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Cook County Recorder 107.50

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MORTGAGE AND SECURITY AGREEMENT

by and between

UPTOWN NATIONAL BANK OF CHICAGO,  
as Trustee under Trust Agreement dated March 5, 1992  
and known as Trust Number 92-101  
as Borrower

and

THE OHIO NATIONAL LIFE INSURANCE COMPANY  
as Lender



This document prepared by  
and after recording return to:

Mark S. Richmond, Esq.  
Katz Randall & Weinberg  
333 West Wacker Drive  
Suite 1800  
Chicago, Illinois 60606  
KRW File No. 08060.00300

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## MORTGAGE AND SECURITY AGREEMENT

### Cover Sheet

**DATE:** September 14, 1998

**BORROWER:** UPTOWN NATIONAL BANK OF CHICAGO, as Trustee under Trust Agreement dated March 5, 1992 and known as Trust Number 92-101

#### BORROWER'S NOTICE

**ADDRESS:** Uptown National Bank  
4753 N. Broadway  
Chicago, IL 60640

**WITH COPIES TO:** Helco Corp.  
175 E. Delaware  
Suite 7606  
Chicago, IL 60611

**LENDER:** THE OHIO NATIONAL LIFE INSURANCE COMPANY, together with other holders from time to time of the Note (as defined herein).

#### LENDER'S NOTICE

**ADDRESS:** P.O. Box 237  
Cincinnati, Ohio 45201  
Attention: Mortgage and Real Estate

**NOTE AMOUNT:** \$830,000.00

**MATURITY DATE:** October 1, 2008

**STATE:** Illinois

#### RECORD OWNER OF LAND (AS DEFINED

**HEREIN):** UPTOWN NATIONAL BANK OF CHICAGO, as Trustee under Trust Agreement dated March 5, 1992 and known as Trust Number 92-101

**Exhibit A:** The legal description attached hereto and incorporated herein by reference.

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## MORTGAGE AND SECURITY AGREEMENT

1. DEFINITION OF TERMS. As used herein, the terms defined in the cover sheet hereof shall have the meanings given on such sheet, and the following terms shall have the following meanings:

- 1.1. Commitment: as defined in Paragraph 3.7.
- 1.2. Borrower's Notice Address: as defined on the cover hereof.
- 1.3. Casualty: as defined in Paragraph 5.1
- 1.4. Contested Sum: as defined in clause (e) of Paragraph 4.1.
- 1.5. Events of Default: as defined in Paragraph 7.1.
- 1.6. Improvements: all buildings, structures and other improvements now or hereafter existing, erected or placed on the Land, or in any way used in connection with the use, enjoyment, occupancy or operation of the Land or any portion thereof; all fixtures and other articles of every kind and nature whatsoever now or hereafter owned by Borrower and used or procured for use in connection with the operation and maintenance of the Realty or Personality.
- 1.7. In its sole unfettered discretion: as defined in Paragraph 9.8.
- 1.8. Indenture: this Mortgage and Security Agreement.
- 1.9. Insurance Premiums: as defined in Paragraph 4.3.
- 1.10. Insurance Proceeds: as defined in clause (a) of Paragraph 5.3.
- 1.11. Laws: as defined in clause (c) of Paragraph 4.2.
- 1.12. Land: the land described in Exhibit A attached hereto, together with all estate, title, interests, title reversion rights, rents, increases, issues, profits, rights of way or uses, additions, accretions, servitudes, gaps, gores, liberties, privileges, water rights, water courses, alleys, streets, passages, ways, vaults, adjoining strips of ground, licenses, tenements, franchises, hereditaments, rights, appurtenances and easements, now or hereafter owned by Borrower and existing, belonging or appertaining to the Land, all claims or demands whatsoever of Borrower therein or thereto, either in law or in equity, in possession or in expectancy and all estate, right, title and interest of Borrower in and to all streets, roads and public places opened or proposed, now or hereafter appertaining to, the Land.
- 1.13. Leases: all leases, license agreements and other occupancy or use agreements (whether oral or written), now or hereafter existing, which cover or relate to all or any portion of the Property, together with all options therefor, amendments thereto and renewals, modifications and guarantees thereof, and all rents, royalties, issues, profits, revenue, income and other benefits of the Property arising from the use or enjoyment thereof or from the Leases, including, without limitation, cash or securities deposited thereunder to secure performance by the tenants of their obligations thereunder,

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whether said cash or securities are to be held until the expiration of the terms of the Leases or applied to one or more of the installments of rent coming due.

1.14. Lease Assignment: a certain Assignment of Rents and Leases between Borrower and Lender of even date herewith and all modifications or amendments thereto or extensions thereof.

1.15. Loan Documents: this Indenture, the Note, the Lease Assignment, and any and all other documents or instruments related thereto or to the Secured Debt now or hereafter given by or on behalf of Borrower to Lender.

1.16. Note: a certain Promissory Note of even date herewith made by Borrower in favor of Lender in the Note Amount and all modifications, renewals and extensions thereof, which Note is payable in monthly installments until the Maturity Date (as defined in the Note and on the Cover Sheet).

1.17. Parties in Interest: as defined in clause (d) of Paragraph 7.1.

1.18. Personality: all of Borrower's interest in the personal property of any kind or nature whatsoever, whether tangible or intangible, whether or not any of such personal property is now or becomes a "fixture" or attached to the Realty, and is not otherwise owned by tenants of the Realty which is used or will be used in the construction of, or is or will be placed upon, or is derived from or used in connection with, the maintenance, use, occupancy or enjoyment of the Realty, including, without limitation, all accounts, documents, instruments, chattel paper, equipment, general intangibles and inventory (as those terms are defined in the Uniform Commercial Code of the State), all plans and specifications, contracts and subcontracts for the construction, reconstruction or repair of the Improvements, bonds, permits, licenses, guarantees, warranties, causes of action, judgments, claims, profits, rents, security deposits, utility deposits, refunds of fees or deposits paid to any governmental authority, letters of credit, policies and proceeds of insurance, proceeds of the Property or any interest therein, motor vehicles and aircraft, together with all present and future attachments, accretions, accessions, replacements and additions thereto and products and proceeds thereof.

1.19. Property: the Realty and Personality or any portion thereof or interest therein except as the context otherwise requires.

1.20. Property Liabilities: as defined in clause (d) of Paragraph 4.1

1.21. Property Taxes and Charges: as defined in clause (b) of Paragraph 4.1

1.22. Realty: the Land and Improvements or any portion thereof or interest therein, as the context requires.

1.23. Secured Debt: to the extent not prohibited by Law, all principal, interest, additional interest, interest at the After-Maturity Rate set forth in the Note on all sums applicable thereto, late charges and other sums, charges, premiums or amounts due or to become due under the Loan Documents, together with any other sums expended or advanced by Lender under the Loan Documents or otherwise with respect to the care or preservation of the Property or the enforcement of the Loan Documents.

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- 1.24. Taking: as defined in Paragraph 5.1.
- 1.25. Taking Proceeds: as defined in clause (a) of Paragraph 5.3.

2. GRANTING CLAUSES. For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower has executed and delivered the Loan Documents and hereby irrevocably and absolutely grants, transfers, assigns, mortgages, bargains, sells, aliens, warrants and conveys to Lender, with all POWERS OF SALE AND STATUTORY RIGHTS, if any, in the State, all of Borrower's estate, right, title and interest in, to and under, and grants to Lender a first and prior security interest in, the Property and any and all of the following whether now owned or held or hereafter acquired or owned by Borrower:

- (a) All Leases;
- (b) All profits and sales proceeds, including, without limitation, earnest money and other deposits, now or hereafter becoming due by virtue of any contract or contracts for the sale of Borrower's interest in the Property;
- (c) All proceeds (including claims thereto or demands therefor) of the conversion, voluntary or involuntary, permitted or otherwise, of any of the foregoing into cash or liquidated claims; and
- (d) All Insurance Proceeds and all Taking Proceeds.

FOR THE PURPOSE OF SECURING THE FOLLOWING OBLIGATIONS OF BORROWER TO LENDER, in such order of priority as Lender may elect:

- (1) Payment of the Secured Debt;
- (2) Payment of such additional sums with interest thereon which may hereafter be loaned to Borrower by Lender or advanced under the Loan Documents (at the After-Maturity Rate set forth in the Note), even if the sum of the amounts outstanding at any time exceeds the Note Amount; and
- (3) Due, prompt and complete observance, performance, fulfillment and discharge of each and every obligation, covenant, condition, warranty, agreement and representation contained in the Loan Documents.

This Indenture is also intended to be a Security Agreement under the Uniform Commercial Code as in force from time to time in the State. Time is of the essence.

TO HAVE AND TO HOLD the Property and all parts thereof unto Lender and its successors and assigns forever, subject, however, to the terms and conditions herein.

3. REPRESENTATIONS AND WARRANTIES. Borrower hereby represents and warrants to Lender that the following warranties and representations in this paragraph are and will be true, correct and complete at all times:

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3.1. **Due Organization, Authority.** If Borrower is a corporation, partnership (general, limited or joint venture) or trust, Borrower is duly organized and validly existing, and in good standing under the laws of the State and has power adequate to carry on its business as presently conducted, to own the Property, to make and enter into the Loan Documents and to carry out the transactions contemplated therein.

3.2. **Execution, Delivery and Effect of Loan Documents.** The Loan Documents have each been duly authorized, executed and delivered by Borrower, and each is a legal, valid and binding obligation of Borrower, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and subject to the exercise of judicial discretion in accordance with general principles of equity (regardless whether enforcement is sought in a proceeding in equity or at law).

3.3. **Other Obligations.** Borrower is not in violation of any term or provision of any document governing its organization or existence or in default under any instruments or obligations relating to Borrower's business, Borrower's assets or the Property. No party has asserted any claim or default relating to any of Borrower's assets or the Property. The execution and performance of the Loan Documents and the consummation of the transactions contemplated thereby will not result in any breach of, or constitute a default under, any contract, agreement, document or other instrument to which Borrower is a party or by which Borrower may be bound or affected, and do not and will not violate or contravene any Law to which Borrower is subject; nor do any such instruments impose or contemplate any obligations which are or will be inconsistent with the Loan Documents. Borrower has filed all federal, state, county and municipal income tax returns required to have been filed by Borrower and has paid all taxes which have become due pursuant to such returns or pursuant to any assessments received by Borrower. Borrower does not know of any basis for additional assessment with regard to any such tax. No approval by, authorization of, or filing with any federal, state or municipal or other governmental commission, board or agency or other governmental authority is necessary in connection with the authorization, execution and delivery of the Loan Documents.

3.4. **Construction and Completion of Improvements.** The presently existing Improvements have been completed and installed in a good and workmanlike manner, in compliance with Laws and the plans and specifications previously delivered to Lender. The Improvements are served by electric, gas, sewer, water, telephone and other utilities required for the present and contemplated uses and operation thereof. Any and all streets, other off-site improvements, access to the Property necessary for its present and contemplated uses and operation and service by utilities have been completed, are serviceable and have been accepted or approved by appropriate governmental bodies.

Borrower understands that any septic system or sewage treatment facility or sewer line on the Property or to be constructed from the Property to a public sewer line and all personal property and rights therein are conveyed to Lender hereunder as part of the Property, whether located on the Property as described in Exhibit A or adjacent to or connected with the same. Borrower covenants not to allow any tie-ons or connections to any such sewer facility or sewer line or to allow any person to use the sewer facility or sewer line or to make any modifications in the plans and specifications or construction contract for the construction of any such sewer facility or sewer line without the written consent of Lender. Borrower understands that such consent may be withheld and/or conditioned upon receipt of documentation and assurances acceptable to Lender, and that Lender will have the first right and lien as secured hereby to any monies or revenues arising from any such tie-ons, connections, or use.

