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1998-08-31 16:01:47
Cook County Recorder 39.50

THIS INSTRUMENT PREPARED BY:
ALLEN C. WESOLOWSKI
MARTIN & KARCAZES, LTD.
30 North LaSalle Street
Suite 4020
Chicago, Illinois 60602

PLEASE MAIL TO:
NORTH COMMUNITY BANK
2639 N. Broadway
Chicago, IL 60613



MORTGAGE

This mortgage made and entered into this 13th day of August, 1998, by and between LASALLE NATIONAL BANK as Trustee under Trust Agreement dated June 16, 1998 and known as Trust No. 121841 (hereinafter referred to as mortgagor) and NORTH COMMUNITY BANK (hereinafter referred to as mortgagee), which maintains an office and place of business at 3639 N. Broadway, Chicago, Illinois 60613.

WITNESSETH, that for the consideration hereinafter stated, receipt of which is hereby acknowledged, the mortgagor does hereby mortgage, sell, grant, assign and convey unto the mortgagee, his successors and assigns, all of the following described property situated and being in the County of Cook, State of Illinois:

See Attached Exhibit A.

Together with and including all buildings, all fixtures including but not limited to all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air conditioning apparatus, and elevators (the mortgagor hereby declaring that it is intended that the items herein enumerated shall be deemed to have been permanently installed as part of the realty), and all improvements now or hereafter existing thereon, except for those fixtures or improvements owned by third party tenants (including, without limitation, the personal property described in that certain lease dated June 29, 1998, between Mortgagor, as landlord and MK-I, L.L.C., as tenant); the hereditaments and appurtenances and all other rights thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, all rights of redemption, and the rents, issues and profits of the above described property (provided, however, that the mortgagor shall be entitled to the possession of said property and to collect and retain the rents, issues, and profits until default hereunder which is not cured within any applicable grace or cure period). To have and to hold the same unto the mortgagee and the successors in interest of the mortgagee forever in fee simple or such other estate, if any, as is stated herein. 10

The mortgagor hereby releases and waives all rights under and by virtue of the homestead exemption laws of the State of Illinois.

The mortgagor covenants that it is lawfully seized and possessed of and has

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the right to sell and convey said property, that the same is free from all encumbrances except as hereinabove recited and including those set forth on Exhibit B attached hereto; and that he hereby binds himself and his successors in interest to warrant and defend the title aforesaid thereto and every part thereof against the claims of all persons whomsoever, claiming by, through or under mortgagor.

This instrument is given to secure (i) the payment of a promissory note dated August 13, 1998 in the principal sum of \$825,000.00, signed by mortgagor and its beneficiary; and (ii) the repayment of any future advance, with interest thereon, made by mortgagee prior to release of this mortgage, which advance is evidenced by a promissory note or guaranty of a promissory note stating that it is secured hereby. Said notes and/or guaranties are herein called the "Indebtedness Hereby Secured". At no time shall the principal amount of the Indebtedness Hereby Secured, not including the sums advanced in accordance herewith to protect the security of this Mortgage, exceed the original amount of the Notes identified in this paragraph, plus One Million (\$1,000,000.00) Dollars.

1. The mortgagor covenants and agrees as follows:

a. It will promptly pay the Indebtedness Hereby Secured.

b. It will pay all taxes, assessments, water rates, and other governmental or municipal charges, fines, or impositions, for which provision has not been made hereinbefore, and will promptly deliver the official receipts therefor to the mortgagee. The real estate taxes will be paid through a real estate tax escrow pursuant to the Real Estate Tax Escrow Agreement executed and delivered by mortgagor's beneficiary, Howard E. Natinsky, D. Steven Soble and George A. Azar. Notwithstanding anything herein contained to the contrary, Mortgagor shall have the right to contest the amount or validity or application, in whole or in part, of any tax, assessment, water rate, and other governmental or municipal charge, fine, or imposition placed upon the property or any laws applicable to mortgagor or the property, provided that mortgagor shall provide security reasonably satisfactory to mortgagee.

c. It will pay such expenses and fees as may be incurred in the protection and maintenance of said property, including the reasonable fees of any attorney employed by the mortgagee for the collection of any or all of the indebtedness hereby secured, or foreclosure by mortgagee's sale or court proceedings, or in any other litigation or proceeding affecting said property. Attorneys' fees reasonably incurred in any other way in enforcing this mortgage shall also be paid by the mortgagor.

d. For better security of the Indebtedness Hereby Secured, upon the request of the mortgagee, its successors or assigns, it shall execute and deliver a supplemental mortgage or mortgages covering any additions, improvements, or betterments made to the property hereinabove described and all personal property acquired by it and located on the property hereinabove described and after the date hereof (all in form reasonably satisfactory to mortgagee). Furthermore, should mortgagor fail to cure any default in the payment of a prior or inferior encumbrance on the property described by this instrument, mortgagor hereby

