

UNOFFICIAL COPY



98930655

PREPARED BY:  
RETURN TO: EMPIRE FUNDING CORP.  
9737 Great Hills Trail, Austin, Texas 78759  
(800)261-4898

ILLINOIS MORTGAGE  
33682  
MAIL TO NOTICE

98930655

Loan#

This Mortgage is made between the Mortgagor,

TIMOTHY R. WESZELITS, DENISE A. WESZELITS  
MARRIED TO EACH OTHER, AS TENANTS BY  
(herein, "Borrower") having an address at

5213 S NEW ENGLAND CHICAGO, IL 60638

and the Mortgagee, EMPIRE FUNDING CORP., 9737 Great Hills Trail, Austin, Texas 78759, a corporation organized and existing under the laws of Oklahoma (herein "Lender"). WHEREAS, Borrower is indebted to Lender in the principal sum of U.S. \$ 45,000.00 which indebtedness is evidenced by Borrower's note dated 09/29/98 and extensions and renewals thereof (herein "Note"), providing for monthly installments of principal and interest with the balance of indebtedness, if not sooner paid, due and payable on 10/05/23;

DEPT-01 RECORDING

\$27.50

T#0009 TRAN 4100 10/16/98 12:13:00

#0721 + RC \*-98-930655

COOK COUNTY RECORDER

TO SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; and the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby mortgage, grant and convey to Lender the following described property located in the County of COOK, State of Illinois.

THE NORTH 30 FEET OF LOT 9, (EXCEPT THE EAST 16 FEET THEREOF) IN BLOCK 22, IN FREDERICK H. BARTLETT'S 3RD ADDITION TO BARTLETT HIGHLANDS, BEING A SUBDIVISION IN THE SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 38 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 19-07-313-031

4

which has the address of 5213 S NEW ENGLAND CHICAGO, IL 60638  
(herein "Property Address");

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents all of which shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing, together with said property (or the leasehold estate if this Mortgage is on a leasehold) are hereinafter referred to as the "Property." Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property, and that the Property is unencumbered, except for encumbrances of record. Borrower covenants that Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to encumbrances of record.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest.** Borrower shall pay when due the principal and interest indebtedness and late charges evidenced by the Note.
2. **Taxes.** Borrower shall pay when due all taxes, liens, assessments, charges, fines, impositions, leasehold payments, ground

Borrower(s) initials

T.R.W. D.W.

EFC 497 Form D-4-IL

Lender - Original Borrower - 1 copy

HERITAGE TITLE COMPANY

PAGE 1 of 4

98930655

# UNOFFICIAL COPY

rents, and any other charges whatsoever now existing or hereafter levied or assessed upon the Property, or upon the interest therein created by this Mortgage and, upon Lender's request, shall deliver to Lender satisfactory evidence of payment thereof. Borrower shall preserve and maintain the liens created hereby on the Property, including any improvements hereafter made a part of the realty. Borrower will not let any mechanic's or other workmen's judgment lien attach to the Property.

3. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender shall be applied by Lender according to the terms of the Note.

4. **Prior Mortgages and Deeds of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations under any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority hereover, and leasehold payments or ground rents, if any.

5. **Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage", and such other hazards as Lender may require and in such amounts and for such periods as Lender may require. The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided, that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in a form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Mortgage. In addition, Borrower agrees to maintain flood insurance with Beneficiary as loss payee in an amount equal to the principal outstanding during the term of said indebtedness if required pursuant to the Flood Disaster Protective Act (42 U.S.C. 4012a).

6. **Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Mortgage is on a leasehold. If this Mortgage is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.

7. **Protection of Lender's Security.** If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as is necessary to protect Lender's interest. If Lender required mortgage insurance as a condition of making the loan secured by this Mortgage, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law. Any amounts disbursed by Lender pursuant to this paragraph 7, with interest thereon, at the Note rate, shall become additional indebtedness of Borrower secured hereby. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof. Nothing contained in this paragraph 7 shall require Lender to incur any expense or take any action hereunder.

8. **Inspection.** Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

9. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority hereover.

10. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured hereby by reason of any demand made by the original Borrower and Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

11. **Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 16 hereof. All covenants and agreements of Borrower shall be joint and several. Any Borrower who co-signs this Mortgage, but does not execute the Note, (a) is co-signing this Mortgage only to grant and convey that Borrower's

Borrower(s) initials: JRW AKW

EFC 4/97 Form D-4-IL

Lender - Original Borrower - 1 copy

PAGE 2 of 4

10000000

# UNOFFICIAL COPY

interest in the Property to Trustee under the terms hereunder, (b) is not personally liable on the Note or under this Mortgage, and (c) agrees that Lender and any other Borrower hereunder may agree to extend, modify, forbear, or make other accommodations with regard to the terms of this Mortgage or the Note, without that Borrower's consent and without releasing that Borrower or modifying this Mortgage as to that Borrower's interest in the Property.

12. **Notice.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Mortgage shall be given by delivering it or by mailing such notice by certified mail addressed to Borrower at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

13. **Governing Law; Severability.** The state and local laws applicable to this Mortgage shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of federal law to this Mortgage. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage and the Note are declared to be severable. As used herein, "costs", "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

14. **Borrower's Copy.** Borrower shall be furnished a copy of the Note and Mortgage at the time of execution hereof.

15. **Rehabilitation Loan Agreement.** Borrower shall fulfill all of Borrower's obligations under any home rehabilitation, improvement, repair or other loan agreement which Borrower enters into with Lender. Lender, at Lender's option, may require Borrower to execute and deliver to Lender, in a form acceptable to Lender, an assignment of any rights, claims or defenses which Borrower may have against parties who supply labor, materials or services in connection with improvements made to the Property.

16. **Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Mortgage. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Mortgage. If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Mortgage. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Mortgage without further notice or demand on Borrower.

**NON-UNIFORM COVENANTS.** Borrower and Lender further covenant and agree as follows:

17. **Acceleration; Remedies.** Except as provided in paragraph 16 hereof, upon Borrower's breach of any covenant or agreement of Borrower in this Mortgage, including the covenants to pay when due any sums secured by this Mortgage, Lender prior to acceleration shall give notice to Borrower as provided in paragraph 12 hereof specifying (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 10 days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage, foreclosure by judicial proceeding, and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the nonexistence of a default or any other defense of Borrower to acceleration and foreclosure. If the breach is not cured on or before the date specified in the notice, Lender, at Lender's option, may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand and may foreclose this Mortgage by judicial proceeding. Lender shall be entitled to collect in such proceeding all expenses of foreclosure, including, but not limited to, reasonable attorneys' fees and costs of documentary evidence, abstracts and title reports.

18. **Borrower's Right to Reinstate.** Notwithstanding Lender's acceleration of the sums secured by this Mortgage due to Borrower's breach, Borrower shall have the right to have any proceedings begun by Lender to enforce this Mortgage discontinued at any time prior to entry of a judgment enforcing this Mortgage if: (a) Borrower pays Lender all sums which would be then due under this Mortgage and the Note had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Mortgage; (c) Borrower pays all reasonable expenses incurred by Lender in enforcing the covenants and agreements of Borrower contained in this Mortgage, and in enforcing Lender's remedies as provided in paragraph 17 hereof, including, but not limited to, reasonable attorneys' fees; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Mortgage, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by Borrower, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

19. **Assignment of Rents; Appointment of Receiver.** As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 17 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable. Upon acceleration under paragraph 17 hereof or abandonment of the Property, Lender shall be entitled to have a receiver appointed by a court to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's

Borrower(s) initials

TOP W

D.W.

FFC 4/97 Form D-4-II.

Lender - Original Borrower - 1 copy

PAGE 3 of 4

15030655

# UNOFFICIAL COPY

fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Mortgage. The receiver shall be liable to account only for those rents actually received.

20. **Release.** Upon payment of all sums secured by this Mortgage, Lender shall release this Mortgage without charge to Borrower. Borrower shall pay all costs of recordation, if any.

21. **Waiver of Homestead.** Borrower hereby waives all right of homestead exemption in the Property.

**REQUEST FOR NOTICE OF DEFAULT AND FORECLOSURE  
UNDER SUPERIOR MORTGAGES OR DEEDS OF TRUST**

Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Mortgage to give Notice to Lender, at Lender's address set forth on page one of this Mortgage, of any default under the superior encumbrance and of any sale or other foreclosure action.

**(PLEASE SIGN AND NOTARIZE ORIGINAL WHITE COPY)**

IN TESTIMONY WHEREOF, the signature of Mortgagor is hereunto affixed on 9-29-98

Timothy R. Weszelits  
TIMOTHY R. WESZELITS

Denise A. Weszelits  
DENISE A. WESZELITS

STATE OF ILLINOIS, COOK County SS:  
On 9-29-98 before me, a Notary Public in and for the aforesaid County, do hereby certify that  
TIMOTHY R. WESZELITS, DENISE A. WESZELITS

personally known to me to be the same person(s) whose name(s) were subscribed to the foregoing instrument, personally appeared before me and acknowledged that he/she/they signed and delivered said instrument as his/her/their free and voluntary act, for the use and purposes therein set forth. WITNESS my hand and official seal the date last aforesaid.