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3.5. Legal Actions. There are no (i) actions, suits or proceedings including, without limitation, any condemnation, insolvency or bankruptcy proceedings, pending or, to the best of Borrower's knowledge and belief, threatened against or affecting Borrower, its business or the Property, or (ii) investigations, at law or in equity, before or by any court or governmental authority, pending or, to the best of Borrower's knowledge and belief, threatened against or affecting Borrower, Borrower's business or the Property, except actions, suits and proceedings fully covered by insurance and heretofore fully disclosed in writing to Lender. Borrower is not in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority affecting Borrower or the Property. Furthermore, to the best knowledge and belief of Borrower, there is no basis for any unfavorable decision, ruling or finding by any court or governmental authority which would in any material respect adversely affect (a) the validity or enforceability of the Loan Documents, or (b) the condition (financial or otherwise) or ability of Borrower to meet Borrower's obligations under the Loan Documents.

3.6. Financial Statements. All statements, financial or otherwise, submitted to Lender in connection with the transaction evidenced by the Loan Documents are true, correct and complete in all respects and all such financial statements have been prepared in accordance with generally accepted accounting principles consistently applied and fairly present the financial condition of the parties or entities covered by such statements as of the date thereof and no additional borrowings have been made by such parties or entities or any of them, since the date thereof, nor has Borrower, or any such party or entity experienced a material, adverse change in its finances, business, operations, affairs or prospects since the date thereof. Borrower and each such party or entity is now solvent.

3.7. Solvency of Tenants. To the best of Borrower's knowledge and belief, no Tenant (as specified in the loan commitment or the loan application, if any, to Lender (the "Commitment") for the loan secured hereby) of the Realty or any part thereof has suffered or incurred any material, adverse change in its finances, business, operations, affairs or prospects since the date of the Commitment.

3.8. Adverse Change to Property. No event or series of events has or have intervened or occurred since the date of Borrower's submission of the Commitment which would, either individually or collectively, have a material adverse effect on the Property.

3.9. Title to Property. Borrower has good and clear record and marketable title to the Realty and good and merchantable title to the Personality and Borrower shall and will warrant and forever defend the title thereto and Lender's first and prior lien thereto unto Lender, its successors and assigns, against the claims of all persons whomsoever.

3.10. Compliance with Laws and Private Covenants. The Property complies with all Laws. The Land is a separate and distinct parcel for tax purposes and shall not become subject to Property Taxes and Charges against any other land. Borrower has examined and is familiar with any applicable agreements affecting the Land and there now exists no violation of any such agreements. Borrower has no notice that any of the Improvements encroaches upon any easement over the Land or upon adjacent property.

3.11. Independence of the Property. Borrower has not by act or omission permitted any building or other improvements on property not covered by this Indenture to rely on the Property or any part thereof or any interest therein to fulfill any municipal or governmental requirement for the existence of such property, building or improvements; and no improvement on the Property shall rely on any property not covered by this Indenture or any interest therein to fulfill any governmental or municipal

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requirement. Borrower has not by act or omission impaired the integrity of the Property as a single separate, subdivided zoning lot separate and apart from all other property.

#### 4. BORROWER'S COVENANTS.

##### 4.1. Payments.

(a) Secured Debt. Borrower shall pay promptly to Lender, when due, the Secured Debt at the times and in the manner provided in the Loan Documents.

(b) Property Taxes and Charges. Subject to Paragraph 4.1(e), Borrower shall pay, prior to delinquency, all real estate taxes and personal property taxes, betterments, assessments (general and special), imports, levies, water, utility and sewer charges, and any and all income, franchise, withholding, profits and gross receipts taxes, other taxes and charges, all other public charges whether of a like or different nature, imposed upon or assessed against Borrower or the Property or upon the revenues, rents, issues, income and profits or use or possession thereof, and any stamp or other taxes which may be required to be paid with respect to any of the Loan Documents, any of which might, if unpaid, result in a lien on the Property, regardless to whom paid or assessed ("Property Taxes and Charges"). Borrower shall furnish Lender with receipts showing payment of the Property Taxes and Charges prior to the applicable delinquency date thereof.

As used in this Paragraph 4.1(b), the term "real estate taxes" shall include any form of assessment, license fee, license tax, business license fee, business license tax, commercial rental tax, levy, charge, penalty, tax or similar imposition, imposed by any authority having the direct power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage or other improvement or special assessment district thereof, against any legal or equitable interest in the Property.

If requested by Lender, Borrower shall cause to be furnished to Lender a tax reporting service covering the Property of the type and duration, and with a company satisfactory to Lender.

(c) Taxes on Lender. If any Law of the State or the United States or any other governmental authority imposes upon Lender the obligation to pay the whole or any part of the Property Taxes and Charges or changes in any way the Laws relating to taxation so as to adversely affect the Loan Documents or Lender, then Borrower shall pay Property Taxes and Charges or reimburse Lender immediately therefor, unless in the opinion of counsel to Lender, it might be unlawful to require Borrower to pay the same or such payment might result in the imposition of interest prohibited by Law. In such case, an Event of Default shall exist.

(d) Liabilities. Borrower shall pay, prior to delinquency, all debts and liabilities incurred in the construction, operation, development, use, enjoyment, repair, maintenance, replacement, restoration and management of the Property ("Property

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Liabilities"), including without limitation, utility charges, sums due mechanics and materialmen and other sums secured or which might be secured by liens on the Property.

(c) Right to Contest. Borrower may, in good faith, by appropriate proceedings, contest the validity, applicability or amount of any asserted Property Taxes and Charges or Property Liabilities ("Contested Sum"), after written notice of the same to Lender. During such contest, Borrower shall not be deemed in default hereunder if (i) prior to delinquency of the Contested Sum, Borrower deposits with Lender cash or other security, in form satisfactory to Lender in its sole unfettered discretion, adequate to cover the payment of such Contested Sum and any obligation, whether matured or contingent, of Borrower or Lender therefor, together with interest, costs and penalties thereon and (ii) Borrower promptly causes to be paid any amounts adjudged to be due, together with all costs, penalties and interest thereon, before such judgment becomes final. Each such contest shall be concluded and the Contested Sum, interest, costs and penalties thereon shall be paid prior to the date such judgment becomes final or any writ or order is issued under which the Property could be sold pursuant to such judgment.

(d) Expenses. Borrower shall, to the extent allowed by Law, and upon receipt of notice and failure to pay, on demand but without counterclaim, setoff, deduction, defense, abatement, suspension, deferment, discrimination or reduction, all fees (including, without limitation, attorneys' fees and disbursements), taxes, recording fees, commissions and other liabilities, costs and expenses incurred in connection with (i) the making or enforcement of the Loan Documents; (ii) Lender's exercise and enforcement of its rights and remedies under Paragraphs 7, 8, and elsewhere hereof; and (iii) Lender's protection of the Property and its interest therein.

Borrower shall not be entitled to any credit on the Secured Debt by reason of the payment of any sums required to be paid under subparagraph 4.1(b) through (d).

#### 4.2. Operation of the Property.

(a) Maintenance Alterations. Borrower shall maintain and preserve the Property in good repair and condition and shall correct any defects or faults in the Property. Borrower shall pursue diligently any remedies or recourse which Borrower may have under agreements, warranties and guarantees relating to the Property. Borrower shall not commit, permit or suffer any demolition or waste of the Property or any use or occupancy which constitutes a public or private nuisance. Borrower shall not do, permit or suffer to be done any act whereby the value of any part of the Property may be decreased. Borrower shall not make any material alterations, improvements, additions, utility installations or the like to the Property without the prior written consent of Lender in each instance; provided, however, Borrower may make (i) replacements or substitution of any items of the Personalty if the replacement or substitution is of a quality, utility, value, condition and character similar to or better than the replaced or substituted item and is free and clear of any lien, charge, security interest or encumbrance, except as created or permitted by this Indenture; (ii) alterations the cost of which does not exceed \$10,000.00 in the aggregate in any calendar year; and (iii) alterations required under any Leases.

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(b) Liens. Borrower shall promptly discharge any mechanics', laborers', materialmen's or similar lien, charge, attachment, or lis pendens filed or recorded which relates to Borrower or the Property, provided, however, Borrower may contest any such lien, charge, attachment or lis pendens in the same manner as provided in subparagraph 4.2(b) above.

(c) Compliance with Laws and Private Covenants. Borrower shall truly keep, observe and satisfy all, and not suffer violations of any Federal, regional, state and local laws, ordinances, rules, regulations, statutes, decisions, orders, judgments, directives or decrees of any governmental or regulatory authority court or arbitrator (herein collectively "Laws") and private covenants affecting the Property.

(d) Use and Management. The Property shall at all times be used for commercial purposes. The Property shall at all times be managed by Borrower (so long as no default exists under any of the Loan Documents) or a leasing and management agent which has been approved by the Lender prior to execution of any management agreement with the same. Any change in the use of the Property or the management agent shall be subject to the prior written approval of Lender.

(e) Inspection. Upon reasonable prior notice, Borrower shall permit Lender to enter upon and inspect the Property at reasonable times, subject to the rights of the tenants, without delay, hindrance or restriction.

4.3. Insurance. Borrower shall obtain or cause to be obtained and keep in force, with one or more insurers acceptable to Lender, such insurance as Lender may from time to time specify by notice to Borrower, including, without limitation, insurance providing (i) comprehensive general public liability and property damage coverage with a broad form coverage endorsement and a combined single limit of at least \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate, (ii) protection against fire, "extended coverage" and other "All Risk" perils, including, where required, flood, to the full replacement value of the Property with a waiver of subrogation, replacement cost, and difference in conditions endorsements, and (iii) rent loss insurance in an amount of not less than a sum equal to twelve (12) months' rental income from all Leases. Lender must be named as loss payee on the rent loss insurance and as an additional insured on the comprehensive general public liability policy.

All property insurance policies or certificates of insurance shall include the standard mortgage clause in the State naming Lender as the first mortgagee with loss payable to Lender as such mortgagee, shall not be cancelable or modifiable without thirty (30) days' prior written notice to Lender, and shall not have more than a \$10,000.00 deductible for any single Casualty. Lender shall also be named as loss payee on the rent loss insurance and an additional insured on the comprehensive general liability and property damage coverage. Additionally, all property insurance must provide a property limit equal to: (a) the cost approach valuation as provided by the appraisal provided to Lender prior to the funding of the loan evidenced by the Note less land and approved soft costs or (b) the outstanding principal balance due under the Note, whichever is less. If the property policy provides a limit equal to (b) above, the policy must contain an agreed amount endorsement. The proceeds of all property insurance policies must be payable to Lender.

If the Property is located in a flood hazard Zone "A", flood insurance in an amount acceptable to Lender must also be provided subject to Lender's right to approve the survey. If the Property

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is located in earthquake zones "3" or "4" as depicted by the Seismic Zone Map of the United States, Earthquake Insurance in an amount acceptable to Lender must be provided. Loss of Rents Insurance providing one year's coverage must also be provided.

The casualty insurance company must meet the following basic requirements:

- (a) Have a minimum rating of "A+" according to Best's Insurance Reports - Property/Casualty Edition;
- (b) Have a claims paying rating of at least single "A" by two approved rating agencies;
- (c) Must be a stock company or a non-assessable mutual company located in a country acceptable to Lender; and
- (d) Must be licensed in the state where the Property is located.

In addition, Lender will not allow any carrier or self-insurer to provide a policy limit in excess of 10% of its policyholder's surplus on any one risk. A tenant will be allowed to self-insure through a wholly owned subsidiary as long as the tenant's net worth exceeds \$100,000,000.00.

Borrower shall provide Lender with evidence of compliance with this Paragraph 4.3, in such forms as required from time to time by Lender, upon notice from Lender or at least fifteen (15) days prior to the expiration date of any policy required hereunder, each bearing notations evidencing the prior payment of premiums ("Insurance Premiums") or accompanied by other evidence satisfactory to Lender that such payment has been made, shall be delivered by Borrower to Lender.

Borrower, to the full extent permitted by Law and to the full extent permitted without invalidating the insurance policies required above, hereby waives the right of subrogation against Lender. Borrower will inform its insurers of the waiver and obtain a waiver of subrogation endorsement if applicable.

