, including, but not limited to, any of the foregoing used for supplying heating, gas, electricity, air-conditioning, water, light, power, plumbing, sprinkler, waste removal, refrigeration, ventilation, and all fire sprinklers, alarm systems, protection, electronic monitoring equipment and devices;

(3) all fixtures now or hereafter owned by Mortgagor and attached to or contained in and used or useful in connection with the Premises or the Improvements. All such property owned by Mortgagor and placed by it on the Premises or used in connection with the operation or maintenance shall, so far as permitted by law, be deemed for the purposes of this Mortgage to be part of the real estate constituting and located on the Premises and covered by this Mortgage. As to any of the property that is not part of such real estate or does not constitute a "fixture," as such term is defined in the Uniform Commercial Code of Illinois (the "Code"), this Mortgage shall be deemed to be a security agreement under the Uniform Commercial Code for the purpose of creating hereby a security interest in property, which Mortgagor hereby grants to the Mortgagee as "secured party" as defined in the Code. The enumeration of any specific items of Personal Property set forth herein shall in no way exclude or be held to exclude any items of property not specifically enumerated.

TO HAVE AND TO HOLD the Property hereby mortgaged and conveyed or so intended, together with its rents, issues and profits, unto the Mortgagee, its successors and assigns, forever, for the uses and purposes herein set forth.

Mortgagor hereby covenants with Mortgagee and with the purchaser at any foreclosure sale: that at the execution and delivery hereof, Mortgagor owns a leasehold estate in the Land and owns the Property and has good, indefeasible estate therein; that the Property is free from all encumbrances and exceptions to title (and any claim of any other person) other than those encumbrances and exceptions described in Exhibit B attached hereto and made a part hereof (the "Permitted Exceptions"); that it has good and lawful right to sell, mortgage and convey the Property; and that Mortgagor and its successors and assigns shall forever warrant and defend the Property against all claims and demands whatsoever.

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If and when the Secured Indebtedness has been paid in full, and all of the agreements, terms, conditions, provisions and warranties contained herein and in all of the Loan Documents have been strictly performed and observed, then this Mortgage and the estate, right and interest of the Mortgagee in and to the Property shall cease and shall be released at the cost of Mortgagor, but otherwise shall remain in full force and effect.

III

## GENERAL AGREEMENTS

3.01 Performance. Mortgagor shall promptly comply with all of the terms, provisions and conditions and other obligations of Mortgagor under the Loan Agreement.

3.02 Impositions. Mortgagor shall pay immediately, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer charges, and any other charges, fees, taxes, claims, levies, expenses, liens and assessments, ordinary or extraordinary, governmental or nongovernmental, statutory or otherwise (all of the foregoing being herein collectively referred to as "Impositions"), that may be asserted against the Property or any part thereof or interest therein.

Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any Impositions; provided, that:

(a) such contest shall have the effect of preventing the collection of the Impositions so contested and the sale or forfeiture of the Property or any sub-part or interest;

(b) Mortgagor has notified Mortgagee in writing of the intention of Mortgagor to prosecute the contest before any Impositions have been materially increased by any interest, penalties, or costs;

(c) Mortgagor shall diligently prosecute the contest of such Impositions by appropriate legal proceedings; and,

(d) Mortgagor shall deposit with Mortgagee such security as Mortgagee shall reasonably require to assure the prompt payment of all amounts following such contest.

3.03 Payment of Impositions by Mortgagee. Upon not less than ten (10) days' notice to Mortgagor, Mortgagee is hereby authorized to make or advance, in the place and stead of Mortgagor, any payment relating to Impositions which is delinquent, unless such Imposition is then being contested by Mortgagor pursuant to Paragraph 3.02. Mortgagee may do so according to any bill, statement, or estimate procured from the

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appropriate public office without inquiry into the accuracy or the validity of any Impositions, lien, sale, forfeiture, or related title or claim. Upon not less than ten (10) days' notice to Mortgagor, Mortgagee is further authorized to make or advance, in place of Mortgagor, unless such matter is being contested by Mortgagor in accordance with Paragraph 3.02, any payment relating to any apparent or threatened adverse title, lien, statement of lien, encumbrance, claim, charge, or payment otherwise relating to any other purpose herein and hereby authorized, but not enumerated in this Paragraph, whenever, in Mortgagee's judgment and discretion, such advance seems necessary or desirable to protect the full security intended to be created by this Mortgage. All such advances and indebtedness authorized by this Paragraph shall constitute Secured Indebtedness and shall be repayable by Mortgagor upon demand with interest at the rate of interest which may be due and owing from time to time on any loan and payable pursuant to Section 2.12 of the Credit Agreement (the "Default Rate").

## 3.04 Insurance.

(a) Coverage. The Mortgagor shall insure the Property in accordance with the terms of the Loan Agreement.

(b) Notice of Damage or Destruction. If the Property or any portion thereof shall be damaged or destroyed by any casualty whatsoever, Mortgagor shall immediately notify Mortgagee in writing of such fact. In Mortgagor's said written notice, Mortgagor shall indicate: (i) whether the damage or destruction is covered by insurance; and (ii) Mortgagor's best estimate of the cost of restoring, repairing, replacing or rebuilding the Property or part thereof damaged or destroyed.

(c) Settlement. In case of loss covered by insurance ("Insured Casualty"), the claim shall be settled and adjusted as provided in the Loan Agreement. Mortgagor may itself adjust losses aggregating not in excess of Fifty Thousand Dollars (\$50,000). The expenses incurred by Mortgagee in the adjustment and collection of insurance proceeds shall constitute Secured Indebtedness and shall be reimbursed to Mortgagee upon demand.

## (d) Application of Proceeds.

(i) In the event of the occurrence of any Insured Casualty, the proceeds of insurance paid on account of such Insured Casualty shall be applied to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding (herein collectively called "Restoring") the Property or the part thereof damaged or destroyed; provided, that each and every of the following conditions are satisfied or are waived in writing by Mortgagee, namely:

(A) the insurers do not deny liability to the Insureds with respect to the Insured Casualty;

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(B) no Event of Default shall have occurred and be then continuing;

(C) the Operating Lease and the Ground Lease shall continue in full force and effect without reduction or abatement of rentals (except during the period of untenability of the Improvements); and

(D) the Permanent Lender (as defined in the Loan Agreement) has affirmed its willingness to fund the Permanent Loan.

(ii) Except as may be otherwise provided herein, Mortgagee shall apply the proceeds of insurance (including amounts not required for Restoring the Property) resulting from any Insured Casualty upon the Secured Indebtedness in such order or manner as Mortgagee may elect.

(iii) In the event that proceeds of insurance shall be made available to Mortgagor for Restoring the Property, Mortgagor hereby covenants to restore the same to at least equal value and substantially the same character as prior to the occurrence of such Insured Casualty, and such proceeds of insurance shall be disbursed in the same manner and subject to the same conditions as Loan proceeds are disbursed under Articles 10, 11 and 12 of the Loan Agreement. In the event Mortgagor shall fail to restore or rebuild the Property within a reasonable time, subject to delays beyond its control, then Mortgagee, at its option, may, but shall not be obligated to, restore and rebuild the Property, for or on behalf of the Mortgagor, and for such purpose may do all necessary acts, including using the insurance proceeds or any other amounts deposited by the Mortgagor.

(iv) Any portion of the insurance proceeds remaining after deduction of all expenses incurred in the collection and administration of the insurance proceeds (including attorney's fees) shall be paid to Mortgagor or as ordered by a court of competent jurisdiction.

(v) No interest shall be payable by Mortgagee on account of any insurance proceeds at any time held by Mortgagee.

(vi) In the event of foreclosure of this Mortgage or other transfer of title to the Property in extinguishment of the Secured Indebtedness, all right, title, and interest of Mortgagor in and to any such insurance policies then in force, and any claims for payment of insurance proceeds and any proceeds, shall pass to Mortgagee or any purchaser or grantee. Mortgagee may, at any time after foreclosure and in its sole discretion, procure and substitute for any and all of the insurance policies, such other policies of insurance, in such amounts, and carried in such companies, as it may select.

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3.05 Condemnation and Eminent Domain. Mortgagor shall give Mortgagee prompt notice of all proceedings, instituted or threatened, seeking condemnation or a taking by eminent domain or like process (herein collectively called "Taking"), of all or any part of the Property or affecting any related easement or appurtenance, and shall deliver to Mortgagee copies of any and all papers served in connection with any such proceeding.

(a) Mortgagor hereby assigns, transfers and sets over unto Mortgagee the entire proceeds of any and all awards resulting from any Taking. Mortgagee is hereby authorized to collect and receive from the condemnation authorities all awards and is further authorized to give appropriate receipts and acquittances;

(b) If (i) in the reasonable judgment of Mortgagor, the Property can be restored to an architectural and economic unit of the same character and not substantially less valuable than existed prior to such Taking and (ii) no Event of Default shall have occurred and then be continuing, the award shall be applied to reimburse Mortgagor for the cost of Restoring the portion of the Property remaining after such Taking as provided below;

(c) Except as provided in Subparagraph (b) above and (e) below, Mortgagee shall apply any award (including the amount not required for Restoring in accordance with Subparagraph (b)) upon the Secured Indebtedness in such order or manner as Mortgagee may elect;

(d) In the event that any award shall be made available to Mortgagor for Restoring the portion of the Property remaining after a Taking, Mortgagor hereby covenants to restore the remaining portion of the Property to a condition of at least equal value and of substantially the same character as existed prior to such Taking all in accordance with the provisions for disbursement set forth below, and such award shall be disbursed in the same manner and subject to the same conditions as Loan proceeds are disbursed under Articles 10, 11 and 12 of the Loan Agreement. In the event Mortgagor shall fail to commence and complete the Restoring within a reasonable time, subject to delays beyond its control, Mortgagee may, but shall not be obligated to, rebuild the Property for or on behalf of Mortgagor and for such purpose may do all necessary acts including, without limitation, using any award;

(e) Any portion of any award remaining after deduction for all expenses incurred in the collection and administration of such award (including attorneys' fees) and after payment in full of the Secured Indebtedness shall be paid to Mortgagor or as ordered by a court of competent jurisdiction; and

(f) No interest shall be payable by Mortgagee on account of any award at any time held by Mortgagee.