My Commission Expires:  
(SEAL)

Lori M. Kraus  
Notary Public



08530055

# UNOFFICIAL COPY

similar nature, and any and all guarantees of the lessee's obligations under any of such leases and subleases; and

(c) All privileges, reservations, allowances, hereditaments and appurtenances belonging or pertaining to the said real estate and improvements and all rights and estates in reversion or remainder and all other interests, estates or other claims, both in law and in equity, which the Mortgagor now has or may hereafter acquire in the said real estate and improvements; and

(d) All easements, rights-of-way and rights used in connection with the said real estate and improvements or as a means of ingress and egress thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same; and

(e) Any land lying within the right-of-way of any street, open or proposed, adjoining the said real estate and improvements, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the said real estate and improvements; and

(f) Any and all buildings and improvements now or hereafter erected on the said real estate, including, but not limited to, all the fixtures, attachments, appliances, equipment, machinery, and other articles attached to said buildings and improvements; and

(g) All materials intended for construction, reconstruction, alteration and repairs of the said real estate and improvements, all of which materials shall be deemed to be included within the said real estate and improvements immediately upon the delivery thereof to the said real estate; and

(h) All fixtures attached to or contained in and used in connection with the said real estate and improvements, including, but not limited to, all machinery, motors, elevators, fittings, radiators, awnings, shades, screens, and all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air-conditioning and sprinkler equipment and fixtures and appurtenances thereto; and all items of furniture, furnishings, equipment and personal property used or useful in the operation of the said real estate and improvements; and all renewals, substitutions and replacements for any or all of the foregoing, and all proceeds therefrom, whether or not the same are or shall be attached to the said real estate and improvements in any manner; it being mutually agreed, intended and declared that all the aforesaid property placed by the Mortgagor on and in the said real estate and improvements shall, so far as

9992655

# UNOFFICIAL COPY

permitted by law, be deemed to form a part and parcel of the real estate and for the purpose of this Mortgage to be real estate and covered by this Mortgage; and as to any of the aforesaid property which does not so form a part and parcel of the real estate or does not constitute a "fixture" (as such term is defined in the Uniform Commercial Code of Illinois), this Mortgage is deemed to be a security agreement under the Uniform Commercial Code of Illinois for the purpose of creating hereby a security interest in such property, which the Mortgagor hereby grants to the Mortgagee as secured party; and

(i) All the estate, interest, right, title or other claim or demand, including claims or demands with respect to any proceeds of insurance related thereto, which the Mortgagor now has or may hereafter acquire, in the said real estate and improvements or personal property and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the said real estate and improvements or personal property, including without limitation any awards resulting from a change of grade of streets and awards for severance damages;

the said real estate and improvements and the property and interests described in (a) through (i) above being collectively referred to herein as the "Premises," and as to any portion of the Premises constituting property subject to the Uniform Commercial Code of Illinois, this Mortgage shall be deemed to be a security agreement under such Code for the purpose of creating hereby a security interest in such portion of the Premises, which the Mortgagor hereby grants to the Mortgagee as secured party.

TO HAVE AND TO HOLD the same unto the Mortgagee and its successors and assigns forever, for the purposes and uses herein set forth.

FOR THE PURPOSE OF SECURING the following (but not exceeding \$21,500,000 in the aggregate):

(a) Payment of the indebtedness evidenced by the Note, the Related Loans Notes (as defined in Article I hereof) and the Schaumburg Bond (as defined in Article I hereof), and including the principal thereof and interest thereon and any and all modifications, extensions and renewals thereof, and performance of all obligations of the Mortgagor under the Note, all obligations of the Related Loans Borrowers (as defined in Article I hereof) under the Related Loans Notes and all obligations of the Authority (as defined in Article I hereof) under the Schaumburg Bond; and

98002855

# UNOFFICIAL COPY

(b) Performance and observance by the Mortgagor and the Tollway Park Trust (as defined in Article I hereof) of all of the terms, covenants and provisions of this Mortgage and the Tollway Park Mortgage (as defined in Article I hereof), respectively; and

(c) Performance and observance by the parties thereto of all of the terms, covenants and provisions of the other Loan Documents and the Related Loans Documents (each as defined in Article I hereof); and

(d) Payment of all sums advanced by the Mortgagee to perform any of the terms, covenants and provisions of this Mortgage or any of the other Loan Documents or the Related Loans Documents, or otherwise advanced by the Mortgagee pursuant to the provisions hereof or any of such other documents to protect the property hereby mortgaged and pledged; and

(e) Performance and observance of all of the terms, covenants and provisions of any other instrument given to evidence or further secure the payment and performance of any indebtedness hereby secured or any obligation secured hereby; and

(f) Payment of any future or further advances which may be made by the Mortgagee at its sole option to and for the benefit of the Mortgagor and/or the Beneficiary, or their successors, assigns and legal representatives.

PROVIDED, HOWEVER, that if the Mortgagor shall pay the principal and all interest as provided in the Note, and shall pay all other sums herein provided for, or secured hereby, and shall well and truly keep and perform all of the covenants herein contained, and if the Related Loans Borrowers shall pay the principal and all interest as provided in the Related Loans Notes, and if the Authority shall pay the principal and all interest as provided in the Schaumburg Bond, then this Mortgage shall be released at the cost of the Mortgagor, otherwise to remain in full force and effect.

TO PROTECT THE SECURITY OF THIS MORTGAGE AND SECURITY AGREEMENT, THE MORTGAGOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

## ARTICLE I

### DEFINITIONS

Section 1.1. Definitions. The terms defined in this Section (except as otherwise expressly provided or unless the

98932855

# UNOFFICIAL COPY

context otherwise requires) for all purposes of this Mortgage shall have the respective meanings specified in this Section.

"AFLP" means Alter Financial Limited Partnership, an Illinois limited partnership.

"Assignment of Rents" means the Assignment of Rents and Leases dated as of October 14, 1998, from the Mortgagor and the Beneficiary to the Mortgagee.

"Authority" means the Illinois Development Finance Authority, a political subdivision, body politic and municipal corporation.

"Beneficiary" means National Build to Suit Kinzie, L.L.C., a Delaware limited liability company.

"Beneficial Interest Assignment" means the Collateral Assignment of Beneficial Interest dated as of October 14, 1998, from the Beneficiary to the Mortgagee.

"Condemnation Event" means --

(i) when used in reference to this Agreement, a Condemnation Event specified in Section 4.1 hereof; and

(ii) when used in reference to any other document, a "Condemnation Event" as defined in such document.

"Dearborn/Kinzie Beneficiary" means Alter Ecker Partnership, an Illinois partnership.

"Dearborn/Kinzie Trust" means LaSalle National Bank, a national banking association, as Trustee under a Trust Agreement dated October 3, 1984, and known as Trust No. 198977.

"Default" means, when used in reference to this Mortgage or any other document, or in reference to any provision of or obligation under this Mortgage or any other document, the occurrence of an event or the existence of a condition which, with the passage of time or the giving of notice, or both, would constitute an Event of Default under this Mortgage or such other document, as the case may be.

"Event of Default" means --

(i) when used in reference to this Mortgage, an Event of Default specified in Section 4.1 hereof; and

(ii) when used in reference to any other document, a default or event of default under such document that has



# UNOFFICIAL COPY

continued after the giving of any applicable notice and the expiration of any applicable grace or cure periods.

"Guarantors" means the Individual Guarantor and AFLP.

"Guaranty" means the Guaranty of Payment and Performance dated as of August 1, 1998, from the Guarantors to the Mortgagee, as modified and amended by the Modification and Assumption Agreement.

"Hazardous Material" means any hazardous substance or any pollutant or contaminant defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation, and Liability Act, any so-called "Superfund" or "Superlien" law, The Toxic Substances Control Act, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards on conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect; asbestos or any substance or compound containing asbestos; polychlorinated biphenyls or any substance or compound containing any polychlorinated biphenyl; petroleum and petroleum products; pesticides; and any other hazardous, toxic or dangerous waste, substance or material.

"Indemnity Agreement" means the Indemnity Agreement dated as of October 14, 1998, from the Guarantors to the Mortgagee.

"Individual Guarantor" means William A. Alter.

"Leases" means the lease or leases described in Exhibit B attached hereto.

"Loan Agreement" means the Loan Agreement dated as of August 1, 1998, by and among the Dearborn/Kinzie Mortgagor, the Dearborn/Kinzie Beneficiary and the Mortgagee, as modified and as assumed by the Mortgagor and the Beneficiary pursuant to the Modification and Assumption Agreement.

"Loan Documents" means the Loan Agreement, the Note and the other "Documents," as defined in the Modification and Assumption Agreement, this Mortgage, the Assignment of Rents, the Beneficial Interest Assignment, the Indemnity Agreement, the Guaranty, and all other documents and instruments at any time evidencing and securing the indebtedness secured by this Mortgage, without limitation, the Schaumburg Second Mortgage Documents.

"Modification and Assumption Agreement" means the Modification and Assumption Agreement of even date herewith, by and among the Dearborn/Kinzie Trust, the Dearborn/Kinzie

# UNOFFICIAL COPY

Beneficiary, the Guarantors, the Mortgagor, the Beneficiary and the Mortgagee.

"Mortgage" means this Mortgage and Security Agreement dated as of October 14, 1998, from the Mortgagor to the Mortgagee.

"Mortgagee" means American National Bank and Trust Company of Chicago, a national banking association.

"Mortgagor" means LaSalle National Bank, as Trustee under a Trust Agreement dated October 13, 1998, and known as Trust No. 122059.

"Note" means the Mortgage Note of the Dearborn/Kinzie Trust dated August 1, 1998, in the original principal amount of \$2,500,000 (as increased by \$800,000 to \$3,300,000 pursuant to the Modification and Assumption Agreement), made payable to the order of the Mortgagee, and as assumed by the Mortgagor pursuant to the Modification and Assumption Agreement.

"Permitted Encumbrances" means (i) this Mortgage; (ii) the Assignment of Rents; (iii) Uniform Commercial Code financing statements reflecting the Mortgagee as secured party; (iv) the Leases, and leases of the Premises entered into after the date of the recording of this Mortgage provided same have been entered into in accordance with the provisions of Section 3.1 of this Mortgage; (v) liens for ad valorem taxes and special assessments not then delinquent; and (vi) the additional matters set forth in Exhibit C attached hereto.

"Premises" means the real estate described in Exhibit A attached hereto and all improvements now and hereafter located thereon, and all other property, rights and interests described in the foregoing granting clauses of this Mortgage.

"Related Loans Borrowers" means the Tollway Park Trust and the 600 LSD Borrower.

"Related Loans Documents" means the Tollway Park Loan Documents and the 600 LSD Loan Documents.

"Related Loans Notes" means the Tollway Park Note and the 600 LSD Note.

"Schaumburg Bond" means the \$9,500,000 original principal amount Illinois Development Finance Authority Industrial Project Revenue Bond (Schaumburg Tech III Partnership Project) dated December 1, 1985, as hereafter modified, amended, renewed and extended.

# UNOFFICIAL COPY

"Schaumburg Premises" means the approximately 146,376 square foot office building occupied by the Illinois Department of Transportation located at 201 West Center Court, in Schaumburg, Illinois.

"Schaumburg Second Mortgage Documents" means the "Loan Documents" as defined in the Mortgage and Security Agreement dated as of August 1, 1998, from the Schaumburg Trust to the Mortgagee, mortgaging the Schaumburg Premises, as hereafter modified, amended, renewed and extended, and all other documents and instruments at any time evidencing and securing the obligations secured by such Mortgage and Security Agreement.