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agrees, to the extent permitted by such prior or inferior encumbrance, to permit mortgagee to cure such default, but mortgagee is not obligated to do so; and such advances shall become part of the indebtedness secured by this instrument, subject to the same terms and conditions.

e. The rights created by this conveyance shall remain in full force and effect during any postponement or extension of the time of the payment of the Indebtedness Hereby Secured.

f. It will continuously maintain hazard insurance, of such type or types and in such amounts as the mortgagee may from time to time reasonably require on the improvements now or hereafter on said property, and will pay promptly when due any premiums thereof. All insurance shall be carried in companies reasonably acceptable to mortgagee and the policies and renewals thereof shall be held by mortgagee and have attached thereto loss payable clauses in favor of and in form reasonably acceptable to the mortgagee. In event of loss, mortgagor will give immediate notice in writing to mortgagee, and mortgagee may make proof of loss if not made promptly by mortgagor. Mortgagor may itself adjust losses aggregating not in excess of One Hundred Fifty Thousand (\$150,000.00) Dollars, without the consent of mortgagee. Losses in excess of One Hundred Fifty Thousand (\$150,000.00) Dollars may also be adjusted by mortgagor with the consent of the mortgagee, which consent shall not be unreasonably withheld, delayed or conditioned. Each insurance company concerned is hereby authorized and directed to make payment for such loss to mortgagor and mortgagee jointly. Provided that mortgagor is not in default beyond any applicable grace or cure period and that mortgagor has sufficient funds to restore or repair the property damaged or destroyed (taking into consideration the insurance proceeds to be made available), the insurance proceeds, or any part thereof, may be applied by mortgagor to the restoration or repair of the property damaged or destroyed. In all other cases, the mortgagee has the option whether to apply the insurance proceeds to reduce the Indebtedness Hereby Secured or to restore or repair the property damaged or destroyed. In event of foreclosure of this mortgage, or other transfer of title to said property in extinguishment of the Indebtedness Hereby Secured, all right, title, and interest of the mortgagor in and to any insurance policies then in force shall pass to the purchaser or mortgagee or, at the option of the mortgagee, may be surrendered for a refund.

g. It will keep all buildings and other improvements on said property in good repair and condition (subject to receipt of insurance proceeds in case of any fire or other casualty); will commit no waste, impairment, deterioration of said property or any part thereof; in the event of failure of the mortgagor to keep the buildings on said premises and those erected on said premises, or improvements thereon, in good repair, the mortgagee may make such repairs as in its discretion it may deem reasonably necessary for the proper preservation thereof after thirty days' written notice to mortgagor or such longer period as may reasonably be necessary provided mortgagor is diligently pursuing such repair; and the full amount of each and every such payment shall be immediately due and payable; and shall be secured by the lien of this mortgage.

h. It will not voluntarily create against the property subject to this mortgage any lien or liens inferior or superior to the lien of this mortgage

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without the written consent of the mortgagee; and further, that it will keep and maintain the same free from the claim of all persons supplying labor or materials for construction of any and all buildings or improvements now being erected or to be erected on said premises. Notwithstanding anything herein contained to the contrary, mortgagor shall have the right to contest any mechanic's lien placed upon the property subject to this mortgage, provided that mortgagor shall provide security reasonably satisfactory to mortgagee.

i. To the extent that any commercial lease shall provide for below market rent payments, mortgagor will not rent or assign any part of the rent of said mortgaged property without the written consent of the mortgagee. Mortgagee agrees to furnish to any tenant of the premises a standard nondisturbance agreement upon written request, with modifications reasonably acceptable to such tenant. Mortgagor will not demolish, or remove, or substantially alter any building without the written consent of the mortgagee. Upon receipt of occupancy permit, mortgagor may rent individual apartment units without prior written consent of the mortgagee. Anything herein to the contrary notwithstanding, mortgagor may lease any portion of the premises without mortgagee's consent so long as any such lease does not provide for below market rents, and mortgagor (or any tenant) may, without mortgagee's consent, construct any leasehold improvements so long as the same comply with all governmental building and zoning codes.