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In the event Mortgagor is entitled to reimbursement from insurance proceeds or any award held by Mortgagee, such proceeds shall be disbursed by Mortgagee if and only if Mortgagor shall have first delivered to Mortgagee: (i) reasonably satisfactory evidence of the estimated cost of completion of Restoring the Property, with funds (or assurances satisfactory to Mortgagee that such funds are available) sufficient in addition to the proceeds of insurance or award, to complete the proposed Restoring; and (ii) such architect's certificates, waivers of lien, contractor's sworn statements and such other evidences of cost and of payment as Mortgagee may reasonably require and approve. No payment made prior to the final completion of Restoring the Property shall exceed ninety percent (90%) of the value of the work performed from time to time. Funds other than proceeds of insurance or the award shall be disbursed prior to the disbursement of such proceeds, except as may otherwise be provided in any loan agreement expressly approved by Mortgagee. At all times the undisbursed balance of such proceeds remaining in the hands of Mortgagee, together with funds deposited for the purpose of Restoring the Property or irrevocably committed to the satisfaction of Mortgagee by or on behalf of Mortgagor for Restoring the Property, shall be at least sufficient in the reasonable judgment of Mortgagee to pay for the cost of completion of the Restoring, free and clear of all liens or claims for lien.

**3.06 Maintenance of Property.** Mortgagor shall or will cause the Operating Tenant under the Operating Lease to:

- (a) promptly repair, restore, replace or rebuild any portion of the Property which may become damaged, destroyed, altered, removed, severed, or demolished, whether or not proceeds of insurance are available or sufficient for the purpose, with replacements at least equal in quality and condition as previously existed, free from any security interest in, encumbrances on or reservation of title thereto;
- (b) keep the Property in good condition and repair, without waste, and free from mechanics', materialmen's or like liens or claims; and
- (c) not make any material alterations in the Property, not otherwise contemplated in the Loan Agreement, except as required by law or municipal ordinance or in the ordinary course of business.

**3.07 Prohibited Liens and Transfers.**

- (a) Mortgagor shall not create, suffer, or permit to be created or filed against the Property any mortgage lien or other lien superior or inferior to the lien created by this Mortgage. Mortgagor may contest any lien claim arising from any work performed, material furnished, or obligation incurred by Mortgagor upon furnishing Mortgagee security and indemnification satisfactory to Mortgagee for the final payment and discharge of the lien.

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(b) Except as otherwise provided in the Loan Agreement, Mortgagor may not sell, lease (other than to the Operating Tenant) or convey all or any part of the Property.

**3.08 Stamp Taxes.** If at any time the United States government, or any federal, state, or municipal governmental subdivision, requires revenue or other documentary stamps, or levies any tax on this Mortgage or on the Note, or requires payment of any tax in the nature of or comparable to the United States Interest Equalization Tax on the Secured Indebtedness, then Mortgagor shall pay such tax, including interest and penalties, in the required manner.

**3.09 Change in Tax Laws.** In the event of the enactment, after the date of this Mortgage, of any law of the United States of America, or any state or political subdivision thereof: (i) deducting from the value of the Property, for the purpose of taxation, the amount of any lien thereon; (ii) imposing upon Mortgagee the payment of all or any part of the taxes, assessments, charges or liens hereby required to be paid by Mortgagor, or (iii) changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagor's interest in the Property, or the manner of collection of taxes, so as to affect this Mortgage or the Secured Indebtedness; then Mortgagor, upon demand by Mortgagee, shall pay such taxes, assessments, charges, or liens or reimburse Mortgagee therefor. If, in the opinion of counsel for Mortgagee, it would be unlawful to require Mortgagor to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the Secured Indebtedness to become due and payable within one hundred twenty (120) days after the giving of such notice. Nothing contained in this Paragraph 3.09 shall be construed as obligating Mortgagor to pay any portion of Mortgagee's federal income tax.

**3.10 Uniform Commercial Code.** This Mortgage constitutes a Security Agreement as that term is used in the Code with respect to: (i) all sums at any time on deposit for the benefit of Mortgagee pursuant to any of the provisions of this Mortgage or any of the Loan Documents; and (ii) any part of the Property which may or might now or hereafter be or be deemed to be personal property, fixtures or property (including all replacements, additions and substitutions) other than real estate (collectively "Collateral"). All of Mortgagor's right, title and interest in the Collateral is hereby assigned to Mortgagee to secure the payment of the Secured Indebtedness and the performance of all of Mortgagor's obligations. All of the terms, provisions, conditions and agreements contained in this Mortgage apply to the Collateral as fully and to the same extent as to any other property comprising the Property.

At any time after an Event of Default has occurred, 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.

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The remedies of 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 so long as any part of the Secured Indebtedness remains unsatisfied. To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover and include all leases between the Mortgagor, as lessor, and various tenants, as lessee, including all extensions and renewals of the Lease terms, as well as any amendments to or replacements of the leases, together with all of the right, title and interest of the Mortgagor as lessor, including, without limiting the generality of the foregoing, the present and continuing right to: (i) make claim for, collect, receive and receipt for any and all of the rents, and moneys payable as damages or in lieu of the rents and moneys payable as the purchase price of the Property or any part thereof or claims for money and other sums of money payable or receivable thereunder howsoever payable; and (ii) bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which Mortgagor or any lessor is or may become entitled to do under the leases.

**3.11 Releases.** Without notice and without regard to the consideration therefor, and to the existence at that time of any inferior liens, Mortgagee may release from the lien created hereby all or any part of the Property, or release from liability any person obligated to repay any Secured Indebtedness, without affecting the liability of any party to the Note, this Mortgage, or any of the other Loan Documents (including without limitation any guaranty given as additional security) and without in any way affecting the priority of the lien created hereby. Mortgagee may agree with any liable party to extend the time for payment of any part or all of the Secured Indebtedness. Such agreement shall not in any way release or impair the lien created by this Mortgage or reduce or modify the liability of any person or entity obligated personally to repay the Secured Indebtedness, but shall extend the lien created by this mortgage as against the title of all parties having any interest in the Property.

**3.12 Further Assurances.** Mortgagor agrees that, upon request of Mortgagee from time to time, it will, at Mortgagor's sole cost and expense, execute, acknowledge and deliver all such additional instruments and further assurances of title and will do or cause to be done all such further acts and things as may reasonably be necessary to fully effectuate the intent of this Mortgage, including without limitation, reimbursing Mortgagee for the costs of appraisals of the Property, to the extent that Mortgagee determines in good faith that such appraisals are required by any law or any governmental rule, regulation, policy, guideline or directive (whether or not having the force of law), or any interpretation thereof, including, without limitation, the provisions of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, and any rules promulgated to implement such provisions. In the event that Mortgagor shall fail to do any of the foregoing, Mortgagee may, in its sole discretion, do so in the name of Mortgagor, and Mortgagor hereby appoints Mortgagee as its attorney-in-fact to do any of the foregoing.

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3.13 Leasehold Estate. Mortgagor hereby represents and covenants:

- (a) that the Leases are in full force and effect and unmodified;
- (b) that all rents (including additional rents and other charges) reserved in the said Leases have been paid to the extent they were payable prior to the date hereof;
- (c) the quiet and peaceful possession of the Mortgagee, and Mortgagor further agrees to defend the leasehold estates created under the Leases for the entire remainder of the term set forth therein, against all and every person or persons lawfully claiming, or who may claim the same or any part thereof, subject to the payment of the rents in the Leases reserved and subject to the performance and observance of all of the terms, covenants, conditions and warranties thereof;
- (d) that there is no uncured default under the Leases (or under any one of the Leases) or in the performance of any of the terms, covenants, conditions or warranties thereof on the part of the lessee to be observed and performed. Further, no state of facts exist under the Leases (or under any one of the Leases) which, with the lapse of time or giving of notice or both would constitute a default thereunder.

3.14 Payment of Lease Expenses. The Mortgagor shall pay or cause to be paid all rents, additional rents, taxes, assessments, water rates, sewer rents, and other charges and impositions payable by the lessee under the Leases for which provision has not been made hereinbefore, when and as often as the same shall become due and payable. Mortgagor will in every case deliver, or cause to be delivered, a proper receipt for any such item so paid and will within ten (10) days after the time when such payment shall be due and payable deliver to the Mortgagee, a copy of the receipts for any such payments.

3.15 Mortgagor's Covenants with Respect to the Leases.

(a) The Mortgagor shall at all times promptly and faithfully keep and perform, or cause to be kept and performed, all the covenants and conditions contained in the Leases by the lessee under the Leases be kept and performed and in all respects conform to and comply with the terms and conditions of the Leases, and the Mortgagor further covenants that it shall not do or permit anything which will impair or tend to impair the security of this Mortgage or will be grounds for declaring a forfeiture of the Leases (or any one of the Leases), and upon any such failure aforesaid, Mortgagor shall be subject to all of the rights and remedies granted Mortgagee in this Mortgage.