"Schaumburg Trust" means LaSalle National Bank, a national banking association, as Trustee under a Trust Agreement dated June 21, 1984, and known as Trust No. 108540.

"600 LSD Borrower" means 600 Lake Shore Drive Associates Limited Partnership, an Illinois limited partnership.

"600 LSD Loan" means the term loan in the amount of \$2,700,000 to be made by the Mortgagee to the 600 LSD Borrower in accordance with the terms and conditions of the 600 LSD Loan Documents.

"600 LSD Loan Documents" means the "Loan Documents" as defined in the Loan Agreement dated as of August 1, 1998, by and between the 600 LSD Borrower and the Mortgagee, as hereafter modified, amended, renewed and extended, and all other documents and instruments at any time evidencing and securing the 600 LSD Loan.

"600 LSD Note" means the Term Note of the 600 LSD Borrower dated August 1, 1998, in the principal amount of \$2,700,000, made payable to the order of the Mortgagee.

"Tollway Park Beneficiary" means WA Land Partnership, an Illinois limited partnership.

"Tollway Park Loan" means the mortgage loan in the amount of \$2,050,000 to be made by the Mortgagee to the Tollway Park Trust in accordance with the terms and conditions of the Tollway Park Loan Documents.

"Tollway Park Loan Documents" means the "Loan Documents" as defined in the Loan Agreement dated as of August 1, 1998, by and among the Tollway Park Trust, the Tollway Park Beneficiary and the Mortgagee, and all other documents and instruments at any time evidencing and securing the Tollway Park Loan.

98932855

# UNOFFICIAL COPY

"Tollway Park Mortgage" means the Mortgage and Security Agreement dated as of August 1, 1998, from the Tollway Park Trust to the Mortgagee.

"Tollway Park Note" means the Mortgage Note of the Tollway Park Trust dated August 1, 1998, in the principal amount of \$2,050,000 made payable to the order of the Mortgagee, evidencing the Tollway Park Loan.

"Tollway Park Trust" means LaSalle National Bank, a national banking association, as Trustee under a Trust Agreement dated April 17, 1985, and known as Trust No. 109674.

## ARTICLE II

### COVENANTS AND AGREEMENTS OF MORTGAGOR

Section 2.1. Payment of Indebtedness. The Mortgagor covenants and agrees that it will pay when due the principal of and interest on the indebtedness hereby secured evidenced by the Note, all other sums which may become due pursuant thereto or hereto, and all other indebtedness hereby secured as described in the foregoing granting clauses of this Mortgage, including, but not limited to, all charges, fees and all other sums to be paid by the Mortgagor as provided in the Loan Documents, and that it will duly and punctually perform, observe and comply with all of the terms, provisions and conditions herein and in the other Loan Documents provided to be performed and observed by the Mortgagor. The Note, which is hereby incorporated into this Mortgage by reference with the same effect as if set forth in full herein, is in the principal amount of \$3,300,000, and bears interest at a variable rate equal to the Mortgagee's Prime Rate (as defined below) from time to time in effect while the Note is outstanding. For such purposes, the term "Prime Rate" shall mean the rate of interest announced or published publicly from time to time by the Mortgagee as its prime or base rate of interest. Changes in the rate of interest on the Note resulting from a change in the Prime Rate shall take effect on the date of change in the Prime Rate as so announced or published. Interest is payable on the Note in arrears on the first day of each month commencing with the month following the month in which the first disbursement of principal occurs. All of the unpaid principal of and accrued and unpaid interest on the Note shall be due and payable on August 31, 2000, subject to extension to August 31, 2002, on the terms and conditions provided in paragraph (b) of Section 1 of the Loan Agreement.

The Tollway Park Note, which is hereby incorporated into this Mortgage by reference with the same effect as if set forth in full herein, is in the principal amount of \$2,050,000, and is payable on the same terms as the Note as described above,

# UNOFFICIAL COPY

except that conditions to the two-year extension applicable to the Tollway Park Note are as provided in paragraph (b) of Section 1 of the Loan Agreement dated as of August 1, 1998, by and among the Tollway Park Trust, the Tollway Park Beneficiary and the Mortgagee.

The 600 LSD Note, which is hereby incorporated into this Mortgage by reference with the same effect as if set forth in full herein, is in the principal amount of \$2,700,000, and is payable on the same terms as the Note as described above, except that conditions to the two-year extension applicable to the 600 LSD Note are as provided in paragraph (b) of Section 1 of the Loan Agreement dated as of August 1, 1998, by and between the 600 LSD Borrower and the Mortgagee.

The Schaumburg Bond, which is hereby incorporated into this Mortgage by reference with the same effect as if set forth in full herein, is in the principal amount of \$8,700,000, and currently bears interest at a variable rate equal to 75% of the Mortgagee's Prime Rate. All of the unpaid principal of and accrued and unpaid interest on the Schaumburg Bond shall be due and payable on June 1, 2015.

Section 2.2. Escrow Deposits. If requested by the Mortgagee, in order to provide moneys for the payment of the Impositions on the Premises required to be paid by the Mortgagor pursuant to Section 2.6 hereof and the premiums on the insurance required to be carried by the Mortgagor pursuant to Section 2.4 hereof, the Mortgagor shall pay to the Mortgagee with each monthly payment on the Note such amount as the Mortgagee shall estimate will be required to accumulate, by the date 30 days prior to the due date of the next annual installment of such Impositions and insurance premiums, through substantially equal monthly payments by the Mortgagor to the Mortgagee, amounts sufficient to pay such next annual Impositions and insurance premiums. All such payments shall be held by the Mortgagee in escrow, and the Mortgagee shall not be obligated to pay interest thereon. Amounts held in such escrow shall be made available by the Mortgagee to the Mortgagor for the payment of the Impositions and insurance premiums on the Premises when due, or may be applied thereto by the Mortgagee if it in its sole discretion so elects. The Mortgagee may at any time and from time to time waive the requirement for the escrow deposits provided for in this Section. In the event of any such waiver, the Mortgagee may thereafter in its sole discretion elect to require that the Mortgagor commence making such escrow deposits by giving the Mortgagor not less than 10 days' written notice of such election. No such waiver shall impair the right of the Mortgagee thereafter to require that such escrow deposits be made.

Section 2.3. Maintenance, Repair, Alterations. The Mortgagor covenants and agrees that it will:

# UNOFFICIAL COPY

- (a) keep the Premises in good condition and repair;
- (b) not remove, demolish or substantially alter (except such alterations as may be required by laws, ordinances or governmental regulations) any of the improvements which are a part of the Premises;
- (c) promptly repair and restore any portion of the Premises which may become damaged or be destroyed so as to be of at least equal value and of substantially the same character as prior to such damage or destruction;
- (d) subject to Section 2.13(b) hereof, pay when due all claims for labor performed and materials furnished to and for the Premises;
- (e) comply with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Premises or any part thereof or requiring any alterations or improvements;
- (f) not commit or permit any waste or deterioration of the Premises or any portion thereof;
- (g) keep and maintain the Premises and abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair and free of nuisance;
- (h) not commit, suffer or permit any act to be done in or upon the Premises in violation of any law, ordinance or regulation;
- (i) not initiate or acquiesce in any zoning change or reclassification of the Premises; and
- (j) subject to Section 2.13(b) hereof, keep the Premises free and clear of all liens and encumbrances of every sort except Permitted Encumbrances.

**Section 2.4. Required Insurance.** The Mortgagor shall at all times provide, maintain and keep in force the following policies of insurance:

- (a) Insurance against loss or damage to the Premises by fire and any of the risks covered by insurance of the type now known as "fire and extended coverage", in an amount not less than the full replacement cost thereof (exclusive of the cost of excavations, foundations and footings below the lowest basement floor), and with not more than \$10,000 deductible from the loss payable for any casualty.

# UNOFFICIAL COPY

(b) Commercial general liability insurance, including coverage for elevators and escalators, if any, on the Premises and completed operations coverage for two years after any construction or repair at the Premises has been completed, on an occurrence basis against claims for personal injury, including without limitation bodily injury, death or property damage occurring on, in or about the Premises and the adjoining streets, sidewalks and passageways, such insurance to afford immediate minimum protection to a limit of not less than \$1,000,000 for one person and \$3,000,000 per occurrence for personal injury or death and \$500,000 per occurrence for damage to property.

(c) Workers' compensation insurance in accordance with the requirements of Illinois law.

(d) During the course of any construction or repair at the Premises, builder's risk insurance against all risks of physical loss, on a completed value basis, including collapse and transit coverage, with a deductible not to exceed \$10,000, in nonreporting form, covering the total value of work performed and equipment, supplies and materials furnished, and containing the "permission to occupy upon completion of work" endorsement.

(e) Boiler and machinery insurance covering any pressure vessels, air tanks, boilers, machinery, pressure piping, heating, air conditioning and elevator equipment and escalator equipment located on the Premises, and insurance against loss of occupancy or use arising from any breakdown therein, all in such amounts as are satisfactory to the Mortgagee.

(f) Business interruption, use and occupancy or rent loss insurance on the Premises covering loss of the use of the Premises caused by the perils covered by the policies described in (a) and (e) above, for a period of not less than one year, in such amount as the Mortgagee may require.

(g) If all or any portion of any building located on the Premises is located in an area that has been identified by the Director of the Federal Emergency Management Agency as a special flood hazard area, flood insurance in an amount at least equal to the principal amount of the Loan or to the maximum amount of coverage allowed for the particular type of property under the National Flood Insurance Program, whichever is less.

(h) Such other insurance, and in such amounts, as may from time to time be required by the Mortgagee against the same or other hazards.

All policies of insurance required by terms of this Mortgage shall contain an endorsement or agreement by the insurer that any

# UNOFFICIAL COPY

loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of the Mortgagor, Beneficiary or the Mortgagee which might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of set-off, counterclaim or deductions against the Mortgagor, and shall provide that the amount payable for any loss shall not be reduced by reason of co-insurance.

