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Cook County Recorder 75.00



THIS INSTRUMENT WAS PREPARED BY  
AND SHOULD BE RETURNED TO:

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William C. Graft & Associates, P.C.  
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Schaumburg, IL 60195

N

Permanent Real Estate Tax Numbers: 17-09-230-001; 17-09-230-002; 17-09-230-003; 17-09-230-004; and 17-09-230-005

780626, NSC

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MORTGAGE AND ASSIGNMENT OF RENTS AND LEASES

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THIS MORTGAGE AND ASSIGNMENT OF RENTS AND LEASES (the "Mortgage") is made as of this eighth day of June, 1999, by and between Chicago Title and Trust Company n/k/a Chicago Title Land Trust Company, an Illinois corporation, not personally but solely as Trustee under Trust Agreement dated December 19, 1986 and known as Trust Number 1089390 (the "Borrower" or the "Trust") and The Northern Trust Company, an Illinois state banking corporation, whose address is 8501 West Higgins Road, Chicago, Illinois 60631 (the "Lender");

A. Mary F. Faucher, as Trustee under Declaration of Trust of Mary F. Faucher dated November 12, 1997 ("Trust A") and Mary F. Faucher and Frank G. Siepker, as Co-Trustees of Trust B of Edward F. Faucher, Jr. Declaration of Trust dated August 4, 1980 ("Trust B"), as the holders collectively of one hundred percent (100%) of the beneficial interest in and power of direction to the Borrower (collectively, Trust A and Trust B are sometimes referred to as the "Beneficiaries"), have heretofore, now and from time to time hereafter, may request loans, advances, extensions of credit and/or other financial accommodations from the Lender; and

B. The Lender has heretofore and may from time to time hereafter lend monies and/or make advances, extensions of credit or other financial accommodations to, on behalf or for the benefit of the Borrower and the Beneficiaries pursuant to the "Mortgage Loan Notes" in the aggregate principal amount of Five Hundred Twenty-Five Thousand and No/100 Dollars

BOX 333-CTI

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(\$525,000.00), as that term is defined herein, in accordance with the "Other Agreements", all as hereinafter defined.

NOW, THEREFORE, in consideration of any loan, advance, extension of credit and/or other financial accommodation at any time made by the Lender to or for the benefit of the Borrower, the Borrower agrees with the Lender as follows:

## 1. DEFINITIONS AND TERMS:

1.1. The following words, terms and/or phrases shall have the meanings set forth thereafter and such meanings shall be applicable to the singular and plural form thereof, giving effect to the numerical difference; whenever the context so requires, the use of "it" in reference to the Borrower shall mean the Borrower as identified at the beginning of this Mortgage.

(A) "And/or": one or the other or both, or any one or more of all, of the things or "Persons" (hereinafter defined) in connection with which the conjunction is used.

(B) "Borrower's Liabilities": (a) the payment of any and all monies, including, without limitation, the payment, when due or declared due, of the principal sum of the Mortgage Loan Notes and interest thereon (including all additional interest set forth therein), now and/or hereafter owed or to become owing by the Borrower to the Lender under and/or pursuant to the terms and provisions of the Mortgage Loan Notes; (b) the payment of and all other debts, claims, obligations, demands, monies, liabilities and/or indebtedness (of any and every kind or nature) now and/or hereafter owing, arising, due or payable from the Borrower to the Lender under and/or pursuant to the terms and provisions of this Mortgage (including, without limitation, all advances made to protect and preserve the value of the Mortgaged Property and the priority of the Lender's lien thereon); and (c) the payment of any and all other debts, claims, obligations, demands, monies, liabilities and/or indebtedness (of any and every kind or nature) now and/or hereafter owing, arising, due or payable from the Borrower and/or any of the Beneficiaries to the Lender, howsoever evidenced, created, incurred, acquired or owed, whether primary, secondary, direct, contingent, fixed or otherwise, and arising under and/or pursuant to the terms and provisions of this Mortgage, the Mortgage Loan Notes or the Other Agreements.

(C) "Borrower's Obligations": the prompt, full and faithful performance, discharge, compliance and observance by the Borrower of each and every term, condition, warranty, representation, agreement, undertaking, covenant and provision to be performed, discharged, observed or complied with by the Borrower contained in this Mortgage, the Mortgage Loan Notes and/or in the Other Agreements.

(D) "Charges": all national, federal, state, county, city, municipal and/or other governmental (or any instrumentality, division, agency, body or department thereof) charges, impositions, levies, assessments and taxes (whether general, special or otherwise), water charges, sewer service charges, liens, claims or encumbrances upon and/or relating to the "Mortgaged Property" (hereinafter defined), Borrower's Liabilities and/or Borrower's Obligations.