(b) The Mortgagor shall not modify, extend or in any way alter the terms of the Leases (or any one of the Leases) or cancel or surrender said Leases (or any one of the Leases), or waive, execute, condone or in any way release or discharge the

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lessor thereunder of or from the obligations, covenants, conditions and agreements by said lessor to be done and performed; and the Mortgagor does expressly release, relinquish and surrender unto the Mortgagee all of its rights, power and authority to cancel, surrender, amend, modify or alter in any way the terms and provisions of the Leases and any attempt on the part of the Mortgagor to exercise any such right without the written approval and consent of the Mortgagee thereto being first had and obtained shall constitute an Event of Default under the terms hereof and the entire Secured Indebtedness shall, at the option of the Mortgagee, become due and payable forthwith and without notice.

(c) The entire Secured Indebtedness shall immediately become due and payable at the option of the Mortgagee, if the Mortgagor fails to give the Mortgagee immediate notice of any default under the Leases (or under any one of the Leases) or of the receipt by it of any notice of default from the lessor thereunder, or if the Mortgagor fails to furnish to the Mortgagee immediately any and all information which it may request concerning the performance by the Mortgagor of the covenants of the Leases, or if the Mortgagor fails to permit the Mortgagee or its representative at all reasonable times to make investigation or examination concerning the performance by the Mortgagor of the covenants of the Leases, or if the Mortgagor fails to permit the Mortgagee or its representative at all reasonable times to make investigation or examination concerning such performance. The Mortgagor shall deliver to the Mortgagee an original executed copy of the Leases, an estoppel certificate from each lessor of the Leases within ten (10) days of request by Mortgagee and in such form and content as shall be satisfactory to Mortgagee, as well as any and all documentary evidence received by it showing compliance by the Mortgagor with the provisions of the Leases. Mortgagor shall also promptly deliver to the Mortgagee an exact copy of any notice, communication, plan, specification or other instrument or document received or given by it in any way relating to or affecting the Leases.

(d) In the event of any failure by Mortgagor to perform any covenant on the part of lessee to be observed and performed under the Leases (or under any one of the Leases), the performance by Mortgagee on behalf of Mortgagor of the respective Lease covenant shall not remove or waive, as between Mortgagor and Mortgagee, the corresponding Event of Default under the terms hereof and any amount so advanced by Mortgagee or any costs incurred in connection therewith, with interest thereon at the Default Rate shall constitute additional Secured Indebtedness and be immediately due and payable.

(e) To the extent permitted by law, the price payable by the Mortgagor, or by any other party so entitled, in the exercise of the right of redemption, if any, shall include all rents paid and other sums advanced by Mortgagee, on behalf of Mortgagor, as lessee under the said Leases.

3.16 Merger. So long as any of the Secured Indebtedness shall remain unpaid, unless the Mortgagee shall otherwise in writing consent, the fee title and the

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leasehold estate in the respective Leasehold Estate under the Leases shall not merge but shall always be kept separate and distinct, notwithstanding the union of said estates either in the lessor or in the lessee, or in a third party, by purchase or otherwise; and the Mortgagor covenants and agrees that, if it shall acquire the fee title, or any other estate, title or interest in the Premises covered by said Lease, this Mortgage shall be considered as mortgaged, assigned or conveyed to the Mortgagee and the lien hereof spread to cover such estate with the same force and effect as though specifically herein mortgaged, assigned or conveyed and spread. The provisions of this paragraph shall not apply if the holder of the Note acquires the fee of the Premises unless Mortgagee shall so elect.

## IV

### EVENT OF DEFAULT AND REMEDIES

4.01 Event of Default. Each of the following shall constitute an event of default ("Event of Default") under this Mortgage:

(a) The occurrence of an "Event of Default", as such term is defined in the Loan Agreement; or

(b) Failure of Mortgagor to perform or observe any other covenant, agreement, representation, warranty or other provision contained in this Mortgage within 30 days after written notice of the default from Mortgagee to Mortgagor; if Mortgagor fails to perform any such covenant, agreement, representation, warranty or other provision and if Mortgagor continues not to perform such covenant, agreement, representation, warranty or other provision for a period of thirty (30) days after written notice of such failure to Mortgagor from Lender; provided, however, that if such default is of a nature that it cannot be cured within thirty (30) days, and if Mortgagor commences and diligently proceeds to cure such default, such cure period shall be extended for such a period of time as is required to cure such default, but in no event more than one hundred eighty (180) additional days.

4.02 Acceleration of Maturity. Following the occurrence of an Event of Default, the Secured Indebtedness shall become due and payable in accordance with the terms of the Loan Agreement. Upon acceleration, Mortgagee may immediately proceed to foreclose this Mortgage and/or exercise any right, power or remedy provided by this Mortgage or any of the Loan Documents or by law or in equity conferred and pursue all remedies afforded to a mortgagee under and pursuant to applicable law.

4.03 Remedies Cumulative and Non-Waiver. No remedy or right of Mortgagee hereunder or under the Note, or any Loan Documents or otherwise, or available under applicable law, shall be exclusive of any other right or remedy. Each such remedy

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or right shall be in addition to every other remedy or right now or hereafter existing under any such document or under applicable law. No delay in the exercise of, or omission to exercise, any remedy or right accruing on the occurrence of any Event of Default shall impair any such remedy or right or be construed to be a waiver of any such Event of Default or an acquiescence therein, nor shall it affect any subsequent Event of Default of the same or a different nature, nor shall it extend or affect any grace period. Every remedy or right may be exercised concurrently or independently, when and as often as may be deemed expedient by the Mortgagee. All obligations of the Mortgagor, and all rights, powers and remedies of the Mortgagee shall be in addition to, and not in limitation of, those provided by law or in the Note or any Loan Documents or any other written agreement or instrument relating to any of the Secured Indebtedness or any security therefor.

**4.04 Litigation Expenses.** In any proceeding to foreclose the lien of this Mortgage or enforce any other remedy of Mortgagee under the Note, this Mortgage, and the other Loan Documents, or in any other proceeding in connection with any of the Loan Documents or any of the Property in which Mortgagee is named as a party, there shall be allowed and included, as additional indebtedness in the judgment or decree resulting all related expenses paid or incurred by or on behalf of Mortgagee. Such expenses shall include: reasonable attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, survey costs, and costs of procuring all abstracts of title, title searches and examinations, title insurance policies, and any similar data and assurances with respect to title to the Property as Mortgagee may deem reasonably necessary either to prosecute or defend in such proceeding or to evidence to bidders at any sale pursuant to such decree the true condition of the title to or value of the Property. All of the foregoing expenses, and such expenses as may be incurred in the protection of any of the Property and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation affecting the Note, this Mortgage, or the Property, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding (which may be estimated as to items to be expended after entry of such judgment or decree), shall be due and payable by Mortgagor upon demand with interest thereon at the Default Rate.

**4.05 Mortgagee's Performance of Mortgagor's Obligations.** Following the occurrence and continuance of an Event of Default, Mortgagee, either before or after acceleration of the Secured Indebtedness 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, in the Note, any of the Loan Documents or any document or instrument related thereto which is required of Mortgagor (whether or not Mortgagor is personally liable therefor) in any form and manner deemed expedient to Mortgagee; and Mortgagee may, but shall not be required to, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises, or contest any impositions and may, but shall not be required to, complete construction, furnishing and equipping of the Improvements upon the Premises and rent, operate and manage the Property and pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that shall be opera-

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tional and usable for its intended purposes. All monies paid for any of the purposes herein authorized, and all expenses paid or incurred in connection therewith, including attorneys' fees and any other monies advanced by Mortgagee to protect the Property and the lien hereof, or to complete construction, furnishing and equipping or to rent, operate and manage the Property or to pay any such operating costs and expenses thereof or to keep the Property operational and usable for its intended purposes, shall constitute Secured Indebtedness, whether or not they exceed the amount of the Note, and shall become due and payable upon demand and with interest thereon at the Default Rate. Mortgagee, in making any payment hereby authorized: (a) for the payment of Impositions, 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; (b) for the purchase, discharge, compromise or settlement of any lien, may do so without inquiry as to the validity or amount of any claim or lien which may be asserted; or (c) for the completion of construction, furnishing or equipping of the Property or the rental, operation or management of the Property or the payment of operating cost and expenses thereof, 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.