Lender shall not, because of accepting, rejecting, approving or obtaining insurance, incur any liability for (i) the existence, nonexistence, form or legal sufficiency thereof, (ii) the solvency of any insurer, or (iii) the payment of losses.

Borrower shall keep, observe and satisfy, and not suffer violations of, the requirements of insurance companies and any bureau or agency which establishes standards of insurability affecting the Property, and pertaining to acts committed or conditions existing thereon.

Upon foreclosure of this Indenture or other transfer of title or assignment of the Property in discharge, in whole or part, of the Secured Debt, all right, title and interest of Borrower in and to all policies of insurance required by this Paragraph 4.3 shall inure to the benefit of and pass to Lender.

4.4. Escrow. Borrower shall pay to Lender monthly, on each date on which a payment is due under the Note, one-twelfth (1/12th) of such amount as Lender from time to time estimates will be required to pay all Property Taxes and Charges before becoming past due and Insurance Premiums. Lender's estimates shall be based on the amounts actually payable or, if unknown, on the amounts actually

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paid for the year preceding that for which such payments are being made. Lender may require Borrower to pay one sixth (1/6th) of said estimate as escrow coverage, which may be retained by Lender in escrow from year to year. Any deficiencies shall be promptly paid by Borrower to Lender on demand. Borrower shall transmit bills for the Property Taxes and Charges and Insurance Premiums as soon as received. When Lender has received from Borrower or on its account funds sufficient to pay the same, Lender shall, except as provided in Paragraph 7.2, pay such bills. If the amount paid by Borrower in any year exceeds the aggregate required, such excess shall be applied to escrow payments for the succeeding year. Payments from said account for such purposes may be made by Lender at its discretion even though subsequent owners of the Property may benefit thereby. Lender shall not be a trustee of funds in said account and may commingle such funds with its general assets without any obligation to pay interest thereon or account for any earnings, income or interest on such funds.

#### 4.5. Sales and Encumbrances.

(a) It shall be an immediate Event of Default hereunder if any of the following shall occur without the prior written consent of Lender, which consent, if given in Lender's sole unfettered discretion, may be conditional upon a change in the interest rate under the Note, payment of a fee or change in the term of the Note, delivery of a management contract approved by Lender with a management company approved by Lender, and/or the satisfaction of other conditions required by Lender or one or more of the foregoing or other requirements of Lender:

(i) If the Borrower shall create, effect, contract for, commit to or consent to or shall suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of the Property or any part thereof, or interest therein;

(ii) If the Borrower is a trustee, then if any beneficiary of the Borrower shall create, effect, contract for, commit to or consent to, or shall suffer or permit, any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of the Property or any part thereof or such beneficiary's beneficial interest in the Borrower;

(iii) If the Borrower is a corporation, or if any corporation is a beneficiary of a trustee Borrower, then if any shareholder of such corporation shall create, effect, contract for, commit to or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of any such shareholder's shares in such corporation;

(iv) If the Borrower is a partnership or joint venture, or if any beneficiary of a trustee Borrower is a partnership or joint venture, then if any general partner or joint venturer in such partnership or joint venture shall create, effect contract for, commit to or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of any part of the partnership interest or joint venture interest, as the case may be, of such partner or joint venturer;

(v) If the Borrower is a limited liability company or if any beneficiary of a trustee Borrower is a limited liability company, then if any member in

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such limited liability company shall create, effect, contract for, commit to or consent to or shall suffer or permit any assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of any part of the limited liability company interest, as the case may be, of such member;

(vi) If there shall be any change in control (by way of transfers of stock ownership, partnership interests or otherwise) in any general partner which directly or indirectly controls or is a general partner of a partnership or joint venture beneficiary as described above;

In each case, whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided that the provisions of this Section 4.5 shall be operative with respect to, and shall be binding upon, any persons who, in accordance with the terms hereof or otherwise, shall acquire any part of or interest in or encumbrance upon the Property, or such beneficial interest in, share of stock of or partnership or joint venture interest in the Borrower or any beneficiary of a trustee Borrower; and provided further that no consent by Lender to, or any waiver of, any event or condition which would otherwise constitute an Event of Default under this Section 4.5, shall constitute a consent to or a waiver of any other or subsequent such event or condition or a waiver of any right, remedy or power of Lender consequent thereon.

(b) One Time Sale. Notwithstanding the provisions of Section 4.5(a) above, provided no Event of Default exists, one and only one sale and conveyance of the Property (or all of the shareholder's interests in Borrower) and assumption of the loan will be permitted but only upon full compliance with the following conditions prior to such conveyance:

- (i) Lender shall have received an amount in good faith equal to one percent (1%) of the outstanding principal balance due under the Note ("Assumption Fee") at the time the conveyance and assumption are approved by Lender, or in Lender's sole discretion, at the time of the closing of the sale and conveyance; and
- (ii) Lender shall have received at least thirty (30) days prior to the proposed sale and transfer, and, in its sole discretion approved, such financial data and information respecting the proposed grantee as Lender may reasonably request, including but not limited to a financial statement certified by a certified public accountant dated within two (2) months prior to the date of the requested conveyance, which financial information is satisfactory to Lender in its sole and absolute discretion; and
- (iii) Lender shall have received such financial data and information respecting the Property as Lender may reasonably request, including but not limited to an income and expense statement covering the operation of the Property for the three (3) year period immediately preceding the date of the request to convey.

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which financial information is satisfactory to Lender in its sole and absolute discretion; and

- (iv) Lender shall have received a management agreement acceptable to Lender executed by the proposed grantee with a management company acceptable to Lender, or such documents and information requested by Lender relating to the proposed grantee or Borrower sufficient to demonstrate that the proposed grantee possesses the experience and capability needed in Lender's sole opinion to manage the Property; and
- (v) Assumption in writing by proposed grantee in form acceptable to Lender of all of Borrower's obligations and duties under the Note and this Indenture and all other Loan Documents including any Environmental Indemnity Agreement in accordance with the terms and provisions of the same, and assumption in writing by the principal owners of grantee of all personal obligations, liabilities and agreements whether contained herein or in the Note or in any certificates, affidavits, Environmental Indemnity Agreement, or otherwise, by which the Borrower is bound or liable under all Loan Documents which were given in connection with the Secured Debt; and
- (vi) Borrower's payment of all costs and expenses of Lender in connection with such sale, including all reasonable legal fees incurred by the Lender.

Nothing contained in this subparagraph (b) shall be construed to entitle the grantee to have a right to convey the Property to a subsequent grantee or to permit any subsequent assumption or to release the Borrower from liability under the Note, this Indenture and the other Loan Documents, including the Environmental Indemnity Agreement upon the assumption referred to in subparagraph (b)(iv) hereof.

In the event of any conveyance of the Property by the Borrower or any grantee-borrower in violation of the terms and conditions hereof, Lender shall be entitled to (i) the Assumption Fee (as payment to Lender for Lender's administrative expenses and not as liquidated damages) and (ii) any or all of Lender's remedies contained in any of the Loan Documents.

(c) Permitted Transfers. Notwithstanding the provisions of Section 4.5(a) above, provided no Event of Default exists, any shareholder of the beneficiary of Borrower ("Beneficiary") may sell, give, devise, bequeath or otherwise transfer his or her interest in Beneficiary so long as the transferee of any such interest is a Family member of such shareholder. For purposes hereof, a "Family Member" means an adult who is the spouse, sibling, child or grandchild of such shareholder or a trust for the benefit of one or more Family Members. A Family Member may, provided all of the conditions of this Section 4.5(b) are satisfied, transfer his interest in the Beneficiary. Transfers of any interest in Beneficiary to a minor child shall not be permitted unless the transferee is a trust or custodian under the Uniform Gifts to Minors Act or similar custodial law or statute.

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Within ten (10) days prior to any transfer described in this Section 4.5(c), Lender shall be furnished with such documentation as is reasonably required by Lender to evidence that such transfer is permitted under this paragraph. No transfer described in this Section 4.5(c) shall affect or release in any way or to any extent the personal liability of any signatory under any Loan Document delivered to Lender, including, without limitation, the Note or any Environmental Indemnity Agreement or Indemnification Agreement.

4.6. Financial Records and Statements. Borrower shall keep accurate books and records in accordance with federal income tax basis of accounting, consistently applied, in which full, true and correct entries shall be promptly made as to all operations of the Property and shall permit all such books and records to be inspected and copied by Lender, its designee or its representatives during customary business hours. Borrower shall deliver or cause to be delivered to Lender within ninety (90) days after the end of each calendar year a statement of condition or balance sheet of Borrower relating solely to the Property as at the end of such year and an annual operating statement showing in reasonable detail all income and expenses of Borrower with respect to the Property, both certified as to accuracy by Borrower and by an independent certified public accountant acceptable to Lender; and a current list of all persons then occupying portions of the Property under their Leases, the rentals payable by such tenants and the unexpired terms of their Leases, certified as to their accuracy by a representative of Borrower acceptable to Lender, and in form and substance satisfactory to Lender.

Borrower shall also furnish to Lender, on a semi-annual basis, a certified rent roll showing the names of all tenants, the amount of space leased, the annual rental being paid, the rent per square foot, any participation rent or expense reimbursement being paid by tenants, the expiration date of each lease, and the amount of vacant space (if any).

In addition to the foregoing, Borrower will deliver or cause to be delivered to Lender, within ninety (90) days after the end of the fiscal year of the tenant of the Property, or as soon thereafter as is reasonably practicable, audited financial statements of each tenant of the Property and of any guarantor of such tenant's lease to the extent such tenant and guarantor are required to deliver the same pursuant to the Leases.

4.7. Further Assurances. Borrower shall promptly upon request of Lender (a) correct any defect, error or omission which may be discovered in the contents of any Loan Document or in the execution or acknowledgment thereof; (b) execute, acknowledge, deliver and record or file such further instruments (including, without limitation, mortgages, deeds of trust, security agreements, financing statements and specific assignments of rents or leases) and do such further acts, in either case as may be necessary, desirable or proper in Lender's opinion to (i) carry out more effectively the purposes of the Loan Documents, (ii) protect and preserve the first and valid lien and security interest of this Indenture on the Property or to subject thereto any property intended by the terms thereof to be covered thereby, including without limitation, any renewals, additions, substitutions or replacements thereto or (iii) protect the interest and security interest of Lender in the Property against the rights or interests of third parties.

Borrower hereby appoints Lender as its attorney-in-fact, coupled with an interest, to take the above actions and to perform such obligations on behalf of Borrower, at Borrower's sole expense and with notice to the Borrower, if Borrower fails to comply fully with Borrower's obligations under this Paragraph 4.7.

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4.8. **Indemnity.** Borrower shall indemnify, defend and hold harmless Lender from and against, and reimburse Lender for, all claims, demands, liabilities, losses, damages, judgments, penalties, costs and expenses, including, without limitation, attorneys' fees and disbursements, which may be imposed upon, asserted against or incurred or paid by Lender by reason of, on account of or in connection with any bodily injury or death or property damage occurring in, upon or in the vicinity of the Property through any cause whatsoever, or asserted against Lender on account of any act performed or omitted to be performed under the Loan Documents or on account of any transaction arising out of or in any way connected with the Property or the Loan Documents, except to the extent such liability arises as a result of the willful misconduct or gross negligence of Lender or after such time as the Lender has taken possession of the Property through foreclosure, deed in lieu of foreclosure or otherwise. Lender shall provide Borrower with the opportunity to defend any such claims on behalf of Lender.

4.9. **No Preferences.** Borrower shall not repay any sums borrowed from anyone other than Lender, if, as a result of, or concurrently with the making of, such payments, Borrower would then be in default under the Loan Documents or in the payment of obligations incurred in the ordinary operation of the Property.

4.10. **Notices.** Borrower shall deliver to Lender at Lender's Notice Address promptly upon receipt of the same, copies of all notices, certificates, documents and instruments received by Borrower which materially and adversely affect Borrower, the Property or the Leases.