Section 2.5. Delivery of Policies; Payment of Premiums. All policies of insurance required by the terms of this Mortgage shall be issued by companies and in amounts in each company satisfactory to the Mortgagee. All policies of insurance shall be maintained for and name the Mortgagor, the Beneficiary and the Mortgagee as insureds, as their respective interests may appear, and the policies required by paragraphs (a), (d), (e), (f) and (g) of Section 2.4 hereof shall have attached thereto a mortgagee's loss payable endorsement for the benefit of the Mortgagee in form satisfactory to the Mortgagee. The Mortgagor shall furnish the Mortgagee with the original of all required policies of insurance or certificates satisfactory to the Mortgagee. At least 30 days prior to the expiration of each such policy, the Mortgagor shall furnish the Mortgagee with evidence satisfactory to the Mortgagee of the payment of the premium and the reissuance of a policy continuing insurance in force as required by this Mortgage. Each policy of insurance required by this Mortgage shall contain a provision that such policy will not be cancelled or materially amended, including any reduction in the scope or limits of coverage, without at least 30 days' prior written notice to the Mortgagee.

Section 2.6. Taxes and Impositions.

(a) The Mortgagor agrees to pay or cause to be paid, at least 10 days prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, including without limitation any non-governmental levies or assessments such as maintenance charges, owner association dues or charges or fees, levies or charges resulting from covenants, conditions and restrictions affecting the Premises, which are assessed or imposed upon the Premises, or become due and payable, and which create, may create or appear to create a lien upon the Premises, or any part thereof (all of which taxes, assessments and other governmental charges and non-governmental charges of the above-described or like nature are hereinafter referred to as "Impositions"); provided however, that if, by law, any such Imposition is payable, or at the option of the taxpayer may be paid, in installments, the Mortgagor may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.

98992855



# UNOFFICIAL COPY

(b) The Mortgagor shall furnish to the Mortgagee within 30 days after the date upon which any Imposition is due and payable by the Mortgagor, official receipts of the appropriate taxing authority, or other proof satisfactory to the Mortgagee, evidencing the payment thereof.

(c) The Mortgagor shall have the right before any delinquency occurs to contest or object to the amount or validity of any Imposition by appropriate legal proceedings properly instituted and prosecuted in such manner as shall stay the collection of the contested Impositions and prevent the sale or forfeiture of the Premises to collect the same; provided that no such contest or objection shall be deemed or construed in any way as relieving, modifying or extending the Mortgagor's covenants to pay any such Imposition at the time and in the manner provided in this Section unless the Mortgagor has given prior written notice to the Mortgagee of the Mortgagor's intent to so contest or object to an Imposition, and unless, at the Mortgagee's sole option, (i) the Mortgagor shall demonstrate to the Mortgagee's satisfaction that legal proceedings instituted by the Mortgagor contesting or objecting to such impositions shall conclusively operate to prevent the sale or forfeiture of the Premises, or any part thereof, to satisfy such Imposition prior to final determination of such proceedings; and/or (ii) the Mortgagor shall furnish a good and sufficient bond or surety as requested by and satisfactory to the Mortgagee, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale or forfeiture of the Premises during the pendency of such contest, adequate fully to pay all such contested Impositions and all interest and penalties upon the adverse determination of such contest.

Section 2.7. Utilities. The Mortgagor shall pay or cause to be paid when due all utility charges which are incurred by the Mortgagor or others for the benefit of or service to the Premises or which may become a charge or lien against the Premises for gas, electricity, water or sewer services furnished to the Premises and all other assessments or charges of a similar nature, whether public or private, affecting the Premises or any portion thereof, whether or not such assessments or charges are liens thereon.

Section 2.8. Actions by Mortgagee to Preserve Premises. Should the Mortgagor fail to make any payment or to do any act as and in the manner provided herein or in any of the other Loan Documents, the Mortgagee in its own discretion, without obligation so to do and without releasing the Mortgagor from any obligation, may make or do the same in such manner and to such extent as it may deem necessary to protect the security hereof. In connection therewith (without limiting its general powers), the Mortgagee shall have and is hereby given the right, but not the obligation, (i) to enter upon and take possession of

# UNOFFICIAL COPY

the Premises; (ii) to make additions, alterations, repairs and improvements to the Premises which it may consider necessary and proper to keep the Premises in good condition and repair; (iii) to appear and participate in any action or proceeding affecting or which may affect the Premises, the security hereof or the rights or powers of the Mortgagee; (iv) to pay any Impositions (as defined in Section 2.6 hereof) asserted against the Premises and to do so according to any bill, statement or estimate procured from the appropriate office without inquiry into the accuracy of the bill, statement or estimate or into the validity of any Imposition; (v) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of the Mortgagee may affect or appears to affect the Premises or the security of this Mortgage or which may be prior or superior hereto; and (vi) in exercising such powers, to pay necessary expenses, including employment of and payment of compensation to counsel or other necessary or desirable consultants, contractors, agents and other employees. The Mortgagor irrevocably appoints the Mortgagee its true and lawful attorney in fact, at the Mortgagee's election, to do and cause to be done all or any of the foregoing in the event the Mortgagee shall be entitled to take any or all of the action provided for in this Section. The Mortgagor shall immediately, upon demand therefor by the Mortgagee, pay all costs and expenses incurred by the Mortgagee in connection with the exercise by the Mortgagee of the foregoing rights, including without limitation, costs of evidence of title, court costs, appraisals, surveys and attorneys' fees, all of which shall constitute so much additional indebtedness secured by this Mortgage immediately due and payable, with interest thereon at a rate of 2% above the then prevailing interest rate on the Note.

## Section 2.9. Damage and Destruction.

(a) The Mortgagor shall give the Mortgagee prompt notice of any damage to or destruction of any portion or all of the Premises, and the provisions contained in the following paragraphs of this Section shall apply in the event of any such damage or destruction.

(b) In the case of loss covered by policies of insurance, the Mortgagee is hereby authorized at its option either (i) to settle and adjust any claim under such policies without the consent of the Mortgagor, or (ii) to allow the Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss; and in any case the Mortgagee shall, and is hereby authorized to, collect and receipt for any such insurance proceeds; and the reasonable expenses incurred by the Mortgagee in the adjustment and collection of insurance proceeds shall be so much additional indebtedness secured by this Mortgage, and shall be reimbursed to the Mortgagee upon demand.

# UNOFFICIAL COPY

(c) In the event of any insured damage to or destruction of the Premises or any part thereof the proceeds of insurance payable as a result of such loss shall be applied upon the indebtedness secured by this Mortgage or applied to the repair and restoration of the Premises, as the Mortgagee in its sole discretion shall elect.

(d) In the event that the Mortgagee shall elect that proceeds of insurance are to be applied to the repair and restoration of the Premises, the Mortgagor hereby covenants promptly to repair and restore the same. In such event such proceeds shall be made available, from time to time, to pay or reimburse the costs of such repair and restoration, upon the Mortgagee's being furnished with satisfactory evidence of the estimated cost of such repair and restoration and with such architect's certificates, waivers of lien, contractors' sworn statements and other evidence of cost and of payments as the Mortgagee may require and approve, and if the estimated cost of the work exceeds 10% of the original principal amount of the indebtedness secured hereby, with all plans and specifications for such repair or restoration as the Mortgagee may require and approve. No payment made prior to the final completion of the work shall exceed ninety percent (90%) of the value of the work performed from time to time, and at all times the undisbursed balance of said proceeds remaining in the hands of the Mortgagee shall be at least sufficient to pay for the cost of completion of the work, free and clear of any liens.

(e) Notwithstanding any provision herein to the contrary and in particular Section 2.9(c) hereof, in the event of any such damage or destruction, the Mortgagee shall make the proceeds of insurance received as a result of such damage or destruction available for the repair and restoration of the Premises, subject to the following conditions: (i) that there does not then exist any Default, Event of Default or Condemnation Event under this Mortgage or any of the other Loan Documents; (ii) that all then existing leases and subleases of the Premises shall continue in full force and effect without reduction or abatement of rental (except during any period of untenability and except to the extent covered by rent loss insurance); (iii) that the Mortgagee shall first be given satisfactory proof that such improvements have been fully repaired and restored, or that by the expenditure of such money will be fully repaired and restored, free and clear of all liens, except the lien of this Mortgage and other Permitted Encumbrances; (iv) that in the event such proceeds shall be insufficient to repair and restore the Premises, the Mortgagor shall deposit promptly with the Mortgagee the amount of such deficiency; (v) that in the event the Mortgagor shall fail within a reasonable time to repair and restore the Premises, then the Mortgagee, at its option, may repair and restore the Premises for or on behalf of the Mortgagor and for such purpose may do all necessary acts, including using said funds deposited by the

98972855

# UNOFFICIAL COPY

Mortgagor as aforesaid; (vi) that waiver of the right of subrogation shall be obtained from any insurer under such policies of insurance who, at that time, claims that no liability exists as to the Mortgagor or the then owner or the assured under such policies; (vii) such insurance proceeds shall be disbursed as provided in Section 2.9(d) hereof; and (viii) that the excess of said insurance proceeds above the amount necessary to complete such repair and restoration shall be applied as a credit upon any portion, as selected by the Mortgagee, of the indebtedness secured hereby. In the event that any of the said conditions are not or cannot be satisfied, then the alternate disposition of such insurance proceeds as provided in Section 2.9(c) hereof shall become applicable. Under no circumstances shall the provisions of this Section 2.9 be deemed to impose any personal liability on the Mortgagee for the fulfillment of the terms, covenants and conditions contained in any leases or subleases of the Premises or to obligate the Mortgagee to take any action to repair and restore the Premises.

## Section 2.11. Eminent Domain.

(a) Should the Premises or any part thereof or interest therein be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner, or should the Mortgagor receive any notice or other information regarding any such proceeding, the Mortgagor shall give prompt written notice thereof to the Mortgagee, and the provisions contained in the following paragraphs of this Section shall apply.

(b) The Mortgagee shall be entitled to all compensation, awards and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name any action or proceedings. The Mortgagor shall be entitled to make any compromise or settlement in connection with such taking or damage, provided, however, that any such compromise or settlement must be approved in writing by the Mortgagee before it is entered into, and further provided that if at any time there exists any Default or Event of Default under this Mortgage or any of the other Loan Documents, then the Mortgagor hereby empowers the Mortgagee, in its discretion, to make a compromise or settlement in connection with such taking or damage. All proceeds of compensation, awards, damages, rights of action and proceeds awarded to the Mortgagor are hereby assigned to the Mortgagee and the Mortgagor agrees to execute such further assignments of such proceeds as the Mortgagee may require.