All advances, disbursements and expenditures (collectively "Advances") made by Mortgagee after an Event of Default, before and during foreclosure, prior to sale, and where applicable, after sale, for the following purposes, including interest thereon at the Default Rate, are hereinafter referred to as "Protective Advances":

- (1) Advances pursuant to this Paragraph 4.05.
- (2) Any amount expended by Mortgagee in Restoring the Property in excess of the actual or estimated proceeds of insurance or condemnation, which excess shall constitute additional Secured Indebtedness;
- (3) Advances in accordance with the terms of this Mortgage to: (a) protect, preserve or restore the Property; (b) preserve the lien of this Mortgage or the priority thereof; or (c) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 15-1302 of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15.1101 et seq. (as amended from time to time, the "Act");
- (4) When due, Impositions; other obligations authorized by this Mortgage; or with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, all as referred to in this Paragraph 4.05 of this Mortgage and in Section 15-1505 of the Act;
- (5) Reasonable attorneys' fees and other costs incurred in connection with: (a) the exercise of Mortgagee's rights to make Protective Advances; (b) the foreclosure of this Mortgage as referred to in Sections 1504(d)(2) and 15-1510 of the Act; (c) any other litigation or administrative proceeding relating to the Property to which Mortgagee may be

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or become or be threatened or contemplated to be a party, without fault on its part, including probate and bankruptcy proceedings; or (d) in the preparation for the commencement or defense of any such suit or proceeding; including filing fees, appraisers' fees, outlays for documents and expert evidence, witness fees, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of judgment) of procuring all such abstracts of title, title charges and examinations, foreclosure minutes, title insurance policies, Torrens certificates, appraisals, and similar data and assurances with respect to title and value as Mortgagee may deem reasonably necessary either to prosecute or defend such suit or, in case of foreclosure, to evidence to bidders at any sale which may be had pursuant to the foreclosure judgment the true condition of the title to or the value of the Property;

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

(7) Impositions as may be required by this Mortgage;

(8) Mortgagee's payment of any amount required to make up a deficiency in deposits for installments of Impositions as may be required by this Mortgage;

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

(10) Expenses incurred and expenditures made by Mortgagee for any one or more of the following: (a) premiums upon casualty and liability insurance made by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required without regard to the limitation to maintaining insurance in effect at the time any receiver or mortgagee takes possession of the Property imposed by Subsection (c)(1) of Section 15-1704 of the Act; (b) expenditures in connection with Restoring the Property in excess of available insurance proceeds or condemnation awards; (c) payments required or deemed by Mortgagee to be for the benefit of the Property or required to be made by the owner of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (d) operating deficits incurred by Mortgagee in possession or reimbursed by Mortgagee to any receiver; and (e) all amounts paid to any public authority for the use or occupancy of any street, alley, or public way.

All Protective Advances shall constitute Secured Indebtedness and shall become immediately due and payable without notice and with interest thereon until paid at the Default Rate. This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time the Mortgage is recorded pursuant to Subsection (b)(1) of Section 15-1302 of the Act.

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

(a) Determination of the amount of the Secured Indebtedness of this Mortgage at any time;

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

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

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

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

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

4.06 Right of Possession. In any case in which Mortgagee has a right to institute foreclosure proceedings (whether or not the entire principal sum secured hereby becomes immediately due and payable or whether before or after the institution of foreclosure proceedings or whether before or after judgment thereunder and at all times until the confirmation of sale) and upon Mortgagee's request to the court, Mortgagor shall, immediately upon Mortgagee's demand, surrender to Mortgagee, and Mortgagee shall be entitled to take actual possession of the Property or any part thereof, personally or by its agent or attorneys, subject to the right of Operating Tenant under the Operating Lease. Mortgagee may enter upon and take and maintain possession or may apply to the court in which a foreclosure is pending to be placed in possession of all or any part of the Property, together with all documents, books, records, papers, and accounts of Mortgagor or the then owner of the Property relating thereto. Mortgagee may exclude Mortgagor, such owner, and any agents and servants from the Property. As attorney-in-fact or agent of Mortgagor or such owner, or in its own name Mortgagee may hold, operate, manage, and control all or any part of the Property and conduct the business thereof, either personally or by its agents. Mortgagee shall have full power to use such measures, legal or equitable, as it may deem proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Property, including actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Mortgagor.

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4.07 Priority of Rent Payments. Any rents, issues, deposits, profits, and avails of the Property received by Mortgagee after taking possession of the Property, or pursuant to any assignment to Mortgagee under the provisions of this Mortgage or any of the other Loan Documents, shall be applied in payment of or on account of the following, in such order as Mortgagee or, in case of a receivership, as the court, may determine:

(a) operating expenses of the Property (including reasonable compensation to Mortgagee, any receiver of the Property, any agent or agents to whom management of the Property has been delegated, and also including compensation for and expenses of seeking and procuring tenants and entering into leases, establishing claims for damages, if any, and paying premiums on insurance hereinabove authorized);

(b) impositions, and water and sewer charges now due or that may become due on the Property, or that may become a lien prior to the lien of this Mortgage;

(c) any and all construction, repairs, renewals, replacements, alterations, additions, betterments, and improvements of the Property (including without limitation the cost, from time to time, of placing the Property in such condition as will, in the judgment of Mortgagee or any receiver, make it readily rentable or salable);

(d) any Secured Indebtedness or any deficiency that may result from any foreclosure sale; and

(e) any remaining funds to Mortgagor or its successors or assigns, as their interests and rights may appear.

4.08 Appointment of Receiver. Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed shall appoint a receiver of the Property whenever Mortgagee when entitled to possession so requests. Such receiver shall have all powers and duties prescribed by applicable law, including the power to make leases to be binding upon all parties, including the Mortgagor after redemption, the purchaser at a sale pursuant to a judgment of foreclosure and any person acquiring an interest in the mortgaged real estate after entry of a judgment of foreclosure. In addition, such receiver shall also have the following powers: (a) to extend or modify any then existing leases, which extensions and modifications may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Secured Indebtedness and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption, discharge of the Secured Indebtedness, satisfaction of any foreclosure

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judgment, or issuance of any certificate of sale or deed to any purchaser; and (b) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Property during the whole of the period of receivership. The court from time to time, either before or after entry of judgment of foreclosure, may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (a) the Secured Indebtedness, or any amounts included in any judgment of foreclosure or supplemental judgment or other item for which Mortgagee is authorized to make a Protective Advance, and (b) the deficiency in case of a sale and deficiency.

4.09 Foreclosure Sale. In the event of any foreclosure sale, the Property may be sold in one or more parcels. Mortgagee may be the purchaser at any foreclosure sale.

4.10 Application of Proceeds. The proceeds of any foreclosure sale of the Property shall be distributed and applied in accordance with the Loan Documents, subject to applicable law.

4.11 Waiver of Statutory Rights. Mortgagor shall not apply for or avail itself of any appraisement, valuation, redemption, stay, extension, or exemption laws, or any so-called "moratorium laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, and Mortgagor hereby waives the benefit of such laws. Mortgagor, for itself and all who may claim through or under it, waives any and all rights to have the Property and estates comprising the Property marshaled upon any foreclosure of the lien of this Mortgage, and agrees that any court having jurisdiction to foreclose such lien may order the Property sold in its entirety. Mortgagor further waives any and all rights of redemption from foreclosure and from sale under any order or decree of foreclosure of the lien created by this Mortgage, for itself and on behalf of: (i) any trust estate of which the Property is a part, all beneficially interested persons; (ii) each and every person acquiring any interest in the Property or title to the Property subsequent to the date of this Mortgage; and (iii) all other persons to the extent permitted by the provisions of laws of the State of Illinois.

V

## MISCELLANEOUS

5.01 Notices. Any notice that Mortgagee or Mortgagor may desire or be required to give to the other shall be in writing and shall be mailed or delivered in the manner set forth in the Loan Agreement. Except as otherwise specifically required, notice of the exercise of any right or option granted to Mortgagee by this Mortgage is not required to be given.

5.02 Time of Essence. Time is of the essence of this Mortgage.

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5.03 Covenants Run with Land. All of the covenants of this Mortgage shall run with the land constituting the Premises.

5.04 GOVERNING LAW. THIS MORTGAGE SHALL BE CONSTRUED AND ENFORCED ACCORDING TO THE LAWS OF THE STATE OF ILLINOIS (WITHOUT REFERENCE TO CONFLICTS OF LAWS PROVISIONS THEREOF). TO THE EXTENT THAT THIS MORTGAGE MAY OPERATE AS A SECURITY AGREEMENT UNDER THE CODE, MORTGAGEE SHALL HAVE ALL RIGHTS AND REMEDIES CONFERRED THEREIN FOR THE BENEFIT OF A SECURED PARTY AS SUCH TERM IS DEFINED IN THE CODE.

5.05 Rights and Remedies Cumulative. All rights and remedies in this Mortgage are cumulative. The holder of the Note and of every other obligation secured hereby may recover judgment, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security of any right or remedy.

5.06 Non-Waiver. Unless expressly provided in this Mortgage to the contrary, no consent or waiver, express or implied, by any party, to or of any breach or default by any other party shall be deemed a consent to or waiver of the performance by such defaulting party of any other obligations or the performance by any other party of the same, or of any other, obligations.

5.07 Headings. The headings or sections and paragraphs in this Mortgage are for convenience of reference only and shall not be construed in any way to limit or define the content, scope, or intent of the provisions.

5.08 Grammar. As used in this Mortgage, the singular shall include the plural, and masculine, feminine, and neuter pronouns shall be fully interchangeable, where the context so requires.

5.09 Successors and Assigns. This Mortgage shall be binding upon Mortgagor and its successors, assigns, legal representatives, and all other persons or entities claiming under or through Mortgagor. "Mortgagor," when used herein, shall include all such persons and entities and any others liable for the payment of the Secured Indebtedness, or any part thereof, whether or not they have executed the Guaranty of Payment, Guaranty of Completion or this Mortgage. The word "Mortgagee," when used herein, shall include the Lender, together with its successors, assigns and legal representatives.

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5.10 Mortgagee in Possession. Nothing contained in this Mortgage shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Property.

5.11 Incorporation of Loan Agreement. The terms of the Loan Agreement are incorporated by reference herein as though set forth in full detail. In the event of any conflict between the terms and provisions of this Mortgage and any other Loan Document, the terms and provisions of such other Loan Document shall control.

5.12 Business Loan. Mortgagor certifies and agrees that the proceeds of the Note secured by this Mortgage will be held for the purposes specified in 815 ILCS 205/4(1)(c), and that the principal obligation secured hereby constitutes a "business loan" within the definition and purview of that Section.

5.13 [INTENTIONALLY OMITTED.]