4.11. **Estoppel Certificates.** Borrower shall promptly furnish to Lender from time to time, on the request of Lender, written statements signed and, if so requested, acknowledged, setting forth the then unpaid principal, premium and interest on the Note and specifying any claims, offsets or defenses which Borrower asserts against the Secured Debt or any obligations to be paid or performed by Borrower under the Loan Documents, together with any other information reasonably requested by Lender.

4.12. **Legal Existence.** If Borrower is executing this instrument as a partnership, corporation, limited liability company, or trust:

(a) Borrower warrants that (i) it is duly organized and validly existing, in good standing under the laws of the state of its organization, (ii) it is duly qualified to do business and is in good standing in the state of its organization and in the state where the Property is located, (iii) it has the power, authority and legal right to carry on the business now being conducted by it and to engage in the transactions contemplated by the Loan Documents and (iv) the execution and delivery of the Loan Documents and the performance and observance of the provisions thereof have been duly authorized by all necessary actions of the Borrower.

(b) Borrower agrees that so long as any of its obligations hereunder, or under the Loan Documents remain unsatisfied, it will not dissolve or liquidate (in whole or in part) its existence, that it will maintain its existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another corporation or partnership, without the prior express written consent of the Lender except as may be otherwise provided herein. Notwithstanding the foregoing, Beneficiary may, upon notice to, but without Lender's consent, merge or consolidate with any corporation provided that the total assets and the total net worth of such assignee after such consolidation or merger shall be in excess of the greater of (i)

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the net worth of Beneficiary immediately prior to such consolidation or merger, or (ii) the net worth as of the date hereof, determined by generally accepted accounting principals and provided that neither Borrower nor Beneficiary is in default hereunder, and provided further that such successor shall execute an instrument in writing, acceptable to Lender in its reasonable discretion, fully assuming all of the obligations and liabilities imposed upon hereunder and deliver the same to Landlord. Notwithstanding the foregoing, no such merger or consolidation shall result in the release of Borrower or Beneficiary or any other party from any obligations hereunder or under the Note or any Indemnification Agreement or Environmental Indemnity Agreement.

4.13. Defense and Notice of Actions. Borrower shall, without liability, cost or expense to Lender, protect, preserve and defend title to the Property, the security hereof and the rights or powers of Lender, against all adverse claimants to title or any possessory or non-possessory interests therein, whether or not such claimants or encumbrances assert title paramount to that of Borrower or Lender or claim their interest on the basis of events or conditions arising subsequent to the date hereof.

4.14. Lost Note. Borrower shall, if the Note is mutilated, destroyed, lost or stolen, deliver to Lender, in substitution therefor, a new promissory note containing the same terms and conditions as the Note with a notation thereon of the unpaid principal and accrued and unpaid interest, and that it is in substitution for the Note, provided Lender shall agree to indemnify and hold Borrower harmless from and against all liabilities to third parties resulting from the loss of such Note.

4.15. Personalty. Borrower shall use the Personalty primarily for business purposes and keep it at the Land. Borrower shall immediately notify Lender in writing of any change in its place of business, and, as of the execution hereof and hereafter from time to time when requested by Lender, upon any acquisition of items of property constituting Personalty, Borrower shall provide Lender with a current, accurate inventory of the Personalty.

## 5. CASUALTIES AND TAKINGS.

5.1. Notice to Lender. In the case of any act or occurrence of any kind or nature which results in damage, loss or destruction to the Property (a "Casualty"), or commencement of any proceedings or actions which might result in a condemnation or other taking for public or private use of the Property or which relates to injury, damage, benefit or betterment thereto (a "Taking"), Borrower shall immediately notify Lender describing the nature and the extent of the Taking or the Casualty, as the case may be. Borrower shall promptly furnish to Lender copies of all notices, pleadings, determinations and other papers in any such proceedings or negotiations.

5.2. Repair and Replacement. In case of a Casualty, the Borrower will promptly restore the Property to the equivalent of its original condition, regardless of whether insurance proceeds exist, are made available, or are sufficient. In case of a Taking, the Borrower will promptly restore, repair or alter the remaining property in the manner reasonably satisfactory to the Lender. Provided, however, upon a Casualty or Taking, if Lender applies the Insurance Proceeds (defined below) or the Taking Proceeds (defined below) to the reduction of the Secured Debt, Borrower shall be obligated only to remove any debris from the Property and take such actions as are necessary to make the undamaged or non-taken portion of the Property into a functional economic unit, insofar as it is practicable under the circumstances.

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## 5.3. Proceeds.

(a) Collection. Borrower shall use its best efforts to collect the maximum amount of insurance proceeds payable on account of any Casualty ("Insurance Proceeds"), and the maximum award of payment or compensation payable on account of any Taking ("Taking Proceeds"). In the case of a Casualty, Lender may, at its sole option, make proof of loss to the insurer, if not made promptly by Borrower. Borrower shall not settle or otherwise compromise any claim for Insurance Proceeds or Taking Proceeds without Lender's prior written consent.

(b) Assignment to Lender. Borrower hereby assigns, sets over and transfers to Lender all Insurance Proceeds and Taking Proceeds and authorizes payments of such Proceeds to be made directly to Lender. Lender may, at its sole option, apply such Proceeds to either of the following, or any combination thereof:

(i) payment of the Secured Debt, either in whole or in part, in any order determined by Lender in its sole unfettered discretion; or

(ii) repair or replacement, either partly or entirely, of any part of the Property so destroyed, damaged or taken, in which case Lender may impose such terms, conditions and requirements for the disbursement of proceeds for such purposes as it, in its sole unfettered discretion, deems advisable. Lender shall not be a trustee with respect to any Insurance Proceeds or Taking Proceeds, and may commingle Insurance Proceeds or Taking Proceeds with its funds without obligation to pay interest thereon.

5.4. Use of Proceeds for Rebuilding. Notwithstanding anything to the contrary which may be contained herein, and so long as (i) no default exists under any of the Loan Documents, (ii) all of the Leases for the Property are in full force and effect and no lease is terminated as a result of such Casualty, (iii) the Leases require Borrower to rebuild or restore the leased premises, (iv) after any repair or reconstruction, the Property shall comply with all laws, ordinances and regulations and the like, and (v) all of the improvements on the Property as of the date of this Indenture can be rebuilt, then upon written request by Borrower to Lender, Borrower shall be entitled to the Insurance Proceeds relating to a casualty loss on the Property which are payable to Lender pursuant to the terms of this Indenture, and such Proceeds shall be disbursed by Lender to Borrower upon the terms and conditions hereinafter set forth.

(a) Such proceeds shall be first applied to pay all reasonable expenses incurred by Lender in connection with the Casualty, including, without limitation, attorneys' fees. Proceeds remaining thereafter are referred to hereafter as "Net Proceeds".

(b) Lender shall disburse the Net Proceeds to Borrower on the following terms and conditions:

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(i) Prior to the first and each subsequent disbursement, Lender must be satisfied that:

(1) Lender is holding a fund comprised of (a) the Net Proceeds and, if necessary, (b) additional deposits made by Borrower or tenants of the Property, which, in the reasonable judgment of Lender, is sufficient to restore the Improvements on the Property to the condition immediately prior to the loss or damage, together with (c) a fund (comprised of rental interruption insurance proceeds or funds deposited by Borrower) sufficient to pay operating expenses, taxes, debt service on the Note and other so-called "carrying costs" of the Property during the period of repair;

(2) after the repairs are completed, the Property will produce sufficient income to pay operating expenses, taxes, debt service on the Note and other so-called "carrying costs" of the Property;

(3) the repairs will be conducted under the supervision of an architect, engineer and/or a general contractor selected and paid by Borrower and approved by Lender;

(4) the repairs will be performed pursuant to plans and specifications approved by Lender and by a contractor selected and paid by Borrower and approved by Lender;

(5) the Property, after the repairs are completed, will be in compliance with all applicable laws, ordinances, regulations and the like; and

(6) no default, or occurrence which with the passage of time or the giving of notice will be a default, exists under any of the terms, covenants and conditions of the Loan Documents.

(ii) With respect to each disbursement and accompanying each request therefor, Borrower will deliver to Lender:

(1) a certificate addressed to Lender executed by Borrower and by the architect, engineer or general contractor supervising the repairs,

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stating that such disbursement is to pay for costs of repair not paid previously by any other prior disbursement and that the amount of such disbursement does not exceed the aggregate of such costs incurred or paid on account of work, labor or services performed and material installed in or stored upon the Property at the date of such certificate; and

(2) an endorsement to Lender's title insurance policy, in which the making of the disbursement is recognized and the effective date of coverage is changed to the date of disbursement with no intervening liens thereon, together with such other endorsements as Lender may require.

(iii) Each disbursement shall be in an amount equal to 90% of the costs described in the certificate referred to in Paragraph (b)(i) above. Disbursement of the final balance of the Net Proceeds, constituting not less than ten (10%) thereof, shall be disbursed only upon delivery to Lender of the following, in addition to the foregoing:

(1) evidence satisfactory to Lender that all claims then existing for labor, services and materials enforceable by lien upon the Property have been paid in full or provision acceptable to Lender has been made therefore;

(2) a certificate of such architect or engineer or general contractor that the repairs of the Property have been completed in a good and workmanlike manner and in accordance with all laws, rules, regulations, orders, codes and ordinances then applicable to such restoration; and

(3) an estoppel certificate in form satisfactory to Lender from each tenant occupying or leasing space in the Property affected by the loss.

(c) If the loss or damage is repaired pursuant to Paragraph (b) above, Lender shall apply any Net Proceeds in excess of the amount used for such repairs to reduction of the Secured Debt.

(d) If any of the foregoing conditions are not or cannot be satisfied, the provisions of this Indenture relating to disposition of Insurance Proceeds shall again become applicable. Moreover, in such cases, Lender shall have the option to make the repairs for and on Borrower's behalf and do any other act Lender deems necessary and appropriate.

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(e) Lender shall in no event be liable for the performance or observance of any covenant or condition arising under any lease in connection with the Property or be obligated to take any action to repair or restore the Property.

(f) Notwithstanding the foregoing, the obligations of Lender hereunder are subject always to the right and option of Lender to apply all or any portion of the Net Proceeds to cure any Event of Default existing or arising at any time or times in the terms, covenants and conditions of the Note or other Loan Documents.

If any portion of the Secured Debt shall thereafter be unpaid, Borrower shall not be excused from the payment thereof in accordance with the terms of the Loan Documents. Lender shall not, in any event or circumstances, be liable or responsible for failure to collect or exercise diligence in the collection of any Insurance Proceeds or Taking Proceeds.

Notwithstanding anything to the contrary contained herein, in the event for any reason all of the improvements on the Property as of the date hereof cannot be repaired or reconstructed after a Casualty, Lender shall have the right, at Lender's sole option, to apply the Net Proceeds to any of the following:

(i) payment of the Secured Debt, either in whole or in part, in any order determined by Lender in its sole unfettered discretion; or

(ii) repair or replacement of the entire Property destroyed or damaged pursuant to the terms of subparagraphs 5.3 and 5.4 above; or

(iii) repair or replacement of that portion of the Property which can be repaired or replaced pursuant to the terms of subparagraphs 5.3 and 5.4 above after deducting from the Net Proceeds an amount, as determined by Lender, which, when applied to the Secured Debt, shall reduce the amount thereof such that the ratio of net operating income to total debt service from the Property is satisfactory to Lender.

6. LEGAL PROCEEDINGS. Whether or not an Event of Default (as defined in Paragraph 7.1) has occurred and exists, Lender shall have the right, but not the duty or obligation, to intervene or otherwise participate in, prosecute or defend at any time any legal or equitable proceedings (including, without limitation, any eminent domain proceedings) which, in Lender's sole unfettered discretion, affect the Property, the Leases or any of the rights created by the Loan Documents.