(c) In the event that any portion of the Premises are taken or damaged as aforesaid, all such proceeds shall be applied upon the indebtedness secured by this Mortgage or applied to the repair and restoration of the Premises, as the Mortgagee in its sole discretion shall elect; provided, however, that if there does not then exist any Default or Event of Default under this

98932855

# UNOFFICIAL COPY

Mortgage or any of the other Loan Documents, the Mortgagee shall not make such an election until after the Mortgagor is given notice and 30 days in which to present a plan for the application of such proceeds which the Mortgagee is free to accept or reject in its sole discretion.

(d) In the event that the Mortgagee shall elect that such proceeds are to be applied to the repair and restoration of the Premises, the Mortgagor hereby covenants promptly to repair and restore the same. In such event such proceeds shall be made available, from time to time, to pay or reimburse the costs of such repair and restoration on the terms provided in Section 2.9(d) hereof with respect to insurance proceeds.

Section 2.11. Inspection of Premises. The Mortgagee, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon or in any part of the Premises for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of this Mortgage or any of the other Loan Documents.

Section 2.12. Inspection of Books and Records; Financial Statements.

(a) The Mortgagor shall keep and maintain full and correct records showing in detail the income and expenses of the Premises and shall make such books and records and all supporting vouchers and data available for examination by the Mortgagee and its agents at any time and from time to time on request at the offices of the Mortgagee, or at such other location as may be mutually agreed upon.

(b) The Mortgagor shall also furnish to the Mortgagee such other information and data with respect to the Premises as may be requested by the Mortgagee.

(c) The Mortgagor shall furnish to the Mortgagee (i) no less often than once during each of the 12-month periods commencing on the date of the first disbursement of the Note and each anniversary thereof, a financial statement of the Individual Guarantor, each such financial statement to be dated as of a date no more than six months prior to the date on which it is furnished to the Mortgagee, prepared in reasonable detail and in a form acceptable to the Mortgagee, and signed and certified by the Individual Guarantor; (ii) within 180 days after the end of each fiscal year of the Beneficiary, an annual financial statement of the Beneficiary consisting of at least a balance sheet as at the end of such one-year period and an income statement and cash flow statement for such one-year period, and prepared in reasonable detail and in a form acceptable to the Mortgagee and signed and certified by an authorized representative of the Beneficiary; and (iii) within 180 days

# UNOFFICIAL COPY

after the end of each fiscal year of AFLP, an annual financial statement of AFLP, in each case consisting of at least a balance sheet as at the end of such one-year period, and prepared in reasonable detail and in a form acceptable to the Mortgagee and signed and certified by an authorized representative of AFLP.

## Section 2.13. Title, Liens and Conveyances.

(a) The Mortgagor represents that it holds good and marketable title to the Premises, subject only to Permitted Encumbrances.

(b) Except for Permitted Encumbrances, the Mortgagor shall not create, suffer or permit to be created or filed against the Premises, or any part thereof or interest therein, any mortgage lien or other lien, charge or encumbrance, either superior or inferior to the lien of this Mortgage. The Mortgagor shall have the right to contest in good faith the validity of any such lien, charge or encumbrance, provided the Mortgagor shall first deposit with the Mortgagee a bond, title insurance or other security satisfactory to the Mortgagee in such amounts or form as the Mortgagee shall require; provided further that the Mortgagor shall thereafter diligently proceed to cause such lien, encumbrance or charge to be removed and discharged. If the Mortgagor shall fail to discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of the Mortgagee, the Mortgagee may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien by depositing in court a bond for the amount claimed or otherwise giving security for such claim, or in such manner as it or may be prescribed by law and any amounts expended by the Mortgagee in so doing shall be so much additional indebtedness secured by this Mortgage. Except for Permitted Encumbrances and liens, charges and encumbrances being contested as provided above, in the event that the Mortgagor shall suffer or permit any superior or junior lien, charge or encumbrance to be attached to the Premises and shall fail to discharge same as described above, the Mortgagee, at its option, shall have the unqualified right to accelerate the maturity of the Note causing the full principal balance and accrued interest on the Note to become immediately due and payable without notice to the Mortgagor.

(c) In the event title to the Premises is now or hereafter becomes vested in a trustee, any prohibition or restriction contained herein upon the creation of any lien against the Premises shall also be construed as a similar prohibition or limitation against the creation of any lien or security interest upon the beneficial interest under such trust.

(d) In the event that the Mortgagor shall sell, transfer, convey or assign the title to all or any portion of the

# UNOFFICIAL COPY

Premises, or in the event the Beneficiary shall sell, transfer, convey or assign the beneficial interest under the Trust Agreement by which the Mortgagor was created (including a collateral assignment thereof), in either case whether by operation of law, voluntarily, or otherwise, or the Mortgagor or the Beneficiary shall contract to do any of the foregoing, the Mortgagee, at its option, shall have the unqualified right to accelerate the maturity of the Note causing the full principal balance and accrued interest on the Note to become immediately due and payable without notice to the Mortgagor.

(e) Any waiver by the Mortgagee of the provisions of this Section shall not be deemed to be a waiver of the right of the Mortgagee to insist upon strict compliance with the provisions of this Section in the future.

## Section 2.14. Taxes Affecting Mortgage.

(a) If at any time any federal, State or municipal law shall require any documentary stamps or other tax hereon or on the Note, or shall require payment of any tax upon the indebtedness secured hereby, then the said indebtedness and the accrued interest thereon shall be and become due and payable at the election of the Mortgagee upon 30 days' notice to the Mortgagor; provided, however, said election shall be unavailing and this Mortgage and the Note shall be and remain in effect, if the Mortgagor lawfully may pay for such stamps or such tax including interest and penalties thereon to or on behalf of the Mortgagee and the Mortgagor does in fact pay, when payable, for all such stamps or such tax, as the case may be, including interest and penalties thereon.

(b) In the event of the enactment after the date of this Mortgage of any law of the State in which the Premises are located deducting from the value of the Premises for the purpose of taxation any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby of the holder hereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments, or reimburse the Mortgagee therefor; provided, however, that if, in the opinion of counsel for the Mortgagee, (i) it might be unlawful to require Mortgagor to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then, and in such event, the Mortgagee may elect, by notice in writing given to the Mortgagor, to declare all of the indebtedness secured hereby to be due and payable within 30 days from the giving of such notice.

# UNOFFICIAL COPY

Notwithstanding the foregoing, it is understood and agreed that the Mortgagor is not obligated to pay any portion of Mortgagee's federal or State income tax.

## Section 2.15. Environmental Matters.

(a) The Mortgagor hereby represents to the Mortgagee that neither the Mortgagor, the Beneficiary nor any of their affiliates or subsidiaries, nor, to the best of the Mortgagor's knowledge, any other person or entity, has ever caused or permitted any Hazardous Material to be placed, held, located or disposed of on, under or at the Premises or any part thereof, and that the Premises has never been used by the Mortgagor, the Beneficiary or any of their affiliates or subsidiaries, or, to the best of the Mortgagor's knowledge, by any other person or entity, as a treatment, storage or disposal site (whether permanent or temporary) for any Hazardous Material, and that there are no underground storage tanks located on the Premises.

(b) Without limitation on any other provision hereof, the Mortgagor hereby agrees to indemnify and hold the Mortgagee harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any kind whatsoever (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any of the following (collectively, "Environmental Laws"): the Comprehensive Environmental Response, Compensation, and Liability Act, any so-called "Superfund" or "Superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree, now or hereafter in force, regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Material) paid, incurred, suffered by or asserted against the Mortgagee as a direct or indirect result of any of the following, regardless of whether or not caused by, or within the control of, the Mortgagor or the Beneficiary: (i) the presence of any Hazardous Material on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release of any Hazardous Material from (A) the Premises or any part thereof, or (B) any other real property in which the Mortgagor, the Beneficiary or any of their affiliates or subsidiaries holds any estate or interest whatsoever (including, without limitation, any property owned by a land trust the beneficial interest in which is owned, in whole or in part, by the Beneficiary or any of its affiliates or subsidiaries), or (ii) any liens against the Premises permitted or imposed by any Environmental Laws, or any actual or asserted liability or obligations of the Mortgagor, the Beneficiary or any of their affiliates or subsidiaries under any Environmental Laws, or (iii) any actual or asserted liability or obligations of the Mortgagee or any of its affiliates or subsidiaries under any Environmental Law relating to the Premises.



# UNOFFICIAL COPY

(c) If any of the provisions of the Illinois Responsible Property Transfer Act of 1988 ("IRPTA") are now or hereafter become applicable to the Premises, the Mortgagor shall comply with such provisions. Without limitation on the generality of the foregoing, (i) if the delivery of a disclosure document is now or hereafter required by IRPTA, the Mortgagor shall cause the delivery of such disclosure document to be made to all parties entitled to receive same within the time period required by IRPTA; and (ii) the Mortgagor shall cause any such disclosure document to be recorded with the Recorder of Deeds of the county in which the Premises are located and filed with the Illinois Environmental Protection Agency, all within the time periods required by IRPTA. The Mortgagor shall promptly deliver to the Mortgagee evidence of such recording and filing of such disclosure document.

(d) The representations, covenants, indemnities and obligations provided for in this Section 2.15 shall be continuing and shall survive the payment, performance, satisfaction, discharge, cancellation, termination, release and foreclosure of this Mortgage; provided, however, that such representations, covenants, indemnities and obligations shall not apply with respect to Hazardous Materials which are first placed on the Premises on or after the date on which the Mortgagee or any other party obtains title to and possession of the Premises pursuant to an exercise by the Mortgagee of its remedies under this Mortgage or any of the other Loan Documents or as a result of a conveyance of title to the Premises by the Mortgagor to the Mortgagee or such other party in lieu of such exercise of remedies.

Section 2.16. Appraisals. It shall be a condition to the first advance of the proceeds of the Note that the Mortgagee shall have obtained an appraisal of the Premises in a form, and showing an appraised value, acceptable to the Mortgagee in its sole discretion. The Mortgagee shall have the right at any time and from time to time to obtain an appraisal of the Premises. The cost of such appraisal shall be paid by the Mortgagor and the Beneficiary when either (i) the same is required by bank regulators, or (ii) the same is obtained because in the sole judgment of the Mortgagee, the value of the Premises has declined since the date of the then most recent appraisal previously obtained by the Mortgagor.

Section 2.17. Estoppel Letters. The Mortgagor shall furnish from time to time, within 15 days after the Mortgagee's request, a written statement, duly acknowledged, of the amount due upon this Mortgage and whether any alleged offsets or defenses exist against the indebtedness secured by this Mortgage.