5.14 Compliance with Applicable Law. Anything elsewhere herein contained to the contrary notwithstanding

(a) In the event that any provision in this Mortgage shall be inconsistent with any provision of applicable law, the provisions of applicable law shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with applicable law; and

(b) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act (as such may be amended from time to time) in the absence of said provision, Mortgagee shall be vested with the rights granted under the Act (as such may be amended from time to time) to the fullest extent permitted by law.

5.15 WAIVER OF JURY TRIAL. MORTGAGEE AND MORTGAGOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS MORTGAGE, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF MORTGAGEE OR MORTGAGOR.

5.16 SUBMISSION TO JURISDICTION. MORTGAGOR HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY ILLINOIS STATE OR FEDERAL COURT SITTING IN CHICAGO, OVER ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS MORTGAGE, AND HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR

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PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH ILLINOIS STATE OR FEDERAL COURT. MORTGAGOR HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE IN ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT AS WELL AS ANY RIGHT IT MAY NOW OR HEREAFTER HAVE, TO REMOVE ANY SUCH ACTION OR PROCEEDING, ONCE COMMENCED, TO ANOTHER COURT ON THE GROUNDS OF FORUM NON CONVENIENS OR OTHERWISE.

[Signature Page Follows]

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IN WITNESS WHEREOF, Mortgagor has duly signed and delivered this Mortgage on the date first above written.

ICE DEVELOPMENT, L.L.C., an Illinois limited liability company

By: *Denzel Deeds*

Its: Managing Member

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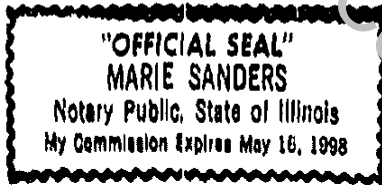


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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, MARIE SANDERS, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that DONZELL STARKS, personally known to me to be the managing member of ICE DEVELOPMENT, L.L.C., an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as managing member of said limited liability company, as his free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 5th day of August, 1997.



Marie Sanders  
Notary Public

My Commission Expires: 5-16-98

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EXHIBIT A-1

LEGAL DESCRIPTION OF RYAN LAND

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EXHIBIT A-2

LEGAL DESCRIPTION OF WESTERN LAND

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EXHIBIT A-3

LEGAL DESCRIPTION OF HOMAN LAND

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## EXHIBIT B

### PERMITTED EXCEPTIONS

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EXHIBIT A-1

LEGAL DESCRIPTION OF RYAN LAND

[ATTACHED]

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A-1

Ryan

## LEGAL DESCRIPTION

### PARCEL 1:

THAT PART OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 4, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN AND PART OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 33, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SAID SECTION 33; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG THE EAST LINE OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 33, 898.49 FEET FOR A POINT OF BEGINNING;

THENCE NORTH 00 DEGREES 33 MINUTES 38 SECONDS WEST, 364.07 FEET TO AN POINT; THENCE NORTH 61 DEGREES 48 MINUTES 58 SECONDS WEST, 38.09 FEET TO AN ANGLE POINT; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, 367.03 FEET TO THE EASTERLY LINE OF AN EASEMENT FOR RAILROAD RIGHT OF WAY RECORDED SEPTEMBER 24, 1968 AS DOCUMENT 39377888, IN COOK COUNTY, ILLINOIS, SAID LINE ALSO BEING A CURVE; THENCE 42.52 FEET NORTHERLY ALONG SAID CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 396.37 FEET, A CHORD BEARING OF NORTH 22 DEGREES 48 MINUTES 06 SECONDS EAST, AND A CHORD DISTANCE OF 42.50 FEET TO A POINT OF NON-TANGENCY AND BEING 746.50 FEET WEST OF SAID EAST LINE OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 33; THENCE NORTH 01 DEGREES 01 MINUTES 08 SECONDS EAST, 4.98 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 39 SECONDS WEST 81.44 FEET; THENCE NORTH 08 DEGREES 58 MINUTES 30 SECONDS EAST, 194.44 FEET TO A POINT OF CURVATURE; THENCE EASTERLY ALONG A TANGENTIAL CURVE TO THE SOUTHEAST HAVING A RADIUS OF 373.04 FEET A CHORD BEARING OF NORTH 34 DEGREES 03 MINUTES 38 SECONDS EAST AND CHORD DISTANCE OF 257.78 FEET; THENCE EASTERLY ALONG SAID CURVE 268.47 FEET TO A POINT OF TANGENCY; THENCE NORTH 62 DEGREES 15 MINUTES 42 SECONDS EAST 314.97 FEET; THENCE NORTH 58 DEGREES 08 MINUTES 42 SECONDS EAST, 118.96 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 353.77 FEET, THE CHORD OF SAID CURVE BEARS NORTH 32 DEGREES 07 MINUTES 57 SECONDS EAST A CHORD DISTANCE OF 324.88 FEET FROM SAID POINT; THENCE NORTHERLY ALONG SAID CURVE 337.51 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH QUARTER OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 33; THENCE NORTH 09 DEGREES 44 MINUTES 04 SECONDS EAST ALONG SAID NORTH LINE, 32.68 FEET TO SAID EAST LINE OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SAID SECTION 33; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG SAID EAST LINE, 1078.86 FEET TO THE POINT OF BEGINNING.

### PARCEL 2:

97584084

EASEMENT FOR INGRESS AND EGRESS AS CREATED BY RECIPROCAL EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS DATED OCTOBER 31, 1996 AND RECORDED NOVEMBER 5, 1996 AS DOCUMENT NUMBER 94844896, BETWEEN HOME DEPOT U.S.A INC. AND THE AETNA CASUALTY AND SURETY COMPANY, AS FOLLOWS:

THAT PART OF THE SOUTHEAST 1/4 OF SECTION 33, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SAID SECTION 33; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG THE EAST LINE OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SAID SECTION 33, A DISTANCE OF 39.53 FEET TO THE POINT OF BEGINNING;

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A-1

THENCE NORTH 20 DEGREES 55 MINUTES 43 SECONDS WEST, 6.85 FEET TO A POINT OF CURVATURE; THENCE NORTHWESTERLY ALONG A CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 114.50 FEET, AND AN ARC LENGTH OF 41.82 FEET, WHOSE CHORD BEARS NORTH 10 DEGREES 27 MINUTES 52 SECONDS WEST, 41.59 FEET TO A POINT OF TANGENCY; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, 588.57 FEET; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST, 33.06 FEET; THENCE SOUTH 00 DEGREES 17 MINUTES 33 SECONDS EAST, 591.20 FEET TO A POINT OF CURVATURE; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 64.00 FEET, AND AN ARC LENGTH OF 33.00 FEET, WHOSE CHORD BEARS SOUTH 15 DEGREES 03 MINUTES 49 SECONDS EAST, 32.63 FEET TO A POINT OF TANGENCY; THENCE SOUTH 29 DEGREES 50 MINUTES 06 SECONDS EAST 37.08 FEET TO A POINT OF CURVATURE; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 15.00 FEET, AND AN ARC LENGTH OF 8.47 FEET, WHOSE CHORD BEARS SOUTH 46 DEGREES 00 MINUTES 11 SECONDS EAST, 8.35 FEET TO A POINT ON A CURVE, SAID POINT BEING ALSO ON THE NORTHERLY RIGHT-OF-WAY LINE, OF 87TH STREET; THENCE SOUTHWESTERLY ALONG SAID NORTHERLY RIGHT-OF-WAY LINE BEING A CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 1033.00 FEET, AND AN ARC LENGTH OF 51.18 FEET, WHOSE CHORD BEARS SOUTH 76 DEGREES 53 MINUTES 72 SECONDS WEST 51.18 FEET TO A POINT ON A CURVE; THENCE NORTHWESTERLY ALONG A CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 20.50 FEET, AND AN ARC LENGTH OF 13.71 FEET, WHOSE CHORD BEARS NORTH 01 DEGREES 42 MINUTES 30 SECONDS WEST, 13.50 FEET TO A POINT OF TANGENCY; THENCE NORTH 20 DEGREES 55 MINUTES 43 SECONDS WEST 24.53 FEET TO THE POINT OF BEGINNING AND CONTAINING 23.518 SQUARE FEET OR 0.540 ACRES MORE OR LESS, IN COOK COUNTY, ILLINOIS.

PIN'S :  
20 33 305-022  
20 33 305-024  
20 33 305-036  
20 33 305-038-6001  
20 33 305-038-6002  
20 33 305-008

Address : Part of 200 W 87th Street, Chicago, IL 60620

9-1584084

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EXHIBIT A-2

LEGAL DESCRIPTION OF WESTERN LAND

[ATTACHED]

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EXHIBIT A "2"

**Parcel 1:**

Lot 3 in Tony, Mike, Cristina & Jim's Resubdivision of part of the Southwest 1/4 of Section 18, Township 38 North, Range 14 East of the Third Principal Meridian, per plat thereof recorded February 19, 1997 as Document 97113722 and corrected by Certificate of Correction recorded February 21, 1997, as Document Number 97121910, in Cook County, Illinois.

**Parcel 2:**

Easements for ingress and egress for the benefit of Parcel 1 as set forth and defined in Declaration of Covenants, Conditions, Restrictions and Easements made by American National Can Company and Marquette National Bank as Trustees under Trust No. 13045 and Southwest Development L.L.C. dated September 20, 1996 recorded September 24, 1996 as Document Number 96729764, as amended by First Amendment to Declaration of Covenants, Conditions, Restrictions and Easements dated January 30, 1997, recorded February 20, 1997 as Document Number 97116437.