#### 7. DEFAULTS; REMEDIES OF LENDER.

7.1. Defaults; Events of Default. Any of the following shall constitute an "Event of Default" hereunder:

(a) Breach of Named Covenant. Any breach by Borrower of the covenants in the Indenture in Paragraphs 4.1 (Payments), 4.3 (Insurance), 4.4 (Escrow),

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4.5 (Sales and Encumbrances) or 4.8 (Indemnity), which breach shall immediately thereupon, without notice or opportunity to cure, constitute an Event of Default hereunder; or

(b) Misrepresentations. Any representation or warranty made by Borrower or any person(s) or entity(ies) comprising Borrower or any guarantor(s) under the Loan Documents or any certificate or side letter delivered in connection with the Loan Documents proves to be untrue, misleading or is not fulfilled and which results in a material adverse effect on the Property or Lender's security interest therein or under which, if known to the Lender prior to the disbursement of the Loan, the Lender would not have entered into the Loan transaction; or

(c) Breach of Covenant. Any breach by Borrower of any other covenant in the Loan Documents or failure to observe or perform any other covenant, agreement, condition, term or provision of any of the Loan Documents or any certificate or side letter delivered in connection with the Loan Documents which breach shall not be cured within thirty (30) days after written notice to Lender, or, if such default cannot be cured within said thirty (30) day period, Borrower shall not have commenced such cure within thirty (30) days after written notice and does not diligently pursue a cure at all times thereafter; or

(d) Bankruptcy. Immediately upon the occurrence of any of the following without the doing of any act or the giving of any notice by Lender: (i) Borrower or any one or more of the then legal or beneficial owners of the Property, or any individual or entity then personally liable on or relating to the Secured Debt (including, without limitation, any indemnitor or guarantor) or, if Borrower is a partnership, any general partner or joint venturer (collectively the "Parties in Interest") becomes insolvent, makes a transfer in fraud of, or assignment for the benefit of, creditors or admits in writing its inability, or is unable, to pay debts as they become due; or (ii) a receiver or trustee is appointed for all or substantially all of the assets of a Party in Interest or for the Property in any proceeding brought by a Party in Interest, or any such receiver or trustee is appointed in any proceeding brought against a Party in Interest or the Property and not discharged within sixty (60) days after such appointment, or a Party in Interest consents or acquiesces in such appointment; or (iii) a Party in Interest files a petition under the Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof, is adjudged a debtor under the Bankruptcy Code or insolvent; or (iv) a petition or answer proposing the adjudication of a Party in Interest as a bankrupt or its reorganization under any present or future federal or state bankruptcy or similar law is filed in any court and such petition or answer is not discharged or denied within sixty (60) days after the filing thereof; or (v) any composition, rearrangement, liquidation, extension, reorganization or other relief of debtors now or hereafter existing is requested by a Party in Interest; or

(e) Adverse Court Action. A court of competent jurisdiction enters a stay order with respect to, assumes custody of or sequesters all or a substantial part of, the Property, or the Property is taken on execution or by other process of law; or

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(f) Suspension. Borrower or any person(s) or entity(ies) comprising Borrower or any guarantor(s) under the Loan Documents terminates or suspends its business; or

(g) Other Events. Any other event occurs which, under any of the Loan Documents constitutes a default by the Borrower or gives the Lender the right to accelerate the maturity of any part of the indebtedness secured by this Indenture.

7.2. Remedies. In case of an Event of Default, Lender may, at any time thereafter, at its option and without notice, exercise any or all of the following remedies:

(a) Acceleration. Declare the entire Secured Debt due and payable, and it shall thereupon be immediately due and payable:

(b) Foreclosure. Foreclose this Indenture by instituting a foreclosure suit in any court having jurisdiction. Borrower hereby waives all right to appraisal allowed under any laws, which appraisal may be obtained at the option of Lender;

(c) Offset Rights. Apply in satisfaction of the Secured Debt or any amount at any time to become due or payable in connection with the ownership, occupancy, use, restoration or repair of the Property, any deposits or other sums credited by or due from Lender to Borrower, including, without limitation, Insurance Proceeds, Taking Proceeds and funds held in the escrow account referred to in Paragraph 4.4;

(d) Cure of Default. Without releasing Borrower from any obligation hereunder or under the Loan Documents, cure any Event of Default. In connection therewith, Lender may enter upon the Property and do such acts and things as Lender deems necessary or desirable to protect the Property or the Leases, including, without limitation: (i) paying, purchasing, contesting or compromising any encumbrance, charge, lien, or claim, Property Taxes and Charges or Property Liabilities; (ii) paying any Insurance Premiums and (iii) employing counsel, accountants, contractors and other appropriate persons to assist Lender in the foregoing. Should Lender make any such payments, the amount thereof shall be secured hereby, provided, however, that the aggregate amount of indebtedness secured hereby, together with all such payments, shall not exceed two hundred percent (200%) of the original indebtedness secured hereby. Borrower shall reimburse Lender for such payments immediately upon demand, and said amount shall bear interest at the After-Maturity Rate specified in the Note until repaid.

(e) Possession of Property. Take physical possession of the Property and of all books, records, documents and accounts relating thereto and exercise, without interference from Borrower, any and all rights which Borrower has with respect to the Property, including, without limitation, the right at Borrower's expense to rent and lease the same, to hire a professional property manager for the Property, and to apply any rents, royalties, income or profits collected to the reduction of the Secured Debt without in any way curing or waiving any default. If necessary to obtain possession as provided for above, Lender may, without exposure to liability from Borrower or other persons, invoke any and all legal remedies to dispossess Borrower, including without limitation, one or more actions for forcible entry and detainer, trespass and restitution. In connection

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with any action taken by Lender pursuant to this subparagraph (e), Lender shall not be liable for any loss sustained by Borrower resulting from any failure to let the Property or from any other act or omission of Lender in managing the Property unless caused by the willful misconduct or bad faith of Lender, nor shall Lender be obligated to perform or discharge any obligation, duty or liability under any Lease or by reason of any Loan Document. Borrower hereby agrees to indemnify, hold harmless and defend Lender from and against any liability, loss or damage incurred by Lender under any Lease or under the Loan Documents as a result of Lender's exercise of rights or remedies under any of the Loan Documents. Should Lender incur any such liability, the amount thereof shall be secured hereby and Borrower shall reimburse Lender therefor immediately upon demand, and said amount shall bear interest at the After-Maturity Rate specified in the Note until repaid. Lender shall have full power to make from time to time all alterations, renovations, repairs and replacements to the Property as may seem proper to Lender;

(f) Remedies under State Law. Lender shall have the right to exercise all rights under laws of the State, whether or not herein specified.

(g) Receiver. Secure the appointment of a receiver or receivers, as a matter of right for the Property whether such receivership be incident to a proposed sale of such Property or otherwise, and without regard to the value of the Property or the solvency of Borrower. Borrower hereby consents to the appointment of such receiver or receivers, waives any and all defenses to such appointment and agrees not to oppose any application therefor by Lender. The appointment of such receiver, trustee or other appointee by virtue of any court order or Laws shall not impair or in any manner prejudice the rights of Lender to receive payment of the rents and income pursuant to the Lease Assignment;

(h) Uniform Commercial Code Remedies. Exercise any and all rights of a secured party with respect to the Personality under the Uniform Commercial Code of the State and in conjunction with in addition to or in substitution for those rights and remedies:

(i) take possession of, assemble and collect Personality or render it unusable by Borrower; and

(ii) require Borrower to assemble the Personality and make it available at any place Lender may designate so as to allow Lender to take possession or dispose of the Personality.

Written notice mailed to Borrower, as provided herein, fifteen (15) days prior to the date of public sale of Personality or prior to the date after which private sale of the Personality will be made, shall be deemed to have been a public sale conducted in a commercially reasonable manner, if held contemporaneously with a sale of Property as provided in this Indenture. In the event of a foreclosure sale, whether made by Lender under the terms hereof, or under judgment of a court, the Personality and the other parts of the Property may, at the option of Lender, be sold in parts or as a whole. It shall not be necessary that Lender take possession of the Personality prior to the time that any sale

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pursuant to the provisions of this subparagraph is conducted and it shall not be necessary that the Personalty be present at the location of such sale;

A CARBON, PHOTOGRAPHIC OR OTHER REPRODUCTION OF THIS INDENTURE OR ANY FINANCING STATEMENT RELATING TO THIS INDENTURE SHALL BE SUFFICIENT AS A FINANCING STATEMENT. THIS INDENTURE IS EFFECTIVE AND SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS WHICH ARE OR ARE TO BECOME FIXTURES INCLUDED WITHIN THE PROPERTY AND IS TO BE FILED FOR RECORD IN THE REAL ESTATE RECORDS OF THE LOCATION IN THE STATE WHERE THE PROPERTY IS SITUATED. THE MAILING ADDRESS OF LENDER AND THE ADDRESS OF BORROWER FROM WHICH INFORMATION CONCERNING THE SECURITY INTEREST MAY BE OBTAINED ARE SET FORTH ON THE COVER SHEET HEREOF;

- (i) Sale. Sell the Property under applicable laws of the State;
- (j) Judicial Actions. Commence and maintain an action or actions in any court of competent jurisdiction to foreclose this Indenture pursuant to the Laws of the State or to obtain specific enforcement of the covenants of Borrower hereunder. Borrower agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy;
- (k) Subrogation. Have and exercise all rights and remedies of any person, entity or body politic to whom Lender renders payment or performance in connection with the exercise of its rights and remedies under the Loan Documents, including, without limitation, any rights or remedies under any mechanics' or vendors' lien or liens, superior titles, mortgages, deeds of trust, liens, encumbrances, rights, equities and charges of all kinds heretofore or hereafter existing on the Property to the extent that the same are paid or discharged from the proceeds of the Note whether or not released of record; and
- (l) Other. Take such other actions or commence such other proceedings as Lender deems necessary or advisable to protect its interest in the Property and its ability to collect the Secured Debt as are available under Laws.

Any sums advanced by Lender under this Paragraph 7.2 shall bear interest at the After-Maturity Rate specified in the Note, shall be payable by Borrower on demand and, together with such interest, shall constitute a part of the Secured Debt.

All sums realized by Lender under this Paragraph 7.2, less all costs and expenses incurred by Lender under this Paragraph 7.2, including, without limitation, attorneys' fees and disbursements, property management fees, costs of alterations, renovations, repairs and replacements made or authorized by Lender and all expenses incident to Lender taking possession of the Property, and such sums as Lender deems appropriate as a reserve to meet future expenses of the Property, shall be applied to the Secured Debt in such order as Lender shall determine. Thereafter, any balance shall be paid to the person or persons legally entitled thereto.

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7.3. **Holding Over.** Should Borrower, after an Event of Default, continue in possession of the Property, either lawfully or unlawfully, Borrower shall be a tenant from day to day, terminable at the will of either Borrower or Lender, at a reasonable rental per diem, based upon the value of the Property occupied computed by Lender in its sole unfettered discretion, such rental to be due and payable daily to Lender.

7.4. **General Provisions.**

(a) **Multiple Sales.** Several sales may be made pursuant to Paragraph 7.2 without exhausting Lender's right to such remedy for any unsatisfied part of the Secured Debt and without exhausting the power to exercise such remedy for any other part of the Secured Debt, whether matured at the time or subsequently maturing. If a part of the Property is sold pursuant to Paragraph 7.2, and the proceeds thereof do not fully pay and satisfy the Secured Debt, such sale, if so made, shall not in any manner affect the unpaid and unsatisfied part of the Secured Debt, but as to such unpaid and unsatisfied part, the Loan Documents shall remain in full force and effect as though no such sale had been made.

(b) **Cumulative Remedies.** All of the rights, remedies and options set forth in Paragraph 7.2 or otherwise available at law or in equity are cumulative and may be exercised without regard to the adequacy of or exclusion of any other right, remedy, option or security held by Lender.

(c) **Right to Purchase.** At any sale or sales of the Property pursuant to Paragraph 7.2, Lender shall have the right to purchase the Property being sold, and in such cases the right to credit against the amount of the bid made therefor (to the extent necessary to satisfy such bid), the amount of the Secured Debt then due.