95000055

# UNOFFICIAL COPY

## ARTICLE III

### LEASES; DECLARATION OF SUBORDINATION TO LEASES

Section 3.1. Leases. The Mortgagor agrees (i) that it will not enter into any lease of the Premises or any portion thereof without the prior written consent of the Mortgagee; (ii) that it will at all times duly perform and observe all of the terms, provisions, conditions and agreements on its part to be performed and observed under any and all leases of the Premises, or any portion thereof, including, but not limited to, the Leases, and shall not suffer or permit any Default or Event of Default on the part of the lessor to exist thereunder; (iii) that it will not agree or consent to, or suffer or permit, any termination, modification, amendment or assignment of, or any sublease under, any lease of the Premises, or any portion thereof, including, but not limited to, the Leases, without the prior written consent of the Mortgagee; and (iv) except for security deposits not to exceed one month's rent for any one lessee, that it will not collect any rent for more than one month in advance of the date same is due. Unless otherwise approved by the Mortgagee, all leases of space in the Premises shall be prepared on a lease form approved by the Mortgagee. Nothing herein contained shall be deemed to obligate the Mortgagee to perform or discharge any obligation, duty or liability of the lessor under any lease of the Premises, and the Mortgagor shall and does hereby indemnify and hold the Mortgagee harmless from any and all liability, loss or damage which the Mortgagee may or might incur under any leases of the Premises or by reason of the Assignment of Rents; and any and all such liability, loss or damage incurred by the Mortgagee, together with the costs and expenses, including reasonable attorneys' fees, incurred by the Mortgagee in the defense of any claims or demands therefor (whether successful or not), shall be so much additional indebtedness secured by this Mortgage, and the Mortgagor shall reimburse the Mortgagee therefor on demand.

Section 3.2. Declaration of Subordination to Leases. At the option of the Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases and subleases of all or any part of the Premises upon the execution by the Mortgagee and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds of the county wherein the Premises are situated, of a unilateral declaration to that effect.

# UNOFFICIAL COPY

## ARTICLE IV

### EVENTS OF DEFAULT, CONDEMNATION EVENTS AND REMEDIES

Section 4.1. Events of Default; Condemnation Events.  
Any one or more of the following shall constitute an "Event of Default" under this Mortgage:

(a) A default shall occur in the payment when due of any installment of principal or interest on the Note or either of the Related Loans Notes, or the Schaumburg Bond, or in the payment when due of any other amount required to be paid by the Mortgagor to the Mortgagee under this Mortgage or under any of the other Loan Documents, or by either of the Related Loans Borrowers under the Related Loan Documents, or by the Authority under the Schaumburg Bond, or in the payment when due of any other indebtedness secured by this Mortgage; or

(b) The Mortgagor shall fail to comply with any provision of this Mortgage or any of the other Loan Documents, relating to the payment by the Mortgagor of any amount payable to a party other than the Mortgagee; or

(c) The Mortgagor, the Beneficiary, or any indemnitor under the Indemnity Agreement or any guarantor under the Guaranty shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of the Mortgagor, the Beneficiary, or any such indemnitor or guarantor or of all or any part of the Premises, or of any or all of the royalties, revenues, rents, issues or profits thereof, or shall make any general assignment for the benefit of creditors, or shall admit in writing its or his inability to pay its or his debts generally as they become due; or

(d) A court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against the Mortgagor, the Beneficiary, or any indemnitor under the Indemnity Agreement or any guarantor under the Guaranty seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree shall remain unvacated and unstayed for an aggregate of 10

# UNOFFICIAL COPY

days (whether or not consecutive) from the first date of entry thereof; or any trustee, receiver or liquidator of the Mortgagor, the Beneficiary, or any such indemnitor or guarantor or of all or any part of the Premises, or of any or all of the royalties, revenues, rents, issues or profits thereof, shall be appointed and such appointment shall remain unvacated and unstayed for an aggregate of 10 days (whether or not consecutive); or

(e) A writ of execution or attachment or any similar process shall be issued or levied against all or any part of or interest in the Premises, or any judgment involving monetary damages shall be entered against the Mortgagor which shall become a lien on the Premises or any portion thereof or interest therein and such execution, attachment or similar process or judgment is not released, bonded, satisfied, vacated or stayed within 10 days after its entry or levy; or

(f) If any representation or warranty of the Mortgagor, the Beneficiary or any indemnitor under the Indemnity Agreement or any guarantor under the Guaranty, contained in this Mortgage, in any of the other Loan Documents, or in any statement, certificate or other document delivered in connection with the loan evidenced by the Note, shall be untrue or incorrect in any material respect; or

(g) If any Event of Default by the Mortgagor or the Beneficiary shall occur and be continuing under any lease of the Premises, including, without limitation, the Leases, or if any such lease shall be terminated, modified, amended or assigned, or a sublease thereunder shall occur, without the prior written consent of the Mortgagee; or

(h) Default by the Mortgagor shall occur in the performance, observance or compliance with any term, covenant, condition, agreement or provision contained in this Mortgage other than as described in paragraphs (a) through (g) above and such default shall continue for a period of 30 days after written notice thereof from the Mortgagee to the Mortgagor and the Beneficiary; or

(i) If any Event of Default or Condemnation Event shall occur and be continuing under any of the other Loan Documents, or under any of Related Loans Documents; or

(j) If any Event of Default or Condemnation Event shall occur and be continuing under any other mortgage or trust deed on the Premises; or

# UNOFFICIAL COPY

(k) Default shall occur in the payment of any moneys due and payable to the Mortgagee by the Mortgagor or any indemnitor under the Indemnity Agreement or any guarantor under the Guaranty, other than in connection with the Loan, or Default shall occur in the performance or observance of any obligation or condition on the part of the Mortgagor or any such indemnitor or guarantor under any written contract, agreement or other instrument heretofore or hereafter entered into with the Mortgagee other than in connection with the Loan.

In addition, the following shall constitute a "Condemnation Event" under this Mortgage:

All or any substantial part of the Premises shall be taken by a Governmental Body or any other person whether by condemnation, eminent domain or otherwise.

Section 4.2. Acceleration upon Event of Default or Condemnation Event; Additional Remedies. Upon or at any time after the occurrence of any Event of Default or Condemnation Event, the Mortgagee may declare the Note and all indebtedness secured by this Mortgage to be due and payable and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind. Thereafter the Mortgagee may:

(a) Either in person or by agent, with or without bringing any action or proceeding, if applicable law permits, enter upon and take possession of the Premises, or any part thereof, in its own name, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Premises, or any part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Premises, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same to the payment of taxes, insurance premiums and other charges against the Premises or in reduction of the indebtedness secured by this Mortgage; and the entering upon and taking possession of the Premises, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any Event of Default or Condemnation Event, or notice thereof hereunder, or invalidate any act done in response to such Event of Default or Condemnation Event or pursuant to such notice thereof and, notwithstanding the continuance in possession of the Premises or the collection, receipt and application of rents, issues or profits, the Mortgagee shall be entitled to exercise every right provided for in any of the other Loan Documents or by law upon occurrence of any Event of Default or Condemnation Event; or

# UNOFFICIAL COPY

(b) Commence an action to foreclose this Mortgage, appoint a receiver, or specifically enforce any of the covenants hereof; or

(c) Sell the Premises, or any part thereof, or cause the same to be sold, and convey the same to the purchaser thereof, pursuant to the statute in such case made and provided, and out of the proceeds of such sale retain all of the indebtedness secured by this Mortgage including, without limitation, principal, accrued interest, costs and charges of such sale, the attorneys' fees provided by such statute (or in the event of a suit to foreclose by court action, a reasonable attorney's fee), rendering the surplus moneys, if any, to the Mortgagor; provided, that in the event of public sale of such property may, at the option of the Mortgagee, be sold in one parcel or in several parcels as the Mortgagee, in its sole discretion, may elect; or

(d) Exercise any or all of the remedies available to a secured party under the Uniform Commercial Code of Illinois and any notice of sale, disposition or other intended action by the Mortgagee, sent to the Mortgagor at the address specified in Section 5.13 hereof, at least five days prior to such action, shall constitute reasonable notice to the Mortgagor.

Section 4.3. Foreclosure; Expense of Litigation. When the indebtedness secured by this Mortgage, or any part thereof, shall become due, whether by acceleration or otherwise, the Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof. In any suit to foreclose the lien hereof or enforce any other remedy of the Mortgagee under this Mortgage or the Note, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree, all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as the Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this Section mentioned, and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by the Mortgagee in any litigation or proceeding affecting this Mortgage, any of the other Loan Documents or the Premises, including probate and bankruptcy proceedings, or in preparations

# UNOFFICIAL COPY

for the commencement or defense of any proceeding or threatened suit or proceeding, shall be so much additional indebtedness secured by this Mortgage, immediately due and payable, with interest thereon at a rate of 2% above the then prevailing interest rate on the Note. In the event of any foreclosure sale of the Premises, the same may be sold in one or more parcels. The Mortgagee may be the purchaser at any foreclosure sale of the Premises or any part thereof.

Section 4.4. Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Premises or of the exercise of any other remedy hereunder shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings or such other remedy, including all such items as are mentioned in Section 4.3 hereof; second, all other items which under the terms hereof constitute indebtedness secured by this Mortgage additional to that evidenced by the Note, with interest thereon as therein provided; third, all principal and interest remaining unpaid on the Note; and fourth, any remainder to the Mortgagor, its successors or assigns, as their rights may appear.

Section 4.5. Appointment of Receiver. Upon or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises or any portion thereof. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of the Mortgagor at the time of application for such receiver and without regard to the then value of the Premises and the Mortgage or any holder of the Note may be appointed as such receiver. Such receiver shall have power (i) to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit, as well as during any further times when the Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits; (ii) to extend or modify any then existing leases and to make new leases, which extension, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness secured by this Mortgage and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon the Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding discharge of the indebtedness secured by this Mortgage, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser; and (iii) all other powers which may be necessary or are usual in such cases for the protection,

# UNOFFICIAL COPY

possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of the indebtedness secured by this Mortgage, or found due or secured by any judgment foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale.

Section 4.6. Insurance After Foreclosure. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in repairing and restoring the Premises, shall be used to pay the amount due in accordance with any judgment of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct.