Permanent Real Estate Index Number: 20-18-300-026  
20-18-304-023  
20-18-303-035  
20-18-312-003

Address: Part of 2300 W. 62nd Street, Chicago, IL 60629

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EXHIBIT A-3

LEGAL DESCRIPTION OF HOMAN LAND

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EXHIBIT A - 3

## DESCRIPTION OF THE LAND

THAT PART OF BLOCKS 4 AND 5 IN TWELFTH STREET ADDITION TO CHICAGO, A SUBDIVISION OF THAT PART OF THE SOUTHEAST 1/4 OF SECTION 14, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF THE RIGHT OF WAY OF THE CHICAGO AND GREAT WESTERN RAILWAY COMPANY, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 30, 1887 AS DOCUMENT NUMBER 846130, TOGETHER WITH ALL VACATED ALLEYS FALLING WITHIN SAID BLOCKS 4 AND 5, TOGETHER WITH THAT PART OF VACATED GRENSHAW STREET FALLING EAST OF THE WEST LINE OF SAID BLOCKS 4 AND 5 AND FALLING WEST OF THE EAST LINE OF SAID BLOCKS 4 AND 5, TOGETHER WITH THE WESTERLY MOST 13' OF VACATED SPAULDING AVENUE LYING EAST OF AND ADJOINING SAID BLOCKS 4 AND 5, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID BLOCK 4; THENCE DUE WEST (BEING AN ASSUMED BEARING FOR THE BENEFIT OF THIS LEGAL DESCRIPTION) ALONG THE SOUTH LINE OF SAID BLOCK 4, 417.96 FEET TO AN INTERSECTION WITH A LINE BEING 180.00 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID BLOCK 4 (AS MEASURED AT RIGHT ANGLES TO THE WEST LINE THEREOF); THENCE NORTH 00 DEGREES 30 MINUTES 19 SECONDS WEST ALONG SAID PARALLEL LINE, 157.01 FEET TO AN INTERSECTION WITH A LINE BEING 157.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID BLOCK 4 (AS MEASURED AT RIGHT ANGLES TO THE SOUTH LINE THEREOF); THENCE DUE WEST ALONG SAID PARALLEL LINE, 180.01 FEET TO THE WEST LINE OF SAID BLOCK 4; THENCE NORTH 00 DEGREES 30 MINUTES 19 SECONDS WEST ALONG SAID WEST LINE, 175.11 FEET TO THE SOUTHWEST CORNER OF BLOCK 5 IN SAID TWELFTH STREET ADDITION TO CHICAGO; THENCE SOUTH 89 DEGREES 59 MINUTES 47 SECONDS EAST ALONG THE SOUTH LINE OF SAID BLOCK 5, 197.29 FEET TO THE SOUTHEAST CORNER OF LOT 31 IN SAID BLOCK 5, THENCE NORTH 00 DEGREES 32 MINUTES 17 SECONDS WEST ALONG THE EAST LINE OF SAID LOT 31, 130.04 FEET TO THE NORTHEAST CORNER THEREOF; THENCE NORTH 89 DEGREES 59 MINUTES 41 SECONDS WEST ALONG THE NORTH LINE OF SAID LOT 31, 6.49 FEET TO AN INTERSECTION WITH THE SOUTHERLY EXTENSION OF THE EAST LINE OF LOT 17 IN SAID BLOCK 5; THENCE NORTH 00 DEGREES 32 MINUTES 11 SECONDS WEST ALONG SAID EAST LINE AND THE SOUTHERLY EXTENSION THEREOF, 118.53 FEET TO THE NORTHEAST CORNER OF SAID LOT 17 AND ALSO BEING THE NORTH LINE OF SAID BLOCK 5; THENCE SOUTH 89 DEGREES 59 MINUTES 34 SECONDS EAST ALONG SAID NORTH LINE, 248.85 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 26 SECONDS WEST ALONG A LINE BEING PERPENDICULAR TO SAID LAST DESCRIBED NORTH LINE, 265.55 FEET TO AN

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A-3

INTERSECTION WITH A LINE BEING 17.00 FEET SOUTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID BLOCK 5 (AS MEASURED AT RIGHT ANGLES TO SAID SOUTH LINE OF BLOCK 5); THENCE SOUTH 89 DEGREES 59 MINUTES 47 SECONDS EAST ALONG SAID PARALLEL LINE, 173.23 FEET TO AN INTERSECTION WITH A LINE BEING 13.00 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SPAULDING AVENUE, SAID PARALLEL LINE ALSO BEING THE WEST LINE OF THAT PORTION OF SPAULDING AVENUE CLOSED TO VEHICULAR TRAFFIC PER DOCUMENT RECORDED DECEMBER 22, 1977 AS DOCUMENT NUMBER 24257553, THENCE SOUTH 00 DEGREES 36 MINUTES 48 SECONDS EAST ALONG SAID PARALLEL LINE, 315.08 FEET TO AN INTERSECTION WITH THE EASTERLY EXTENSION OF THE SOUTH LINE OF SAID BLOCK 4; THENCE DUE WEST ALONG SAID EASTERLY EXTENSION, 13.00 FEET TO THE SOUTHEAST CORNER OF SAID BLOCK 4 AND THE POINT OF BEGINNING, COOK COUNTY, ILLINOIS.

Common Address: NE Corner of Roosevelt and Homan  
Chicago, Illinois

P.I.N.	16-14-424-043	16-14-428-016
	16-14-424-046	16-14-428-017
	16-14-424-048	16-14-428-018
	16-14-428-001	16-14-428-019
	16-14-428-002	16-14-428-020
	16-14-428-004	16-14-428-025
	16-14-428-005	16-14-428-026
	16-14-428-006	16-14-428-027
	16-14-428-007	16-14-428-028
	16-14-428-008	16-14-428-029
	16-14-428-009	16-14-428-030
	16-14-428-010	16-14-428-031
	16-14-428-011	16-14-428-032
	16-14-428-012	16-14-428-033
	16-14-428-013	16-14-428-034
	16-14-428-014	16-14-428-035
	16-14-428-015	16-14-428-036
		16-14-428-037
		16-14-428-038
		16-14-428-039

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EXHIBIT

PERMITTED EXCEPTIONS

[ATTACHED]

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RYAN  
LAND

CHICAGO TITLE INSURANCE COMPANY  
**UNOFFICIAL COPY**  
LOAN POLICY (1992)  
SCHEDULE B

POLICY NO.: 1401 007668989 D1

NOTWITHSTANDING THE PROVISIONS OF THE CONDITIONS AND STIPULATIONS OF THIS POLICY, ALL ENDORSEMENTS, IF ANY, ATTACHED HERETO ARE VALID DESPITE THE LACK OF SIGNATURE BY EITHER THE PRESIDENT, A VICE PRESIDENT, THE SECRETARY, AN ASSISTANT SECRETARY, OR VALIDATING OFFICER OR AUTHORIZED SIGNATORY OF THE COMPANY.

THIS POLICY DOES NOT INSURE AGAINST LOSS OR DAMAGE SUSTAINED BY THE INSURED (AND THE COMPANY WILL NOT PAY COSTS, ATTORNEY'S FEES OR EXPENSES) WHICH ARISE BY REASON OF:

SPECIAL EXCEPTIONS:

BJ 1.

TAXES FOR THE YEARS 1996 & 1997.  
1997 TAXES ARE NOT YET DUE OR PAYABLE.

PERMANENT INDEX NUMBER: 20-33-305-038-6001 1 OF 6.  
AFFECTS: THIS TAX NUMBER AFFECTS A PART OF PIQ & OP.

NOTE: 1996 FIRST ESTIMATED INSTALLMENT IS SATISFIED.

NOTE: 1996 FINAL INSTALLMENT NOT DELINQUENT BEFORE AUG 1, 1997.

3 A PLEASE NOTE: THE FOLLOWING DESCRIBED PORTION OF PIQ IS APPARENTLY NOT ASSESSED FOR THE YEAR OR YEARS AS NOTED HEREIN.  
YEAR 1995 AND PRIOR

THIS COMMITMENT IS SUBJECT TO SAID TAXES AS WILL BE OUR POLICY IN THE ABSENCE OF PRIOR DISPOSITION THEREOF.

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CHICAGO TITLE INSURANCE COMPANY  
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LOAN POLICY (1992)

SCHEDULE B (CONTINUED)

POLICY NO.: 1401 007668989 D1

TAXES FOR THE YEARS 1996 & 1997.  
1997 TAXES ARE NOT YET DUE OR PAYABLE.

PERMANENT INDEX NUMBER: 20-33-305-038-6002 2 OF 6.  
AFFECTS: THIS TAX NUMBER AFFECTS A PART OF PIQ & OP.

NOTE: 1996 FIRST ESTIMATED INSTALLMENT AMOUNTING TO \$16,045.04 IS PAID.

NOTE: 1996 FINAL INSTALLMENT NOT DELINQUENT BEFORE AUG 1, 1997.

NOTE: AS RETURNED IN SCHEDULE D OF RAILROAD  
WARRANTS BY BELT RAILROAD. TOWN OF LAKE.  
YEAR 1994 AND PRIOR SATISFIED.

\* \* \* \* \*

TAXES FOR THE YEARS 1995, 96 & 1997.  
1997 TAXES ARE NOT YET DUE OR PAYABLE.

PERMANENT INDEX NUMBER: 20-33-405-022-0000 3 OF 6.  
AFFECTS: THIS TAX NUMBER AFFECTS ONLY A PART OF PIQ.

NOTE: 1996 FIRST ESTIMATED INSTALLMENT IS SATISFIED.