(d) **Right to Terminate Proceedings.** Lender may, at any time before conclusion of any proceeding or other action brought in connection with its exercise of the remedies provided for in Paragraph 7.2, terminate, without prejudice to Lender, such proceedings or actions.

(e) **No Waiver or Release.** Lender may resort to any remedies and the security given by the Loan Documents in whole or in part, and in such portions and in such order as may seem best to Lender in its sole unfettered discretion, and any such action shall not in any way be considered as a waiver of any of the rights, benefits or remedies evidenced by the Loan Documents. The failure of Lender to exercise any right, remedy or option provided for in the Loan Documents shall not be deemed to be a waiver of any of the covenants or obligations secured by the Loan Documents. No sale of all or any of the Property, no forbearance on the part of Lender and no extension of the time for the payment of the whole or any part of the Secured Debt or any other indulgence given by Lender to Borrower or any other person or entity, shall operate to release or in any manner affect Lender's interest in the Property or the liability of Borrower to pay the Secured Debt.

(f) **Waivers and Agreements Regarding Remedies.** To the full extent Borrower may do so Borrower hereby:

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(i) agrees that Borrower will not at any time insist upon, plead, claim or take the benefit or advantage of any laws now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, and waives and releases all rights of redemption, valuation, appraisal, stay of execution, extension and notice of election to mature or declare due the whole of the Secured Debt;

(ii) waives all rights to a marshalling of the assets of Borrower, including the Property, or to a sale in inverse order of alienation in the event of foreclosure of the interests hereby created, and agrees not to assert any right under any Law pertaining to the marshalling of assets, the sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Lender under the terms of the Loan Documents to a sale of the Property for the collection of the Secured Debt without any prior or different resort for collection, or the right of Lender to the payment of the Secured Debt out of proceeds of sale of the Property in preference to every other claimant whatsoever;

(iii) waives any right to bring or utilize any defense, counterclaim or setoff, other than one which denies the existence or sufficiency of the facts upon which the action is grounded. If any defense, counterclaim or setoff, other than one permitted by the preceding sentence is timely raised in such foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based on a claim which could be tried in an action for money damages, such claim may be brought in a separate action which shall not thereafter be consolidated with Lender's foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying Lender's action;

(iv) waives and relinquishes any and all rights and remedies which Borrower may have or be able to assert by reason of the provisions of any Laws pertaining to the rights and remedies of sureties; and

(v) waives the defense of laches and any applicable statutes of limitation.

(g) Lender's Discretion. Lender may exercise its options and remedies under any of the Loan Documents in its sole unfettered discretion.

(h) Sales. In the event of a sale or other disposition of the Property pursuant to Section 7.2 and the execution of a deed or other conveyance pursuant thereto, the recitals therein of facts (such as default, the giving of notice of default and notice of

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sale, demand that such sale should be made, postponement of sale, sale, purchase, payment of purchase money and other facts affecting the regularity or validity of such sale or disposition) shall be conclusive proof of the truth of such facts. Any such deed or conveyance shall be conclusive against all persons as to such facts recited therein.

The acknowledgment of the receipt of the purchase money, contained in any deed or conveyance executed as aforesaid, shall be sufficient to discharge the grantee of all obligations to see to the proper application of the consideration therefor as herein provided. The purchaser at any trustee's or foreclosure sale hereunder may disaffirm any easement granted or rental agreement or Lease made in violation of any provision of the Loan Documents, and may take immediate possession of the Property free from, and despite the terms of, such grant of easement and rental or Lease.

### 8. POSSESSION AND DEFEASANCE.

8.1. **Possession.** Until the occurrence of an Event of Default and except as otherwise expressly provided to the contrary, Borrower shall retain full possession of the Property, subject, however, to all of the terms and provisions of the Loan Documents.

8.2. **Defeasance.** If all of the Secured Debt is paid as the same becomes due and payable and if all of the covenants, warranties, conditions, undertakings and agreements made in the Loan Documents are kept and performed, then on that event only, all rights under the Loan Documents shall terminate and the Property shall become wholly clear of the liens, grants, security interests, conveyances and assignments evidenced hereby, and Lender shall release or cause to be released, such liens, grants, assignments, conveyances and security interests in due form at Borrower's cost, and this Indenture shall be void.

Recitals of any matters or facts in any instrument executed hereunder shall be conclusive proof of the truthfulness thereof. To the extent permitted by law, such an instrument may describe the grantee as "the person or persons legally entitled thereto." Lender shall not have any duty to determine the rights of persons claiming to be rightful grantees of any of the Property. When the Property has been fully released, such release shall operate as a reassignment of all future rents, issues and profits of the Property to the person or persons legally entitled thereto, unless such release expressly provides to the contrary.

### 9. GENERAL.

9.1. **Lender's Right to Waive, Consent or Release.** Lender may at any time and from time to time, in writing: (a) waive compliance by Borrower with any covenant herein made by Borrower to the extent and in the manner specified in such writing; (b) consent to Borrower doing any act which Borrower is prohibited hereunder from doing, or consent to Borrower's failing to do any act which Borrower is required hereunder to do, to the extent and in the manner specified in such writing; or (c) release any part of the Property, or any interest therein from this Indenture and the lien of the Loan Documents. No such act shall in any way impair the rights hereunder of Lender, except to the extent specifically agreed to by Lender in such writing.

9.2. **No Impairment.** The interests and rights of Lender under the Loan Documents shall not be impaired by any indulgence, including, without limitation, (a) any renewal, extension or modification which Lender may grant with respect to any of the Secured Debt, (b) any surrender,

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compromise, release, renewal, extension, exchange or substitution which Lender may grant in respect of the Property or any interest therein, or (c) any release or indulgence granted to any maker, endorser, guarantor or surety of any of the Secured Debt.

9.3. Amendments. The Loan Documents may not be waived, changed or discharged orally, but only by an agreement in writing and signed by Lender, and any oral waiver, change or discharge of any provision of the Loan Documents shall be without authority and of no force and effect. Such waiver, change or discharge shall be effective only in the specific instances and for the purposes for which given and to the extent therein specified.

9.4. No Usury. Any provision contained in any of the Loan Documents notwithstanding, Lender shall not be entitled to receive or collect, nor shall Borrower be obligated to pay interest on, any of the Secured Debt in excess of the maximum rate of interest permitted by applicable Laws, and if any provision of the Loan Documents shall ever be construed or held to permit the collection or to require the payment of any amount of interest in excess of that permitted by such Laws, the provisions of this Paragraph 9.4 shall control unless contrary or inconsistent with any provision of the Note, in which case the provision of the Note shall control. Borrower's and Lender's intent is to conform strictly to the usury laws now in force, and the Loan Documents evidencing or relating to any of the Secured Debt shall be held subject to reduction to conform to said Laws as now or hereafter construed.

9.5. Notices. Any notice, request, demand or other communication required or permitted under the Loan Documents (unless otherwise expressly provided therein) shall be given in writing by delivering the same in person to the intended addressee, by overnight courier service with guaranteed next day delivery or by certified United States Mail postage prepaid or telegram sent to the intended addressee at the applicable Notice Address or to such different address as either Borrower or Lender shall have designated by written notice to the other sent in accordance herewith. Such notices shall be deemed given when received or, if earlier, in the case of delivery by certified United States Mail, two (2) days after deposit therein. No notice or demand on Borrower in any case shall of itself entitle Borrower to any other or further notice or demand in similar or other circumstances. Copies of all notices of default hereunder shall also be delivered to Henry A. Waller, Esq., Mandel, Lipton & Stevenson, 120 N. LaSalle Street, Suite 2900, Chicago, Illinois 60602.

9.6. Successors and Assigns. The terms, provisions, covenants and conditions hereof shall be binding upon Borrower, and any permitted successors and assigns of Borrower, and shall inure to the benefit of Lender and its successors, substitutes and assigns, and shall constitute covenants running with the Land. All references in this Indenture to Borrower or Lender shall be deemed to include all such successors, substitutes and assigns.

If, in contravention of the provisions of this Indenture or otherwise, ownership of the Property or any portion thereof becomes vested in a person other than Borrower, Lender may, without notice to the Borrower, whether or not Lender has given written consent to such change in ownership, deal with such successor or successors in interest with reference to the Loan Documents and the Secured Debt in same manner as with Borrower, without in any way vitiating or discharging Lender's remedies under or the Borrower's liability under the Loan Documents or on the Secured Debt.

9.7. Severability. A determination that any provision of the Loan Documents is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of the Loan Documents to any person or circumstances

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is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

9.8. **Gender and Construction.** Within this Indenture, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. References in this Indenture to "herein", "hereunder" or "hereby" shall refer to this entire Indenture, unless the context otherwise requires. When the phrase "in its sole unfettered discretion" is used in the Loan Documents with respect to Lender, it shall permit Lender to evaluate such criteria as it chooses in approving or disapproving the requested or pending action.

9.9. **Joint and Several Liability.** If Borrower is composed of more than one party, the obligations, covenants, agreements, representations and warranties contained within the Loan Documents, as well as the obligations arising thereunder, are and shall be joint and several as to each such party.

9.10. **Modifications.** References to any of the Loan Documents in this Indenture shall be deemed to include all amendments, modifications, extensions and renewals thereof.

9.11. **Governing Laws.** This Indenture shall be construed according to and governed by the laws of the State.

9.12. **Captions.** All paragraph and subparagraph captions are for convenience of reference only and shall not affect the construction of any provision herein.

9.13. **Acknowledgment of Receipt.** Borrower hereby acknowledges receipt, without charge, of a true and complete copy of this Indenture.

9.14. **Hazardous Waste.** Borrower covenants, represents, and warrants that no toxic or hazardous substances, including without limitation asbestos and the group of organic compounds known as polychlorinated biphenyls have been or shall be generated, treated, stored or disposed of, or otherwise deposited in or located on the Property, including without limitation the surface and subsurface waters of the Property; (b) no activity has been or shall be undertaken on the Property which would cause (i) the Property to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise bring the Property within the ambit of, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. § 6901 *et seq.*, or any similar state law or local ordinance, (ii) a release or threatened release of hazardous waste from the Property within the meaning of, or otherwise bring the Property within the ambit of, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601 - 9657, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), or any similar state law or local ordinance or any other environmental law, or (iii) the discharge of pollutants or effluents into any water source or system, or the discharge into the air of any emissions, which would require a permit under the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*, or the Clean Air Act, 42 U.S.C. § 7401, *et seq.*, or any similar state law or local ordinance; (c) there are and shall be no substances or conditions in or on the Property which may support a claim or cause of action under RCRA, CERCLA, SARA, or any other federal, state or local environmental statutes, regulations, ordinances or other environmental regulatory requirements, and (d) there are and shall be no underground storage tanks or underground deposits located on the Property.

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9.15. Exhibits. The following are the Exhibits referred to in this Indenture, which are hereby incorporated by reference herein:

Exhibit A - Property Description

9.16. JURY TRIAL WAIVER. RECOGNIZING THAT ANY DISPUTE ARISING HEREUNDER WILL BE COMMERCIAL IN NATURE AND COMPLEX, AND IN ORDER TO MINIMIZE THE COSTS INVOLVED IN THE DISPUTE RESOLUTION PROCESS, THE UNDERSIGNED HEREBY WAIVES THE RIGHT TO A TRIAL BY JURY.

9.17. Trustee Exculpation. This Instrument is executed by Uptown National Bank of Chicago, as Trustee under Trust Agreement dated March 5, 1992 and known as Trust Number 92-101 in the exercise of the power and authority conferred upon and vested in it as such Trustee. All the terms, provisions, stipulations, covenants and conditions to be performed by Uptown National Bank are undertaken by it solely as Trustee, as aforesaid, and not individually, and all statements herein made are made on information and belief and are to be construed accordingly, and no personal liability shall be asserted or be enforceable against Uptown National Bank by reason of any of the terms, provisions, stipulations, covenants and/or statements

IN WITNESS WHEREOF, this instrument has been executed by the undersigned under seal on the date first above written.