Section 4.7. Remedies Not Exclusive; No Waiver of Remedies.

(a) The Mortgagee shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Mortgage or under any of the other Loan Documents or other agreement or any laws now or hereafter in force, notwithstanding that some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or other powers herein contained, shall prejudice or in any manner affect the Mortgagee's right to realize upon or enforce any other security now or hereafter held by the Mortgagee, it being agreed that the Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by the Mortgagee in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to the Mortgagee is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to the Mortgagee or to which it may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as it may be deemed expedient by the Mortgagee and the Mortgagee may pursue inconsistent remedies. Failure by the Mortgagee to exercise any right which it may exercise hereunder, or the acceptance by the Mortgagee of partial payments, shall not be deemed a waiver by the Mortgagee of any default or of its right to exercise any such rights thereafter.

(b) In the event the Mortgagee at any time holds additional security for any of the indebtedness secured by this



# UNOFFICIAL COPY

Mortgage, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before or concurrently with exercising remedies under this Mortgage or after a sale is made hereunder.

Section 4.8. No Mortgagee in Possession. Nothing herein contained shall be construed as constituting the Mortgagee a mortgagee in possession.

Section 4.9. Waiver of Certain Rights. The Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but rather waives the benefit of such laws. The Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. The Mortgagor hereby waives any and all rights of redemption under any applicable law, including, without limitation, redemption from sale or from or under any order, judgment or decree of foreclosure, pursuant to rights herein granted, on behalf of the Mortgagor and all persons beneficially interested therein and each and every person acquiring any interest in or title to the Premises subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by the provisions of the laws of the State in which the Premises are located.

THE MORTGAGOR HEREBY WAIVES TRIAL BY JURY IN ANY JUDICIAL PROCEEDING RELATING TO THIS MORTGAGE.

Section 4.10. Mortgagee's Use of Deposits. With respect to any deposits made with or held by the Mortgagee or any depository pursuant to any of the provisions of this Mortgage, in the event of a default in any of the provisions contained in this Mortgage or in the Note or any of the other Loan Documents, the Mortgagee may, at its option, without being required to do so, apply any moneys or securities which constitute such deposits on any of the obligations under this Mortgage, the Note or the other Loan Documents, in such order and manner as the Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to the Mortgagor. Such deposits are hereby pledged as additional security for the prompt payment of the Note and any other indebtedness hereunder and shall be held to be irrevocably applied by the depository for the purposes for which made hereunder and shall not be subject to the direction or control of the Mortgagor.

# UNOFFICIAL COPY

## ARTICLE V

### MISCELLANEOUS

Section 5.1. Recitals. The recitals hereto are hereby incorporated into and made a part of this Mortgage.

Section 5.2. Time of Essence. Time is of the essence of this Mortgage and of each and every provision hereof.

Section 5.3. Usury. The Mortgagor hereby represents and covenants that the proceeds of the Note will be used for the purposes specified in subparagraph 1(c) contained in Section 205/4 of Chapter 815 of the Illinois Compiled Statutes (1996), and that the indebtedness secured hereby constitutes a "business loan" within the meaning of that Section.

Section 5.4. Lien for Service Charges and Expenses. At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures (in addition to any loan proceeds disbursed from time to time) the payment of any and all origination fees, loan commissions, service charges, liquidated damages, expense and advances due to or incurred by the Mortgagee in connection with the loan to be secured hereby, all in accordance with the application and any loan commitment issued in connection with this transaction.

Section 5.5. Subrogation. To the extent that proceeds of the indebtedness secured by this Mortgage are used to pay any outstanding lien, charge or prior encumbrance against the Premises, the Mortgagee shall be subrogated to any and all rights and liens owned by any owner or holder of such outstanding liens, charges and prior encumbrances, and shall have the benefit of the priority thereof, irrespective of whether such liens, charges or encumbrances are released.

Section 5.6. Recording. The Mortgagor shall cause this Mortgage and all other documents securing the indebtedness secured by this Mortgage at all times to be properly filed and/or recorded at the Mortgagor's own expense and in such manner and in such places as may be required by law in order to fully preserve and protect the rights of the Mortgagee.

Section 5.7. Further Assurances. The Mortgagor will do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurances necessary or advisable, in the judgment of the Mortgagee, for the better assuring, conveying, mortgaging, assigning and confirming unto the Mortgagee all property mortgaged hereby or property intended so to be, whether now owned by the Mortgagor or hereafter acquired.

# UNOFFICIAL COPY

Section 5.8. No Defenses. No action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Note.

Section 5.9. Invalidity of Certain Provisions. If the lien of this Mortgage is invalid or unenforceable as to any part of the indebtedness secured by this Mortgage, or if such lien is invalid or unenforceable as to any part of the Premises, the unsecured or partially secured portion of the indebtedness secured by this Mortgage shall be completely paid prior to the payment of the remaining and secured or partially secured portion thereof and all payments made on the indebtedness secured by this Mortgage, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion thereof which is not secured or fully secured by the lien of this Mortgage.

Section 5.10. Illegality of Terms. Nothing herein or in the Note contained nor any transaction related thereto shall be construed or shall so operate either presently or prospectively, (i) to require the Mortgagor to pay interest at a rate greater than is now lawful in such case to contract for, but shall require payment of interest only to the extent of such lawful rate, or (ii) to require the Mortgagor to make any payment or do any act contrary to law. If any provision contained in this Mortgage shall otherwise so operate to invalidate this Mortgage, in whole or in part, then such provision only shall be held for naught as though not herein contained and the remainder of this Mortgage shall remain operative and in full force and effect, and the Mortgagee shall be given a reasonable time to correct any such error.

Section 5.11. Mortgagee's Right to Deal with Transferee. In the event of the voluntary sale, or transfer by operation of law, or otherwise, of all or any part of the Premises, the Mortgagee is hereby authorized and empowered to deal with such vendee or transferee with reference to the Premises, or the debt secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might with the Mortgagor, without in any way releasing or discharging the Mortgagor from the covenants and/or undertakings hereunder, specifically including Section 2.13(d) hereof, and without the Mortgagee waiving its rights to accelerate the Note as set forth in Section 2.13(d).

Section 5.12. Release. The Mortgagee, without notice, and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens, may release any part of the Premises, or any person liable for any indebtedness secured hereby, without in any

99932855

# UNOFFICIAL COPY

way affecting the liability of any party to the Note, this Mortgage, the Guaranty, or any other guaranty given as additional security for the indebtedness secured hereby and without in any way affecting the priority of the lien of this Mortgage, and may agree with any party obligated on said indebtedness to extend the time for payment of any part or all of the indebtedness secured hereby. Such agreement shall not, in any way, release or impair the lien created by this Mortgage, or reduce or modify the liability, if any, of any person or entity personally obligated for the indebtedness secured hereby, but shall extend the lien hereof as against the title of all parties having any interest in said security which interest is subject to the indebtedness secured by this Mortgage.

Section 5.13. Giving of Notice. All communications provided for herein shall be in writing and shall be deemed to be given or made when served personally or two business days after deposit in the United States mail, registered or certified, return receipt requested, postage prepaid, addressed as follows:

If to the Mortgagor: LaSalle National Bank,  
as Trustee under  
Trust No. 122059  
135 South LaSalle Street  
Chicago, Illinois 60603  
Attention: Land Trust Department  
with a copy to:

National Build to Suit Kinzie,  
L.L.C.  
c/o The Alter Group  
7303 North Cicero Avenue  
Lincolnwood, Illinois 60646

If to the Mortgagee: American National Bank and  
Trust Company of Chicago  
120 South LaSalle Street  
Chicago, Illinois 60603  
Attention: Commercial Real Estate

or to such party at such other address as such party may designate by notice duly given in accordance with this Section to the other party.

Section 5.14. Concerning the Related Loans Documents, the Schaumburg Bond and the Schaumburg Second Mortgage Documents. This Mortgage and the undertakings of the Mortgagor hereunder and the mortgage lien created hereby shall be continuing and shall be binding upon the Mortgagor and the Premises, and shall remain in

# UNOFFICIAL COPY

full force and effect, and shall not be discharged, impaired or affected by (i) the power or authority of the Related Loans Borrowers, the Authority or the Schaumburg Trust to issue or to execute, acknowledge or deliver the Related Loans Documents, the Schaumburg Bond or the Schaumburg Second Mortgage Documents, as the case may be; (ii) the existence or continuance of any obligation on the part of the Related Loans Borrowers, the Authority or the Schaumburg Trust on or with respect to the obligations under the Related Loans Documents, the Schaumburg Bond or the Schaumburg Second Mortgage Documents, as the case may be; (iii) the validity or invalidity of the obligations under the Related Loans Documents, the Schaumburg Bond or the Schaumburg Second Mortgage Documents; (iv) any defense, set-off or counterclaim whatsoever that the Related Loans Borrowers, the Authority or the Schaumburg Trust may or might have to the performance or observance of the obligations under the Related Loans Documents, the Schaumburg Bond or the Schaumburg Second Mortgage Documents, as the case may be, or to the performance or observance of any of the terms, provisions, covenants and agreements contained in any of the Related Loans Documents, the Schaumburg Bond or the Schaumburg Second Mortgage Documents, including, without limitation, any defense based on any alleged failure of the Mortgagee to comply with the implied covenant of good faith and fair dealing, or any limitation or exculpation of liability on the part of the Related Loans Borrowers, the Authority or the Schaumburg Trust; (v) the existence or continuance of the Related Loans Borrowers, the Authority or the Schaumburg Trust as legal entities; (vi) the transfer by the Related Loans Borrowers or the Schaumburg Trust of all or any part of any property encumbered by the Related Loans Documents or the Schaumburg Second Mortgage Documents; (vii) any sale, pledge, assignment, surrender, indulgence, alteration, substitution, exchange, extension, renewal, release, compromise, change in, modification or other disposition of any of the obligations under the Related Loans Documents, the Schaumburg Bond or the Schaumburg Second Mortgage Documents, all of which the Mortgagee is hereby expressly authorized to make from time to time without notice to the Mortgagor, or to anyone; (viii) the acceptance by the Mortgagee of the primary or secondary obligation of any party with respect to, or any security for, or any guarantors upon, all or any part of the obligations under the Related Loans Documents, the Schaumburg Bond or the Schaumburg Second Mortgage Documents; or (ix) any failure, neglect or omission on the part of the Mortgagee to realize or protect any of the obligations under the Related Loans Documents, the Schaumburg Bond or the Schaumburg Second Mortgage Documents or any collateral or appropriation of any moneys, credits or property of the Related Loans Borrowers, the Authority or the Schaumburg Trust toward the liquidation of the obligations under the Related Loans Documents, the Schaumburg Bond or the Schaumburg Second Mortgage Documents or by any application of any moneys received by the Mortgagee under the Related Loans Documents, the Schaumburg Bond or the Schaumburg

# UNOFFICIAL COPY

**Second Mortgage Documents.** The obligations of the Mortgagor hereunder and the mortgage lien on the Premises created hereby shall not be affected, discharged, impaired or varied by any act, omission or circumstance whatsoever (whether or not specifically enumerated above) except the due and punctual payment and performance of all of the obligations under the Loan Documents, the Related Loans Documents, the Schaumburg Bond and the Schaumburg Second Mortgage Documents and then, in each case, only to the extent thereof.