NOTE: 1996 FINAL INSTALLMENT NOT DELINQUENT BEFORE AUG 1, 1997.

NOTE: AS RETURNED IN SCHEDULE A OF RAILROAD  
WARRANTS BY CHICAGO AND WESTERN INDIANA RAILROAD  
TOWN OF LAKE  
YEAR 1994 AND PRIOR SATISFIED

YEAR 1995 NOT AVAILABLE

\* \* \* \* \*

TAXES FOR THE YEARS 1996 & 1997.  
1997 TAXES ARE NOT YET DUE OR PAYABLE.

PERMANENT INDEX NUMBER: 20-33-305-022-0000 4 OF 6.  
AFFECTS: THIS TAX NUMBER AFFECTS A PART OF PIQ & OP.

NOTE: 1996 FIRST ESTIMATED INSTALLMENT AMOUNTING TO \$2,866.49 IS PAID.

NOTE: 1996 FINAL INSTALLMENT NOT DELINQUENT BEFORE AUG 1, 1997.

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CHICAGO TITLE INSURANCE COMPANY

## LOAN POLICY (1992)

### SCHEDULE B (CONTINUED)

POLICY NO.: 1401 00766898U D1

TAXES FOR THE YEARS 1996 & 1997.  
1997 TAXES ARE NOT YET DUE OR PAYABLE.

PERMANENT INDEX NUMBER: 20-33-305-024-0000 5 OF 6.  
AFFECTS: THIS TAX NUMBER AFFECTS A PART OF PIQ & OP.

NOTE: 1996 FIRST ESTIMATED INSTALLMENT AMOUNTING TO \$596.81 IS PAID.

NOTE: 1996 FINAL INSTALLMENT NOT DELINQUENT BEFORE AUG 1, 1997.

\* \* \* \* \*

TAXES FOR THE YEAR 1996 & 1997.  
1997 TAXES ARE NOT YET DUE OR PAYABLE.

PERMANENT INDEX NUMBER: 20-33-305-036-0000 6 OF 6.  
AFFECTS: THIS TAX NUMBER AFFECTS A PART OF PIQ & OP.

NOTE: 1996 FIRST ESTIMATED INSTALLMENT AMOUNTING TO \$3,558.81 IS PAID.

NOTE: 1996 FINAL INSTALLMENT NOT DELINQUENT BEFORE AUG 1, 1997.

- 1 2. RIGHTS OF COMMONWEALTH EDISON COMPANY WITH RESPECT TO A LINE OF POWER POLES AND OVERHEAD ELECTRICAL WIRES; WHICH LINE RUNS ACROSS THE EASTERNMOST LINE OF THE LAND, AS DISCLOSED BY SURVEY BY JACOB & HEFNER ASSOCIATES, INC. DATED DECEMBER 15, 1996.
  
- 1 3. TERMS, PROVISIONS, CONDITIONS AND LIMITATIONS OF THE RECIPROCAL EASEMENT AND OPERATION DECLARATION FOR HOME DEPOT SUBDIVISION RECORDED FEBRUARY 11, 1997 AS DOCUMENT 97098471.  
  
SUPPLEMENT TO REA RECORDED JULY 2, 1997 AS DOCUMENT 97480671.  
  
AMENDMENT TO RECIPROCAL EASEMENT AND OPERATING DECLARATION RECORDED JULY 14, 1997 AS DOCUMENT 97505122.
  
- BL 4. THE ABOVE REFERENCED RECIPROCAL EASEMENT AND OPERATING DECLARATION NOTED ABOVE AT EXCEPTION REFERENCE LETTER "T", PROVIDES FOR LIEN RIGHTS IN FAVOR OF ADJOINING OWNERS AGAINST ANY OWNER WHO MAY BE IN DEFAULT OF ITS PERFORMANCE OBLIGATION THEREUNDER.

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CHICAGO TITLE INSURANCE COMPANY

## LOAN POLICY (1992)

### SCHEDULE B (CONTINUED)

POLICY NO.: 1401 007668989 D1

5. ANY LIEN, OR RIGHT TO A LIEN, FOR SERVICES, LABOR OR MATERIAL, HEREAFTER FURNISHED, IMPOSED BY LAW AND NOT SHOWN BY THE PUBLIC RECORDS.

6.

LEASE EXECUTED BY LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED MAY 8, 1997 AND KNOWN AS TRUST NUMBER 120995, AS LESSOR, AND ICR DEVELOPMENT, L.L.C., AN ILLINOIS LIMITED LIABILITY COMPANY, AS LESSEE, DATED JULY 25, 1997, A MEMORANDUM OF WHICH LEASE WAS RECORDED AS DOCUMENT ~, DEMISING THE LAND FOR A TERM OF YEARS BEGINNING ON JULY 25, 1997 AND ENDING ON THE LAST DAY OF THE TWENTIETH LEASE YEAR AND ALL RIGHTS THEREUNDER OF, AND ALL ACTS DONE OR SUFFERED THEREUNDER BY, SAID LESSEE OR BY ANY PARTY CLAIMING BY, THROUGH, OR UNDER SAID LESSEE.

7. EXISTING SUBLEASE, AS DISCLOSED BY THE GROUND LEASE DESCRIBED IN SCHEDULE A MADE BY ICR DEVELOPMENT, L.L.C., AN ILLINOIS LIMITED LIABILITY COMPANY TO PLITI THEATERS, INC., A DELAWARE CORPORATION, DATED JULY 25, 1997 A MEMORANDUM OF WHICH WAS RECORDED AS DOCUMENT ~, AND ALL RIGHTS THEREUNDER OF, AND ALL ACTS DONE OR SUFFERED THEREUNDER BY, SAID LESSEE OR BY ANY PARTY CLAIMING BY, THROUGH, OR UNDER SAID LESSEE.

8. (A) TERMS, PROVISIONS, AND CONDITIONS RELATING TO THE EASEMENT DESCRIBED AS PARCEL 2 CONTAINED IN THE INSTRUMENT CREATING SAID EASEMENT.

(B) RIGHTS OF THE ADJOINING OWNER OR OWNERS TO THE CONCURRENT USE OF SAID EASEMENT.

(C) COVENANTS, CONDITIONS AND RESTRICTIONS AND EASEMENTS FOR INGRESS AND EGRESS AS CREATED BY RECIPROCAL EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS DATED OCTOBER 31, 1996 AND RECORDED NOVEMBER 5, 1996 AS DOCUMENT NUMBER 968-14596, BETWEEN HOME DEPOT U.S.A INC. AND THE AETNA CASUALTY AND SURETY COMPANY, AS FOLLOWS:

THAT PART OF THE SOUTHEAST 1/4 OF SECTION 33, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SAID SECTION 33; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG THE EAST LINE OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SAID SECTION 33, A DISTANCE OF 39.51 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 20 DEGREES 55 MINUTES 43 SECONDS WEST, 6.85 FEET TO A POINT OF CURVATURE; THENCE NORTHWESTERLY ALONG A CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 114.50 FEET, AND AN ARC LENGTH OF 41.82 FEET, WHOSE CHORD BEARS NORTH 10 DEGREES 27 MINUTES 52 SECONDS WEST, 41.59 FEET TO A POINT OF TANGENCY; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, 588.57 FEET; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST, 33.06 FEET; THENCE SOUTH

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CHICAGO TITLE INSURANCE COMPANY

## LOAN POLICY (1992) SCHEDULE B (CONTINUED)

POLICY NO.: 1401 007668989 D1

00 DEGREES 17 MINUTES 33 SECONDS EAST, 591.20 FEET TO A POINT OF CURVATURE; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 64.00 FEET, AND AN ARC LENGTH OF 33.00 FEET, WHOSE CHORD BEARS SOUTH 15 DEGREES 03 MINUTES 49 SECONDS EAST, 32.63 FEET TO A POINT OF TANGENCY; THENCE SOUTH 29 DEGREES 50 MINUTES 06 SECONDS EAST 37.08 FEET TO A POINT OF CURVATURE; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 15.00 FEET, AND AN ARC LENGTH OF 8.47 FEET, WHOSE CHORD BEARS SOUTH 46 DEGREES 00 MINUTES 11 SECONDS EAST, 8.35 FEET TO A POINT ON A CURVE, SAID POINT BEING ALSO ON THE NORTHERLY RIGHT-OF-WAY LINE, OF 87TH STREET; THENCE SOUTHWESTERLY ALONG SAID NORTHERLY RIGHT-OF-WAY LINE BEING A CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 1033.06 FEET, AND AN ARC LENGTH OF 51.18 FEET, WHOSE CHORD BEARS SOUTH 76 DEGREES 53 MINUTES 52 SECONDS WEST 51.18 FEET TO A POINT ON A CURVE; THENCE NORTHWESTERLY ALONG A CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 20.50 FEET, AND AN ARC LENGTH OF 13.75 FEET, WHOSE CHORD BEARS NORTH 01 DEGREES 42 MINUTES 30 SECONDS WEST, 13.50 FEET TO A POINT OF TANGENCY; THENCE NORTH 20 DEGREES 55 MINUTES 43 SECONDS WEST 24.53 FEET TO THE POINT OF BEGINNING AND CONTAINING 23.515 SQUARE FEET OR 0.540 ACRES MORE OR LESS, IN COOK COUNTY, ILLINOIS.