"BORROWER:"

UPTOWN NATIONAL BANK OF CHICAGO, as Trustee under Trust Agreement dated March 5, 1992 and known as Trust Number 92-101

ATTEST:

By: [Signature]  
Its: TRUST OFFICER

X  
By: [Signature]  
Its: Sr. Vice President

STATE OF ILLINOIS )  
COUNTY OF COOK )

I, Dawn Boyle, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Carter Huhta, as Sr. Vice President and Steven Olson, as \_\_\_\_\_ Secretary of Uptown National Bank of Chicago, a national banking association, as Trustee under Trust agreement dated March 5, 1992 and known as Trust No. 92-101, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Sr. Vice President and \_\_\_\_\_ Secretary of said Bank, respectively, appeared before me this day in person and acknowledged that they signed and delivered the

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said instrument as their own free and voluntary act and as the free and voluntary act of said Bank for the uses and purposes therein set forth; and said \_\_\_\_\_ Secretary did then and there acknowledge that he, as custodian of the corporate seal of said Bank did affix the corporate seal of said Bank to said instrument as his own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 14 day of September, 1998.



Dawn Boyce  
Notary Public

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## EXHIBIT "A"

### LEGAL DESCRIPTION:

#### PARCEL 1:

LOT 2 IN DE YOUNG'S SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTH 1/2 OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 36 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 08, 1957 AS DOCUMENT 16821944, IN COOK COUNTY, ILLINOIS, ALSO (EXCEPTING THEREFROM THE EAST 6 FEET OF LOT 2 AS CONDEMNED IN CASE NUMBER 82L12148);

#### PARCEL 2:

THE EAST 1/2 OF THE HERETOFORE VACATED 16 FOOT PUBLIC ALLEY LYING WEST OF AND ADJOINING AFORESAID LOT 2 IN THE DE YOUNG'S SUBDIVISION, IN COOK COUNTY, ILLINOIS.

#### PARCEL 3:

LOT 1 AND LOT 7 IN DE YOUNG'S SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTH 1/2 OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 36 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 08, 1957 AS DOCUMENT 16821944 (EXCEPTING FROM SAID LOT 1 THAT PART THEREOF DESCRIBED AS: BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 1, THENCE WEST ALONG THE NORTH LINE OF SAID LOT 1 A DISTANCE OF 13 FEET TO A POINT; THENCE SOUTHEASTERLY ALONG A STRAIGHT LINE TO A POINT OF INTERSECTION WITH A LINE LYING 6 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID LOT 1, SAID POINT LYING 18 FEET SOUTH OF SAID NORTHEAST CORNER OF LOT 1 (AS MEASURED ALONG SAID EAST LINE OF LOT 1); THENCE SOUTH ALONG SAID PARALLEL LINE A DISTANCE OF 146.15 FEET TO A POINT OF INTERSECTION WITH THE SOUTH LINE OF SAID LOT 1; THENCE EAST ALONG SAID SOUTH LINE A DISTANCE OF 6 FEET TO THE SOUTHEAST CORNER OF SAID LOT 1; THENCE NORTH ALONG SAID EAST LINE OF LOT 1 A DISTANCE OF 166.15 FEET TO THE POINT OF BEGINNING IN COOK COUNTY, ILLINOIS;

#### PARCEL 4:

THE EAST 1/2 OF THE HERETOFORE VACATED 16 FOOT PUBLIC ALLEY LYING WEST OF AND ADJOINING AFORESAID LOT 1 AND TOGETHER WITH THAT PART OF THE WEST 1/2 OF THE HERETOFORE VACATED 16 FOOT PUBLIC ALLEY LYING EAST OF AND ADJOINING AFORESAID LOT 7 IN DE YOUNG'S SUBDIVISION, IN COOK COUNTY, ILLINOIS.

Property Address: Park Plaza  
16244 South Park Avenue, South Holland, Illinois

PIN: 29-22-106-011 and 29-22-106-012

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## ASSIGNMENT OF RENTS AND LEASES

by

UPTOWN NATIONAL BANK OF CHICAGO, as Trustee  
under Trust Agreement dated March 5, 1992  
and known as Trust Number 92-101

in favor of

THE OHIO NATIONAL LIFE INSURANCE COMPANY

This document prepared by  
and after recording return to:  
Mark S. Richmond, Esq.  
Katz Randall & Weinberg  
333 West Wacker Drive  
Suite 1800  
Chicago, Illinois 60606  
KRW File No. 08060.00300

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## ASSIGNMENT OF RENTS AND LEASES

THE FOLLOWING meanings are hereby adopted by the undersigned for the following capitalized terms for purposes of this Assignment:

- a. "Lender" shall mean THE OHIO NATIONAL LIFE INSURANCE COMPANY.
- b. "Lender's Notice Address" shall mean P.O. Box 237, Cincinnati, Ohio, 45201, Attention: Mortgages and Real Estate.
- c. "Loan Amount" shall mean \$830,000.00.
- d. "State" shall mean the State of Illinois.
- e. "Owner" shall mean Uptown National Bank of Chicago, as Trustee under Trust Agreement dated March 5, 1992 and known as Trust Number 92-401.

1. BY THIS ASSIGNMENT, the Owner, for value received, hereby assigns to the Lender all of Owner's right, title, privileges and interest which Owner has and may have in the leases, operating agreements, management agreements, concession agreements, licenses, and all similar agreements, now existing or hereafter made and affecting the real property and the improvements thereon described in Exhibit A attached hereto and incorporated herein by reference (collectively referred to as the "Property"), together with all extensions, renewals, modifications or replacements of said leases and agreements, and together with any and all guarantees of the obligations of the lessees and other obligors thereunder, whether now existing or hereafter executed, and all extensions and renewals of said guarantees. All said leases and all other said agreements described in this Paragraph 1, together with any and all guarantees, modifications, extensions and renewals thereof are hereinafter collectively and severally referred to as the "Lease".

2. OWNER'S PURPOSE in making this assignment is to induce the Lender to make the loan in the Loan Amount to the Owner by relinquishing to Lender its right to collect and enjoy the rents, royalties, issues, profits, income and other benefits at any time accruing by virtue of the Lease (hereinafter called "Rents and Profits") as additional security for the outstanding indebtedness to Lender as evidenced by the note in favor of Lender (hereinafter called the "Obligation") dated this same date in the Loan Amount executed by Owner, and as additional security for the Owner's obligation under the Mortgage and Security Agreement (referred to as the "Indenture") executed to further secure the Obligation and to furnish security for the performance of Owner's obligations contained herein. The Obligation and other said loan documents and all other documents executed in connection with this loan are referred to as the "Loan Documents".

3. THE PARTIES INTEND that this Assignment shall be a present, absolute and unconditional assignment and shall, immediately upon execution, give Lender the right to collect the Rents and Profits and to apply them in payment of the principal and interest and all other sums payable on Owner's Obligation, as well as all other sums payable under the Loan Documents. However, Lender hereby grants to Owner a license to collect, subject to the provisions set forth below and in the Loan

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Documents, the Rents and Profits as they respectively become due and to enforce the Lease, so long as there is no default by Owner in performance of the terms, covenants or provisions of the Obligation, the Loan Documents or this Assignment. Nothing contained herein, nor any collection of Rents and Profits by Lender or by a receiver, shall be construed to make Lender a "mortgagee-in-possession" of the Property so long as Lender has not itself entered into actual possession of the Property.

4. UPON THE OCCURRENCE OF ANY DEFAULT under the terms and conditions of this Assignment or any of the Loan Documents, this Assignment shall constitute a direction to and full authority to any and all obligors under the Lease and any guarantor of the Lease to pay all Rents and Profits to Lender without proof of the default relied upon. Owner hereby irrevocably authorizes any and all obligors under the Lease and any guarantor to rely upon and comply with any notice or demand by Lender for the payment to Lender of any Rents and Profits due or to become due. Any and all obligors under the Lease and any guarantor shall have no right or duty to inquire whether a default has actually occurred and Owner shall have no claim against any obligor under the Lease or any guarantor for any Rents and Profits paid by such obligor, Lessee or such guarantor to Lender pursuant to Lender's demand or notice.

5. OWNER WARRANTS:

- (a) that no default exists or will exist on the part of Owner under any Lease;
- (b) that no rent or other payment has been or will be collected under any Lease for more than one month in advance of the date on which it is due under the terms of any Lease;
- (c) that neither the Lease nor any interest therein has been previously or will be assigned or pledged by Owner;
- (d) that no concession has been or will be granted to any Lessee in the form of a waiver, release, reduction, discount or other alteration of rent or other payment due or to become due; and
- (e) that all unoccupied space, if any, is completed in all respects except for floor and wall coverings.

All of the foregoing warranties shall be deemed to be reaffirmed on and as of the time of each Lease executed by Owner on the Property.

6. OWNER AGREES:

- (a) if the Lease provides for a security deposit paid by Lessee to Owner, this Assignment transfers to the Lender all of Owner's right, title and interest in and to the security deposit, provided that Owner shall have the right to retain said security deposit so long as Owner is not in default under this Assignment or the Loan Documents; and provided further that Lender shall have no obligation to any obligor under the Lease with respect to such security deposit unless and until Lender comes into actual possession and control of said deposit;

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(b) before any Lease is executed on the Property (other than Leases approved in writing as of this date) a copy of the same shall be submitted to Lender for its approval which shall not be unreasonably withheld. Owner shall provide executed originals and/or copies of all Leases to Lender upon demand;

(c) that the Lease shall remain in full force and effect despite any merger of the interest of Owner and any obligor under the Lease, and Owner shall not transfer or convey fee title to the leased premises to any obligor under the Lease without the prior written consent of Lender, and where such consent is given or where under applicable law the requirement for such consent is not enforceable, Owner shall require the said obligor under the Lease, in writing, to assume and agree to pay the Obligation in accordance with the terms, covenants and conditions of the Loan Documents; provided, however, that, in no event shall any such transfer or conveyance operate to release or relieve Owner of any liability to Lender unless Lender specifically agrees otherwise in writing;

(d) Owner shall not terminate the Lease or modify or amend the Lease or any of the terms thereof or grant any concessions in connection therewith or accept a surrender thereof without the prior written consent of Lender, except for modifications which do not affect the obligations of the tenants or the landlord under the Leases.

(e) Owner shall not collect any Rents and Profits more than one (1) month in advance of the date on which they become due under the terms of the Lease;

(f) Owner shall not discount any future accruing Rents and Profits;

(g) Subject to the terms of the Leases, Owner shall not consent to assignment of the Lease, or subletting thereunder without the prior written consent of Lender;

(h) Owner shall not execute any further assignment of any of the Rents and Profits or any interest therein or suffer or permit any such assignment to occur by operation of law;

(i) Owner shall not request, consent to, agree to, or accept a subordination of the Lease to any mortgage or other encumbrance, or any other lease now or hereafter affecting the Property or any part thereof, or suffer or permit conversion of any Lease to a sublease;

(j) Owner shall faithfully perform and discharge its obligations under the Lease, and shall give prompt written notice to Lender of any notice of Owner's default received from any obligor under the Lease or any other person and furnish Lender with a complete copy of said notice; Owner shall appear in and defend, at no cost to Lender, any action or proceeding arising under or in any manner connected with the Lease; and if requested by Lender, Owner shall enforce the Lease and all remedies available to Owner against any obligor under the Lease in the case of default under the Lease by any Obligor under the Lease;

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(k) Owner shall give Lender written notice immediately upon entering into any lease or other agreement respecting any part of the Property, and shall promptly provide to Lender a true and correct copy of the executed lease or other agreement; each such lease or agreement shall be deemed included in this Assignment automatically as though originally listed herein, and the term "Lease" as used herein shall include such lease or agreement;

(l) The Property shall at all times be managed by Owner (so long as no default exists under any of the Loan Documents) or Owner shall at all times contract to manage the Property through a qualified manager, and Owner shall obtain the Lender's prior written consent to and approval of the said management contract and manager before execution of and employing the same, respectively. The said management contract and all of the management, leasing, or other fees under such management contract shall be subordinate to the lien of the Loan Documents;

(m) Owner shall deliver to Lender, promptly upon request, but no more often than once in any Calendar year, a duly executed estoppel certificate from any obligor under the Lease as required by Lender, attesting that the Lease is in full force and effect with no defaults thereunder on the part of any party, that no rental has been paid more than one month in advance, and that said obligor under the Lease claims no defense or offset against the full and timely performance of its obligations under the Lease; and

(n) Nothing herein shall be construed to impose any liability or obligation on Lender under or with respect to the Lease; Owner shall indemnify and hold Lender harmless from and against any and all liabilities, losses and damages which Lender may incur under the Lease or by reason of this Assignment, and Owner shall immediately upon demand reimburse Lender for the amount thereof together with all costs and expenses and attorneys' fees incurred by Lender; all of the foregoing sums shall bear interest until paid at the rate set forth in the Obligation; and any Rents and Profits collected by Lender may be applied by Lender in its discretion in satisfaction of any such liability, loss, damage, claim, demand, costs, expense or fees.