j. All awards of damages in connection with any condemnation for public use of or injury to any of the property subject to this mortgage are hereby assigned and shall be jointly payable to mortgagor and mortgagee. Mortgagor may itself settle any award aggregating not in excess of One Hundred Fifty Thousand (\$150,000.00) Dollars, without the consent of mortgagee. Any award for damages in excess of One Hundred Fifty Thousand (\$150,000.00) Dollars may also be settled by mortgagor with the consent of the mortgagee, which consent shall not be unreasonably withheld, delayed or conditioned. Provided that mortgagor is not in default beyond any applicable grace or cure period and that mortgagor has sufficient funds to restore or repair any improvement damaged by the taking of a portion the property subject to this mortgage (taking into consideration the award to be made available), the award of damages, or any part thereof, may be applied by mortgagor to the restoration or repair of the improvement so injured or taken. In all other cases, the mortgagee has the option whether to apply the award of damages to reduce the Indebtedness Hereby Secured or to restore or repair the improvements injured or taken. In event of foreclosure of this mortgage, or other transfer of title to said property in extinguishment of the Indebtedness Hereby Secured, all right, title, and interest of the mortgagor in and to any awards of damages in connection with any condemnation for public use of or injury to any of the property subject to this mortgage shall pass to the purchaser or mortgagee.

k. The mortgagee shall have the right to inspect the mortgaged premises at any reasonable time, upon reasonable notice.

l. It has never received any written notice of any violations of federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement,

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handling, production or disposal of Hazardous Materials and, to its actual knowledge, there have been no actions commenced or threatened by any party for noncompliance;

m. It shall deliver to mortgagee the Disclosure Document in accordance with Section 4 of the Illinois Responsible Property Transfer Act (hereinafter called "Act") on or before the date hereof, if required to do so under the Act.

n. It shall keep or cause the premises to be kept free of Hazardous Materials other than as may customarily be used in the course of construction or operation of similar building improvements and businesses and in accordance with applicable environmental laws, and, without limiting the foregoing, it shall not cause the premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce, or process Hazardous Materials, except in compliance with all applicable federal, state and local laws and regulations, nor shall it cause, as a result of any intentional or unintentional act or omission on its part, a release of Hazardous Materials onto the premises or onto any other property in violation of applicable environmental laws.

o. It shall, subject to the contest rights provided in the Environmental Indemnity Agreement of even date executed and delivered to Lender by Howard E. Natinsky, D. Steven Soble, and George A. Azar:

(i) conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials, on, under, from or affecting the premises in accordance with all applicable federal, state, and local laws, ordinances, rules, regulations and policies, to the reasonable satisfaction of Mortgagee, and in accordance with the orders and directives of all federal, state and local governmental authorities; and

(ii) defend, indemnify and hold harmless mortgagee, its employees, agents, officers and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise (excluding consequential or punitive or similar damages except to the extent mortgagee may be subject to the same by reason of any third party claim), arising out of, or in any way related to: (A) the presence, disposal, release or threatened release of any Hazardous Materials on, over, under, from, or affecting the Premises or the soil, water, vegetation, buildings, personal property, persons or animals thereon; (B) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials and occurring on the property subject to this mortgage; (C) any lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Materials located on the property subject to this mortgage; and/or (D) any violation of laws, orders, regulations, requirements or demands of government authorities, or any policies or requirements of mortgagee, which are based upon or in any way related to such Hazardous Materials located on the property subject to this mortgage, including, without limitation, reasonable attorneys' and consultants' fees, investigation and laboratory fees, court costs, and litigation expenses; provided that this indemnity shall not apply to the extent the claim is

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attributable to acts of mortgagee or its agents. Mortgagee shall tender defense of any claim to mortgagor for handling with counsel of mortgagor's selection, and mortgagor shall control any remediation, provided mortgagor has not defaulted under the Note, Mortgage or any other agreement and the default has remained uncured after expiration of any applicable cure period. This indemnity shall survive the release of the lien of the Mortgage, foreclosure or deed in lieu thereof or by an other action, and this covenant shall survive such reconveyance or extinguishment; provided, however, this indemnity shall not apply to any fact, event or circumstance occurring after the Property has been transferred by mortgagor, by foreclosure, deed in lieu of foreclosure or otherwise, or after mortgagor has been dispossessed of the Property by mortgagee without a transfer of title. To the extent of any conflict between the provisions herein and the Environmental Indemnity Agreement of even date executed and delivered to mortgagee by Howard E. Natinsky, D. Steven Soble and George A. Azar, said Environmental Indemnity Agreement shall control.

2. Default in any of the covenants or conditions of this instrument or of the note or loan agreement secured hereby, which, in the case of a monetary default, shall remain uncured for ten days following written notice, or, in the case of a non-monetary default, shall remain uncured for thirty days or any longer period reasonably required to cure the default, shall terminate the mortgagor's right to possession, use, and enjoyment of the property, at the option of the mortgagee or his assigns (it being agreed that the mortgagor shall have such right until default not cured within any applicable grace or cure period). Upon any such uncured default, the mortgagee shall become the owner of all of the rents and profits accruing after default as security for the indebtedness secured hereby, with the right to enter upon said property for the purpose of collecting such rents and profits, pursuant to the terms of a separate instrument of even date entitled Absolute and Unconditional Assignment of Leases and Rents executed by mortgagor.