(FOR PARTICULARS SEE DOCUMENT)

- AH 9. ENCROACHMENT OF FENCE LOCATED MAINLY ON THE LAND NORTHWESTERLY AND ON THE LAND WESTERLY AND ADJOINING LAND ONTO LAND BY UNSPECIFIED AMOUNTS AT 3 DIFFERENT SECTIONS AS DISCLOSED BY SURVEY BY JACOB & HEFNER ASSOCIATES, INC. DATED DECEMBER 5, 1996.
- AI 10. ENCROACHMENT OF PAVEMENT LOCATED MAINLY ON THE LAND EAST AND ADJOINING LAND ONTO THE LAND AT THE SOUTHEAST CORNER BY AN UNDISCLOSED AMOUNT.

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CHICAGO TITLE INSURANCE COMPANY

LOAN POLICY (1992)

SCHEDULE B

POLICY NO.: 1401 007668991 D1

NOTWITHSTANDING THE PROVISIONS OF THE CONDITIONS AND STIPULATIONS OF THIS POLICY, ALL ENDORSEMENTS, IF ANY, ATTACHED HERETO ARE VALID DESPITE THE LACK OF SIGNATURE BY EITHER THE PRESIDENT, A VICE PRESIDENT, THE SECRETARY, AN ASSISTANT SECRETARY, OR VALIDATING OFFICER OR AUTHORIZED SIGNATORY OF THE COMPANY.

THIS POLICY DOES NOT INSURE AGAINST LOSS OR DAMAGE SUSTAINED BY THE INSURED (AND THE COMPANY WILL NOT PAY COSTS, ATTORNEY'S FEES OR EXPENSES) WHICH ARISE BY REASON OF:

SPECIAL EXCEPTIONS:

BC 1.

TAXES FOR THE YEARS 1996 & 1997.  
1997 TAXES ARE NOT YET DUE OR PAYABLE.

PERMANENT INDEX NUMBER: 20-18-300-026-0000 1 OF 4.  
AFFECTS: THIS TAX NUMBER AFFECTS A PART OF PIQ & OP.

NOTE: 1996 FIRST ESTIMATED INSTALLMENT AMOUNTING TO \$13,082.77 IS PAID.

NOTE: 1996 FINAL INSTALLMENT NOT DELINQUENT BEFORE AUG 1, 1997.

\* \* \* \*

TAXES FOR THE YEARS 1996 & 1997.  
1997 TAXES ARE NOT YET DUE OR PAYABLE.

PERMANENT INDEX NUMBER: 20-18-303-035-0000 2 OF 4.  
AFFECTS: THIS TAX NUMBER AFFECTS A PART OF PIQ & OP.

NOTE: 1996 FIRST ESTIMATED INSTALLMENT AMOUNTING TO \$3,950.46 IS PAID.

NOTE: 1996 FINAL INSTALLMENT NOT DELINQUENT BEFORE AUG 1, 1997.

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**LOAN POLICY (1992)**

**SCHEDULE B (CONTINUED)**

POLICY NO.: 1401 007668991 D1

TAXES FOR THE YEARS 1996 & 1997.  
1997 TAXES ARE NOT YET DUE OR PAYABLE.

PERMANENT INDEX NUMBER: 20-18-304-023-0000 3 OF 4.  
AFFECTS: THIS TAX NUMBER AFFECTS ONLY A PART OF PIQ.

NOTE: 1996 FIRST ESTIMATED INSTALLMENT AMOUNTING TO \$8,671.46 IS PAID.

NOTE: 1996 FINAL INSTALLMENT NOT DELINQUENT BEFORE AUG 1, 1997.

\* \* \* \* \*

TAXES FOR THE YEARS 1996 & 1997.

1997 TAXES ARE NOT YET DUE OR PAYABLE.

PERMANENT INDEX NUMBER: 20-18-312-003-0000 4 OF 4.  
AFFECTS: THIS TAX NUMBER AFFECTS A PART OF PIQ & OP.

NOTE: 1996 FIRST ESTIMATED INSTALLMENT AMOUNTING TO \$422.10 IS PAID.

NOTE: 1996 FINAL INSTALLMENT NOT DELINQUENT BEFORE AUG 1, 1997.

- E 2. EASEMENTS RESERVED BY THE CITY OF CHICAGO IN ORDINANCE OF VACATION RECORDED OCTOBER 4, 1984 AS DOCUMENT 27282709 FOR ITSELF AND FOR THE BENEFIT OF SUCH PUBLIC AND QUASI-PUBLIC UTILITY AGENCIES AS MAY BE INVOLVED, TO MAINTAIN EXISTING FACILITIES NOW LOCATED AND FOR THE INSTALLATION OF ANY ADDITIONAL FACILITIES WHICH IN THE FUTURE MAY BE LOCATED IN THE VACATED STREETS AND ALLEYS AND FOR THE RENEWAL AND CONSTRUCTION OF SUCH FACILITIES. IT IS FURTHER PROVIDED THAT NO BUILDINGS OR OTHER STRUCTURES SHALL BE ERECTED ON SAID RIGHT OF WAY HEREIN RESERVED OR OTHER USE MADE OF SAID AREAS, WHICH IN THE JUDGMENT OF THE RESPECTIVE MUNICIPAL OFFICIALS HAVING CONTROL OF THE AFORESAID SERVICE FACILITIES OR THE PUBLIC OR QUASI-PUBLIC AGENCIES INVOLVED IN THE CASE OF THE OTHER SERVICE FACILITIES WOULD INTERFERE WITH THE USE, MAINTENANCE, RENEWAL OR RECONSTRUCTION ON SAID FACILITIES OR THE CONSTRUCTION OF ADDITIONAL FACILITIES

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- H 3. <sup>Chg 8-1-97</sup>  
(A) DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS DATED AS OF SEPTEMBER 20, 1996, BY AND AMONG, AMERICAN NATIONAL BANK COMPANY, A DELAWARE CORPORATION ("AMERICAN") AND MARQUETTE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 22, 1993 AND KNOWN AS TRUST NO. 13045 AND ITS SOLE

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CHICAGO TITLE INSURANCE COMPANY

## LOAN POLICY (1992) SCHEDULE B (CONTINUED)

POLICY NO.: 1401 007668991 D1

BENEFICIARY, SOUTHWEST DEVELOPMENT L.L.C. RECORDED SEPTEMBER 24, 1996 AS DOCUMENT 96729764, AND THE TERMS AND PROVISIONS CONTAINED THEREIN.

FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS DATED AS OF JANUARY 20, 1997 AND RECORDED FEBRUARY 20, 1997 AS DOCUMENT 97116437 MADE BY AND BETWEEN AMERICAN NATIONAL CAN COMPANY, A DELAWARE CORPORATION, STATE STREET BANK AND TRUST COMPANY, NOT IN ITS INDIVIDUAL CAPACITY, BUT SOLELY AS TRUSTEE UNDER A DECLARATION OF TRUST DATED NOVEMBER 13, 1995 AND ALDI INC., AN ILLINOIS CORPORATION.

X *clerk (B)*  
RIGHTS OF THE ADJOINING OWNER OR OWNERS TO THE CONCURRENT USE OF THE EASEMENT DESCRIBED AS PARCEL 2.

HP 5. EASEMENT IN FAVOR OF COMMONWEALTH EDISON COMPANY, A CORPORATION OF ILLINOIS, ILLINOIS BELL TELEPHONE COMPANY, A/K/A AMERITECH-ILLINOIS, A CORPORATION OF ILLINOIS, AND ITS/THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, TO INSTALL, OPERATE AND MAINTAIN ALL EQUIPMENT NECESSARY FOR THE PURPOSE OF SERVING THE LAND AND OTHER PROPERTY TOGETHER WITH THE RIGHT OF ACCESS TO SAID EQUIPMENT, AND THE PROVISIONS RELATING THERETO CONTAINED IN THE GRANT RECORDED/FILED AS DOCUMENT NO. 97-197525, AFFECTING THE EAST AND SOUTH 10 FEET OF THE LAND.

HP 6. ANY LIEN, OR RIGHT TO A LIEN, FOR SERVICES, LABOR OR MATERIAL, HEREAFTER FURNISHED, IMPOSED BY LAW AND NOT SHOWN BY THE PUBLIC RECORDS.

HP 7.

LEASE EXECUTED BY LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED MAY 8, 1997 AND KNOWN AS TRUST NUMBER 120924, AS LESSOR, AND ICE DEVELOPMENT, L.L.C., AN ILLINOIS LIMITED LIABILITY COMPANY, AS LESSEE, DATED JULY 25, 1997, A MEMORANDUM OF WHICH LEASE WAS RECORDED AS DOCUMENT -, DEMISING THE LAND FOR A TERM OF YEARS BEGINNING JULY 25, 1997 AND ENDING ON THE LAST DAY OF THE TWENTIETH LEASE YEAR AND ALL RIGHTS THEREUNDER OF, AND ALL ACTS DONE OR SUFFERED THEREUNDER BY, SAID LESSEE OR BY ANY PARTY CLAIMING BY, THROUGH, OR UNDER SAID LESSEE.

HP 8. EXISTING SUBLEASE, AS DISCLOSED BY THE GROUND LEASE DESCRIBED IN SCHEDULE A MADE BY ICE DEVELOPMENT, L.L.C., AN ILLINOIS LIMITED LIABILITY COMPANY TO PLITT THEATERS, INC., A DELAWARE CORPORATION, DATED JULY 25, 1997, A MEMORANDUM OF WHICH WAS RECORDED AS DOCUMENT -, AND ALL RIGHTS THEREUNDER OF, AND ALL ACTS DONE OR SUFFERED THEREUNDER BY, SAID LESSEE OR BY ANY PARTY CLAIMING BY, THROUGH, OR UNDER SAID LESSEE.

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