## 7. OWNER HEREBY GRANTS TO LENDER THE FOLLOWING RIGHTS:

(a) Lender shall be deemed to be the creditor of any obligor under the Lease in respect of any assignments for the benefit of creditors and any bankruptcy, arrangement, reorganization, insolvency, dissolution, receivership or other debtor-relief proceedings affecting such obligor (without obligation on the part of Lender, however, to file timely claims in such proceedings or otherwise pursue creditor's rights therein);

(b) Lender shall have the right to assign Owner's right, title and interest in the Lease to any subsequent holder of the Indenture or any participating interest therein or to any person acquiring title to all or any part of the Property through foreclosure or otherwise, and any subsequent assignee shall have all the rights and powers herein provided to Lender;

(c) Lender shall have the right (but not the obligation), upon any failure of Owner to perform any of its agreements hereunder, to take any action as Lender

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may deem necessary or appropriate to protect its security, including but not limited to appearing in any action or proceeding and performing any obligations of the lessor under any Lease, and Owner agrees to pay, on demand, all costs and expenses (including without limitation Lender's attorneys' fees) incurred by Lender in connection therewith, together with interest thereon at the After-Maturity Rate set forth in the Obligation;

(d) Upon default by Owner under any Lease, the Lender shall have the right, but not the obligation, to cure the same, upon failure of Owner to cure, and Lender shall have the right to add all costs necessary to cure such defaults, including Lender's attorney's fees, to the Obligation; and

(e) Upon any default by Owner under this Assignment or under the Loan Documents and without notice to or consent of Owner, Lender shall have the following rights (none of which shall be construed to be obligations of the Lender):

(i) Lender shall have the right under this Assignment to use and possess, without rental or charge, all personal property of the Owner located on the Property and used in the operation or occupancy thereof. Lender shall have the right to apply any of the Rents and Profits to pay installments due for personal property rented or purchased on credit, insurance premiums on personal property, or other charges relating to personal property on the Property. However, this Assignment shall not make Lender responsible for the control, care, management or repair of the Property or any personal property or for the carrying out of any of the terms or provisions of the Lease;

(ii) Lender shall have the right to apply the Rents and Profits and any sums recovered by Lender hereunder to Owner's outstanding indebtedness to Lender secured hereby or by any of the Loan Documents, as well as to the charges for taxes, insurance, improvements, maintenance and other items relating to the operation of the Property;

(iii) Lender shall have the right to take possession of the Property, manage and operate the Property and Owner's business thereon, and to take possession of and use all books of account and financial records of Owner and its property managers or representatives relating to the Property;

(iv) Lender shall have the right to execute new Leases of any part of the Property, including Leases that extend beyond the term of the Indenture;

(v) Lender shall have the right to cancel or alter any existing Lease subject to the terms of the Leases and any enforcement thereof; and

(vi) Lender shall have the authority, as Owner's attorney-in-fact, such authority being coupled with an interest and being

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irrevocable, to sign the name of Owner and to bind Owner on all papers and documents relating to the operation, leasing and maintenance of the Property.

All of the foregoing rights and remedies of Lender are cumulative and not in lieu of, but are in addition to, any rights or remedies which Lender shall have under the Note, the Indenture and any other Loan Document, or at law or in equity or by statute, which said rights and remedies may be exercised by Lender either prior to, simultaneously with, or subsequent to, any action taken hereunder. The rights and remedies of Lender may be exercised from time to time and as often as such exercise is deemed expedient, and the failure of Lender to avail itself of any of the terms, provisions and conditions of this Assignment for any period of time, at any time or times, shall not be construed or deemed to be a waiver of any rights under the terms hereof.

8. This Assignment is intended to be supplementary to and not in substitution for or in derogation of any assignment of rents contained in the Loan Documents. Failure of the Lender to avail itself of any terms, covenants and conditions of this Assignment for any period of time or for any reason shall not constitute a waiver thereof.

9. Notwithstanding any future modification of the terms of the Loan Documents, this Assignment and the rights and benefits hereby assigned and granted shall continue in favor of Lender in accordance with the terms of this Assignment.

10. This Assignment shall be binding upon and inure to the benefit of the respective heirs, legal representatives, successors and assigns of the parties hereto (including without limitation, in the case of Lender, any third parties now or hereafter acquiring any interest in the Obligation or any part thereof, whether by virtue of assignment, participation or otherwise). The words "Owner", "Lender", "obligor under the Lease", and "guarantor", wherever used herein, shall include the persons and entities named herein or in the Lease or any guaranty and designated as such and their respective heirs, legal representatives, successors and assigns, provided that any action taken by the named Lender or any successor designated as such by an instrument recorded in the appropriate office of the county in which the Property is located referring to this Assignment shall be sufficient for all purposes notwithstanding that Lender may have theretofore assigned or participated any interest in the Obligation to a third party. All words and phrases shall be taken to include the singular or plural number, and the masculine, feminine, or neuter gender, as may fit the case.

11. Any change, amendment, modification, abridgement, cancellation, or discharge of this Assignment or any term or provision hereof shall be invalid without the written consent of Lender.

12. Upon payment to Lender of the full amount of all indebtedness and obligations secured hereby and by the Loan Documents, as evidenced by a recorded satisfaction or release of the Indenture, note and guarantees, this Assignment shall be void and of no further effect.

13. All notices given hereunder shall be given in the manner set forth in the Indenture.

14. If any provision hereof is determined to be illegal or unenforceable for any reason, the remaining provisions hereof shall not be affected thereby.

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15. This Assignment shall be governed by and construed in accordance with the laws of the State.

16. This Assignment shall terminate upon the issuance of a satisfaction of the Indenture by Lender.

17. RECOGNIZING THAT ANY DISPUTE ARISING HEREUNDER WILL BE COMMERCIAL IN NATURE AND COMPLEX, AND IN ORDER TO MINIMIZE THE COSTS INVOLVED IN THE DISPUTE RESOLUTION PROCESS, THE UNDERSIGNED HEREBY WAIVES THE RIGHT TO A TRIAL BY JURY.

18. The obligations of the undersigned hereunder are and shall at all times be joint and several.

19. Trustee Exculpation. This Instrument is executed by Uptown National Bank of Chicago, as Trustee under Trust Agreement dated March 5, 1992 and known as Trust Number 92-101 in the exercise of the power and authority conferred upon and vested in it as such Trustee. All the terms, provisions, stipulations, covenants and conditions to be performed by Uptown National Bank are undertaken by it solely as Trustee, as aforesaid, and not individually, and all statements herein made are made on information and belief and are to be construed accordingly, and no personal liability shall be asserted or be enforceable against Uptown National Bank by reason of any of the terms, provisions, stipulations, covenants and/or statements contained in this Instrument.

IN WITNESS WHEREOF, this instrument has been executed by the undersigned under seal on this 14 day of September, 1998.

"Borrower:"

UPTOWN NATIONAL BANK OF CHICAGO, as Trustee under Trust Agreement dated March 5, 1992 and known as Trust Number 92-101

ATTEST:

By: [Signature]

Its: Trust Officer

By: [Signature]

Its: Trust Officer, Sr. Vice President

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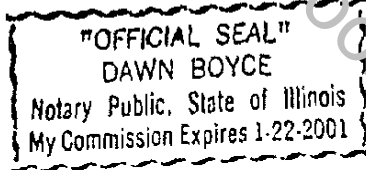
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STATE OF ILLINOIS )  
COUNTY OF Cook )

I, Dawn Boyce, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Carter Huhta, as Sr. Vice President and Steven Olson, as \_\_\_\_\_ Secretary of Uptown National Bank of Chicago, a national banking association, as Trustee under Trust agreement dated March 5, 1992 and known as Trust No. 92-101, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Sr. Vice President and \_\_\_\_\_ Secretary of said Bank, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Bank for the uses and purposes therein set forth; and said \_\_\_\_\_ Secretary did then and there acknowledge that he, as custodian of the corporate seal of said Bank did affix the corporate seal of said Bank to said instrument as his own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 14 day of September, 1998.



Dawn Boyce  
Notary Public

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## EXHIBIT "A"

### LEGAL DESCRIPTION:

#### PARCEL 1:

LOT 2 IN DE YOUNG'S SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTH 1/2 OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 36 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 08, 1957 AS DOCUMENT 16821944, IN COOK COUNTY, ILLINOIS, ALSO (EXCEPTING THEREFROM THE EAST 6 FEET OF LOT 2 AS CONDEMNED IN CASE NUMBER 82L12148);

#### PARCEL 2:

THE EAST 1/2 OF THE HERETOFORE VACATED 16 FOOT PUBLIC ALLEY LYING WEST OF AND ADJOINING AFORESAID LOT 2 IN THE DE YOUNG'S SUBDIVISION, IN COOK COUNTY, ILLINOIS.

#### PARCEL 3:

LOT 1 AND LOT 7 IN DE YOUNG'S SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTH 1/2 OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 36 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 08, 1957 AS DOCUMENT 16821944 (EXCEPTING FROM SAID LOT 1 THAT PART THEREOF DESCRIBED AS: BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 1, THENCE WEST ALONG THE NORTH LINE OF SAID LOT 1 A DISTANCE OF 13 FEET TO A POINT; THENCE SOUTHEASTERLY ALONG A STRAIGHT LINE TO A POINT OF INTERSECTION WITH A LINE LYING 6 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID LOT 1, SAID POINT LYING 18 FEET SOUTH OF SAID NORTHEAST CORNER OF LOT 1 (AS MEASURED ALONG SAID EAST LINE OF LOT 1); THENCE SOUTH ALONG SAID PARALLEL LINE A DISTANCE OF 146.15 FEET TO A POINT OF INTERSECTION WITH THE SOUTH LINE OF SAID LOT 1; THENCE EAST ALONG SAID SOUTH LINE A DISTANCE OF 6 FEET TO THE SOUTHEAST CORNER OF SAID LOT 1; THENCE NORTH ALONG SAID EAST LINE OF LOT 1 A DISTANCE OF 164.15 FEET TO THE POINT OF BEGINNING IN COOK COUNTY, ILLINOIS;

#### PARCEL 4:

THE EAST 1/2 OF THE HERETOFORE VACATED 16 FOOT PUBLIC ALLEY LYING WEST OF AND ADJOINING AFORESAID LOT 1 AND TOGETHER WITH THAT PART OF THE WEST 1/2 OF THE HERETOFORE VACATED 16 FOOT PUBLIC ALLEY LYING EAST OF AND ADJOINING AFORESAID LOT 7 IN DE YOUNG'S SUBDIVISION, IN COOK COUNTY, ILLINOIS.

Property Address: Park Plaza  
16244 South Park Avenue, South Holland, Illinois

PIN: 29-22-106-011 and 29-22-106-012

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