The Mortgagee shall have the right to enforce this Mortgage for and to the full extent of the amounts hereby secured, whether or not other proceedings or steps are pending or have been taken or have been concluded to enforce or otherwise realize upon the obligation or security of the Related Loans Borrowers, the Authority or the Schaumburg Trust under the Related Loans Documents, the Schaumburg Bond or the Schaumburg Second Mortgage Documents, as the case may be. The enforcement of this Mortgage against the Premises for the collection of the obligations of the Related Loans Borrowers, the Authority or the Schaumburg Trust under the Related Loans Documents, the Schaumburg Bond or the Schaumburg Second Mortgage Documents shall not in any wise entitle the Mortgagor, either at law, or in equity or otherwise, to any right, title or interest in and to the Related Loans Documents, the Schaumburg Bond or the Schaumburg Second Mortgage Documents or any of the other obligations hereby secured, or in and to any security therefor, or to any right of recovery against the Related Loans Borrowers, the Authority or the Schaumburg Trust, in each case whether by way of indemnity, reimbursement, contribution, subrogation or otherwise, and the Mortgagor hereby waives and relinquishes any and all such right, title and interest in and to the Related Loans Documents, the Schaumburg Bond or the Schaumburg Second Mortgage Documents, such other obligations, and such security and any and all such rights of recovery against the Related Loans Borrowers, the Authority and/or the Schaumburg Trust.

**Section 5.15. Binding Effect.** This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon the Mortgagor and its successors and assigns (including, without limitation, each and every from time to time record owner of the Premises or any other person having an interest therein), and shall inure to the benefit of the Mortgagee and its successors and assigns. Wherever herein the Mortgagee is referred to, such reference shall be deemed to include the holder from time to time of the Note, whether so expressed or not; and each such holder of the Note shall have and enjoy all of the rights, privileges, powers, options and benefits afforded hereby and hereunder, and may enforce all and every of the terms and provisions hereof, as fully and to the same extent and with the same effect as if such from time to time holder were herein by name specifically granted such rights, privileges,

# UNOFFICIAL COPY

powers, options and benefits and was herein by name designated the Mortgagee.

Section 5.16. Covenants to Run with the Land. All the covenants hereof shall run with the land.

Section 5.17. Entire Agreement. This Mortgage sets forth all of the covenants, promises, agreements, conditions and understandings of the parties relating to the subject matter of this Mortgage, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as are herein set forth.

Section 5.18. Governing Law; Severability; Modification. This Mortgage shall be governed by the laws of the State of Illinois. In the event that any provision or clause of this Mortgage conflicts with applicable laws, such conflicts shall not affect other provisions hereof which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage are declared to be severable. This Mortgage and each provision hereof may be modified, amended, changed, altered, waived, terminated or discharged only by a written instrument signed by the party sought to be bound by such modification, amendment, change, alteration, waiver, termination or discharge.

Section 5.19. Meanings. Wherever in this Mortgage the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

Section 5.20. Captions. The captions or headings at the beginning of each Article and Section hereof are for the convenience of the parties and are not a part of this Mortgage.

Section 5.21. Approval or Consent of Mortgagee. Wherever in this Mortgage provision is made for the approval or consent of the Mortgagee, or that any matter is to be to the Mortgagee's satisfaction, or that any matter is to be as estimated or determined by the Mortgagee, or the like, unless specifically stated to the contrary, such approval, consent, satisfaction, estimate, determination or the like shall be made, given or determined by the Mortgagee pursuant to a reasonable application of judgment in accordance with institutional lending practice and commercial custom in connection with major real estate loans.

Section 5.22. Construction and Interpretation. The Mortgagor and the Mortgagee, and their respective legal counsel, have participated in the drafting of this Mortgage, and accordingly the general rule of construction to the effect that any ambiguities in a contract are to be resolved against the

# UNOFFICIAL COPY

party drafting the contract shall not be employed in the construction and interpretation of this Mortgage.

Section 5.23. Execution by Mortgagor. This Mortgage is executed by LaSalle National Bank, not personally but as trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such trustee and it is expressly understood and agreed that nothing herein or in the Note contained shall be construed as creating any liability on LaSalle National Bank personally to pay the Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained, all such liability, if any, being expressly waived by every person now or hereafter claiming any right or security hereunder. Nothing contained in this Section shall modify or discharge the personal liability of any guarantor or any person under or by virtue of the Guaranty or any of the other Loan Documents. LaSalle National Bank, by its execution hereof on behalf of the Mortgagor represents and warrants that it possesses full power and authority to execute this instrument.

[SIGNATURE PAGE(S) AND EXHIBIT(S),  
IF ANY, FOLLOW THIS PAGE]



# UNOFFICIAL COPY

IN WITNESS WHEREOF, the Mortgagor has caused this instrument to be executed as of the date first above written.

LASALLE NATIONAL BANK,  
solely as Trustee as  
aforesaid and not personally

By Nancy A. Carlin  
Title: Assistant Vice President

## JOINDER OF BENEFICIARY

The undersigned, National Build to Suit Kinzie, L.L.C., a Delaware limited liability company, being the Beneficiary (as defined in Article I of this Mortgage), hereby joins in this Mortgage for the purpose of subjecting to the lien and security interests created hereby its interest in the property described in paragraphs (g) and (h) of the granting clauses of this Mortgage, and all proceeds thereof.

NATIONAL BUILD TO SUIT KINZIE,  
L.L.C.

By 18-Chai Corp., Manager

By Renald P. Siegal, Vice President

Lawrence M. Freedman

99932855



# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION OF THE PREMISES

LOT 2 IN BLOCK 1 IN WOLCOTT'S ADDITION TO CHICAGO IN SECTION 9,  
TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL  
MERIDIAN, IN COOK COUNTY, ILLINOIS.

PERMANENT TAX INDEX NUMBER:

17-09-262-017-0000

ADDRESS:

10 West Kinzie Street  
Chicago, Illinois

Property of Cook County Clerk's Office

989.32855

# UNOFFICIAL COPY

## EXHIBIT B

### SCHEDULE OF LEASES

<u>Lessor</u>	<u>Lessee</u>	<u>Date of Lease</u>	<u>Premises</u>
LaSalle National Bank as trustee YTIN 122059	W. Andrew Wright	10/14/98	10 W. Kinzie Chicago, Ill.

Property of Cook County Clerk's Office

98932855

# UNOFFICIAL COPY

## EXHIBIT C

### ADDITIONAL PERMITTED ENCUMBRANCES

1. TAXES FOR THE YEAR 1998.  
1998 TAXES ARE NOT YET DUE OR PAYABLE.
- PERMANENT INDEX NUMBER: 17-09-262-017-0000.
- NOTE: 1997 FIRST ESTIMATED INSTALLMENT AMOUNTING TO \$23,758.79 IS PAID.
- NOTE: 1997 FINAL INSTALLMENT IN THE AMOUNT OF \$22,201.55 IS PAID.
2. THE LAND LIES WITHIN THE BOUNDARIES OF A SPECIAL SERVICE AREA AS DISCLOSED BY ORDINANCE RECORDED AS DOCUMENT 91075841, AND IS SUBJECT TO ADDITIONAL TAXES UNDER THE TERMS OF SAID ORDINANCE AND SUBSEQUENT RELATED ORDINANCES.
3. ENCROACHMENT OF 3 STORY BRICK BUILDING LOCATED MAINLY ON THE LAND OVER THE SOUTH LINE BY ABOUT 0.15 FEET AND OVER THE WEST LINE BY ABOUT 0.15 FEET AS SHOWN ON SURVEY MADE BY CERTIFIED SURVEY COMPANY DATED AUGUST 27, 1988 AS ORDER NO. 881336.
4. ENCROACHMENT OF 2 STORY BRICK BUILDING LOCATED MAINLY ON THE LAND OVER THE WEST LINE BY ABOUT 0.04 FEET AND OVER THE NORTH LINE BY ABOUT 0.08 FEET AS SHOWN ON SURVEY AFORESAID.
5. UNRECORDED LEASE TO W. ANDREW WRIGHT FOR A TERM BEGINNING OCTOBER 14, 1998 AND ENDING NOVEMBER 30, 1998 AND OF ALL PARTIES CLAIMING THEREUNDER. **98932856**
6. ASSIGNMENT OF RENTS AND LEASES RECORDED OCTOBER 16, 1998 AS DOCUMENT 16 MADE BY LSALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED OCTOBER 13, 1998 AND KNOWN AS TRUST NUMBER 122059 AND NATIONAL BUILD TO SUIT KINZIE, L.L.C. TO AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO
7. SECURITY INTEREST OF AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, SECURED PARTY, IN CERTAIN DESCRIBED CHATTELS ON THE LAND, AS DISCLOSED BY FINANCING STATEMENT EXECUTED BY LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED OCTOBER 13, 1998 AND KNOWN AS TRUST NUMBER 122059, DEBTOR, AND FILED OCTOBER 16, 1998 AS DOCUMENT NO. 98 U 10818
8. SECURITY INTEREST OF AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, SECURED PARTY, IN CERTAIN DESCRIBED CHATTELS ON THE LAND, AS DISCLOSED BY FINANCING STATEMENT EXECUTED BY NATIONAL BUILD TO SUIT KINZIE, L.L.C., DEBTOR, AND FILED OCTOBER 16, 1998 AS DOCUMENT NO. 98 U 10819

**98932855**

UNOFFICIAL COPY

Property of Cook County Clerk's Office