3. The mortgagor covenants and agrees that if it shall fail to pay the Indebtedness Hereby Secured or any part thereof when due, following expiration of any applicable grace or cure period, or shall fail to perform any covenant or agreement of this instrument or any note or guaranty secured hereby, following expiration of any applicable grace or cure period, the entire Indebtedness Hereby Secured shall immediately become due, payable and collectible without notice, at the option of the mortgagee or assigns, regardless of the maturity, and the mortgagee or his assigns may before or after entry sell said property without appraisalment (the mortgagor having waived and assigned to the mortgagee all rights of appraisalment) pursuant to the laws of the State of Illinois governing the disposition of said property.

4. The proceeds of any sale of said property in accordance with the preceding paragraph shall be applied first to pay the reasonable costs and expenses of said sale, the reasonable expenses incurred by the mortgagee for the purpose of protecting and maintaining said property, and reasonable attorneys' fees; secondly, to pay the Indebtedness Hereby Secured; and thirdly, to pay any surplus or excess to the person or persons legally entitled thereto.

5. In the event said property is sold at a judicial foreclosure sale, and the

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proceeds are not sufficient to pay the Indebtedness Hereby Secured, the mortgagee will be entitled to a deficiency judgment for the amount of the deficiency without regard to appraisal.

6. In the event the mortgagor fails to pay any Federal, state, or local tax assessment, income tax or other tax lien, charge, fee, or other expense charged against the property the mortgagee is hereby authorized at his option to pay the same, after ten days written notice to mortgagor. Any sums so paid by the mortgagee shall be added to and become a part of the principal amount of the Indebtedness Hereby Secured, subject to the same terms and conditions applicable under this mortgage and any note or guaranty secured hereby. If the mortgagor shall pay and discharge the Indebtedness Hereby Secured, then this mortgage shall be canceled and surrendered.

7. The covenants herein contained shall bind and the benefits and advantages shall inure to the respective successors and assigns of the parties hereto. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

8. No waiver of any covenant herein or of the obligation secured hereby shall at any time thereafter be held to be a waiver of the terms hereof or of the note secured hereby.

9. A judicial decree, order or judgment holding any provision of this instrument invalid or unenforceable shall not in any way impair or preclude the enforcement of the remaining provisions or portions of this instrument.

10. Any written notice to be issued to the mortgagor pursuant to the provisions of this instrument shall be addressed to the mortgagor at 135 S. LaSalle, Chicago, Illinois, with copies addressed to mortgagor's beneficiary at 2747 N. Lincoln, Chicago, Illinois 60614 and to Burke, Warren, MacKay and Serritella, 330 N. Wabash, 22nd Floor, Chicago, Illinois 60611-3607, Attn: D. Albert Daspin, and any written notice to be issued to the mortgagee shall be addressed to the mortgagee at 3639 N. Broadway, Chicago, Illinois 60613.

11. The mortgagor, on behalf of it and each and every person claiming by, through, or under him, hereby waives any and all rights of redemption, statutory or otherwise, without prejudice to mortgagee's right to any remedy, legal or equitable, which mortgagee may pursue to enforce payment or to affect collection of all or any part of the indebtedness secured by this mortgage, and without prejudice to mortgagee's right to a deficiency judgment or any other appropriate relief in the event of foreclosure of this mortgage.

12. Upon written request of either party, the mortgagor and mortgagee shall furnish the other an estoppel certificate declaring that no default has occurred under the terms and conditions of this mortgage or under any lease covering any portion of the property subject to this mortgage, and any other information reasonably requested in connection with this mortgage or any lease.

13. This mortgage is executed by LASALLE NATIONAL BANK, not personally, but as Trustee under its Trust No. 121841 in the exercise of the power and authority

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EXHIBIT A

LEGAL DESCRIPTION

LOTS 18, 19, 20, 21 AND 22 IN BLOCK 27 IN JOHNSTON, ROBERTS AND STORR'S ADDITION TO CHICAGO IN THE WEST ½ OF THE SOUTH EAST 1/4 OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 17-04-437-014-0000; 17-04-437-015-0000
17-04-437-016-0000; 17-04-437-017-0000

Common Address: 862-868 N. Franklin, Chicago, Illinois.

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Exhibit B

1. General Taxes for the second installment of the 1997 and the years thereafter.
2. Lease dated June 29, 1998 between Mortgagor, as landlord and MK-I, L.L.C. as tenant.
3. Terms, provisions, conditions and limitations of the urban renewal plan known as Project Chicago-Orleans, recorded April 9, 1969 as Document 20806067.

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