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(E) “Documents”: the definition ascribed to this term in Paragraph 2.3 below.

(F) “Encumbrances”: all liabilities, claims, debts, exceptions, easements, restrictions, security interests, charges and all other types of encumbrances.

(G) “Equipment”: all present and future apparatus, and/or fixtures and articles of personal property of any and every kind and nature whatsoever used, attached to, installed or located in or on the “Premises” (hereinafter defined), or required for use in or on or in connection with the Premises or the management, maintenance, operation or business thereof and all replacements thereof, substitutions therefor and accessions thereto, including, without limitation, any such item now or at any time or times hereafter situated on the Premises and used to supply or otherwise deliver heat, gas, air conditioning, water, light, electricity, power, plumbing, refrigeration, sprinkling, ventilation, mobility, communication, incineration, and all other related or other such services. Notwithstanding anything contained herein to the contrary, the Lender agrees that any security interest granted to it by the Borrower in any Equipment, as that term is used herein, is intended to give the Lender a security interest in fixtures and personal property owned by Borrower or Beneficiaries only, and not any items of personal property and/or trade fixtures owned by the Tenant.

(H) “Event of Default”: the definition ascribed to this term in Paragraph 6.1 below.

(I) “Leases”: all present and future leases, agreements, tenancies, licenses and franchises of or from the Premises and/or the Equipment or in any way, manner or respect required, existing, used or useable in connection with the Premises and/or the Equipment or the management, maintenance, operation or business thereof, and all deposits of money as advance rent or for security under any or all of the Leases and all guarantees of lessee’s performance thereunder.

(J) “Mortgage Loan Notes”: the two (2) separate Mortgage Loan Notes of even date herewith, the first of which is made by the Borrower and Trust A and payable to the order of the Lender in the principal amount of Three Hundred Ninety-Nine Thousand and No/100 Dollars (\$399,000.00), and the second of which is made by the Borrower and Trust B and payable to the order of the Lender in the principal amount of One Hundred Twenty-Six Thousand and No/100 Dollars (\$126,000.00) and each guaranteed by Mary F. Faucher.

(K) “Mortgaged Property”: (a) the Premises; (b) the “Rents” (hereinafter defined); (c) the Leases; (d) the Equipment (which shall be deemed to be a part of the Premises, whether physically attached thereto or not); (e) all present and future judgments, awards of damages and settlements made as a result or in lieu of any taking of the Premises, the Equipment and/or the Leases, or any part thereof, under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) thereto; (f) all present and future insurance policies in force or effect insuring the Premises, the Rents, the Leases or the Equipment; (g) all of the Borrower’s now existing and/or owned and hereafter arising or acquired monies, reserves, deposits, deposit accounts and interest or dividends thereon, securities, cash, cash equivalents

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and other property now or at any time and times hereafter in the possession or under the control of the Lender or its representatives for any purposes; and (h) all substitutions, renewals, improvements, accessions or additions thereto, replacements, products and proceeds of each and every of the foregoing, including without limitation, proceeds or insurance policies insuring each and every of the foregoing.

(L) “Other Agreements”: all agreements, instruments and documents, including, without limitation, loan agreements, security agreements, guaranties, mortgages, assignments of rents, deeds of trust, notes, letters of credit, advises of credit, bankers acceptances, pledges, powers of attorney, consents, assignments, contracts, notices, leases, financing statements and all other written matter heretofore, now and/or from time to time hereafter executed by and/or on behalf of any of the Borrower and/or the Beneficiaries and delivered to the Lender, or issued by the Lender upon the application and/or other request of, and on behalf of the Borrower and/or any of the Beneficiaries.

(M) “Person”: any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, institution, entity, party or government (whether national, federal, state, county, city, municipal or otherwise, including, without limitation, any instrumentality, division, agency, body or department thereof).

(N) “Personal Property”: all of the assets, property, collateral, accounts and property of whatever kind or nature except any real property, now-owned or hereafter acquired by the Borrower.

(O) “Premises”: all of the following described real estate, and all of the Borrower's estate, right, title and interest therein, situated, lying and being in the City of Chicago, County of Cook, State of Illinois, and legally described on Exhibit A attached hereto and made a part hereof and commonly known as 233 West Ontario Street, Chicago, Illinois, together with all buildings, improvements, tenements, easements, hereditaments and appurtenances now and/or at any time or times hereafter upon, belonging or otherwise appertaining to or situated on said real estate and all heretofore or hereafter acquired roads, alleys, streets and other public ways abutting said real estate, whether before or after vacation thereof.

(P) “Rents”: all present and future rents, issues, avails, profits and proceeds of or from the Premises, the Leases and/or the Equipment.

## 2. CONVEYANCE

2.1. To secure the payment by the Borrower of Borrower's Liabilities and the performance by the Borrower of Borrower's Obligations, the Borrower hereby does grant, give, bargain, confirm, assign, pledge, set over, transfer, sell, convey, remise, release and otherwise mortgage to the Lender, its successors and assigns, forever, the Mortgaged Property for the purposes and uses set forth in this Mortgage; provided, nevertheless, that if the Borrower, its successors or assigns, shall satisfy, discharge and otherwise pay to the Lender, its successors or

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assigns, in full, Borrower's Liabilities and keep and perform all of Borrower's Obligations, then this Mortgage shall become null and void and shall be released at the Borrower's expense. The Borrower warrants and represents that the mortgaged Property is not considered homestead property under Illinois law.

2.2. This Mortgage shall operate as and constitute a Security Agreement with respect to that portion of the Mortgaged Property constituting property or interests in property, whether real or personal, tangible or intangible, which are subject to the priority and perfection of security interest provisions of the Uniform Commercial Code or any similar and applicable law, statute, code or other governing body of law. Therefore, to secure the payment by the Borrower of Borrower's Obligations, the Borrower hereby grants to the Lender a security interest in the Mortgaged Property.

2.3. The Borrower, immediately upon request by the Lender, at the Borrower's sole expense, will make, execute and deliver and/or will cause to be made, executed and delivered to and/or for the benefit of the Lender, in form and substance acceptable to the Lender, all Documents that the Lender is advised are and/or deems necessary or appropriate to evidence, document or conclude the transactions described in and/or contemplated by this Mortgage, the Mortgage Loan Notes or the Other Agreements or required to perfect or continue perfected, as valid Encumbrances, the Encumbrances granted herein or in the Other Agreements by the Borrower to the Lender upon the Mortgaged Property. "Documents" means any mortgage, deed of trust or similar instrument, assignment of leases, assignment of rents, notes, security agreement, guaranty, financing statement, assignment of insurance, loss payable clause, mortgage title insurance policy, letter of opinion, waiver letter, estoppel letter, consent letter, non-offset letter, insurance certificate, appraisal, survey and any other similar such agreements, instruments or documents.

2.4 The Lender may take, and the Borrower hereby waives notice of, any action from time to time that the Lender may deem necessary or appropriate to maintain or protect the Mortgaged Property and the Lender's security interest therein, and in particular, the Lender may at any time after an Event of Default under this Mortgage (i) transfer the whole or any part of the Mortgaged Property into the name of the Lender or its representative; (ii) collect any amounts due on the Mortgaged Property directly from persons obligated thereon; (iii) take control of any proceeds and products of the Mortgaged Property; and/or (iv) sue or make any compromise or any settlement with respect to any Mortgaged Property. The Borrower hereby releases the Lender from any and all causes of action or claims which the Borrower may now or hereafter have for any asserted loss or damage to the Borrower's claim to be caused by or arising from: (a) the Lender's taking any action permitted by this subsection; (b) any failure of the Lender to protect, enforce or collect, in whole or in part, any of the Mortgaged Property; and/or (c) any other act or omission to act on the part of the Lender, its officers, agents or employees, except for willful misconduct.

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## 3. COVENANTS, WARRANTIES AND REPRESENTATIONS

3.1. The Borrower and the Beneficiaries covenant and represent to the Lender as follows:

(A) The Borrower promptly will pay, or cause to be paid, when due or declared due, Borrower's Liabilities and will promptly, fully and faithfully perform, discharge, observe and comply with each and every of Borrower's Obligations.

(B) The Borrower now has and hereafter shall maintain the standing, right, power and lawful authority to own the Mortgaged Property, to carry on the business of and operate the Mortgaged Property, to enter into, execute and deliver this Mortgage, the Mortgage Loan Notes and the Other Agreements to the Lender, to encumber the Mortgaged Property to the Lender as provided herein or in the Other Agreements and to perform all of Borrower's Obligations and to consummate all of the transactions described in or contemplated by this Mortgage, the Mortgage Loan Notes and the Other Agreements.

(C) The execution, delivery and performance by the Borrower of and under this Mortgage, the Mortgage Loan Notes and the Other Agreements does not and will not constitute a violation of any applicable law and does not and will not conflict with or result in a default or breach of or under or an acceleration of any obligation arising, existing or created by or under any agreement, instrument, document, mortgage, deed, trust deed, notes, judgment, order, award, decree or other restriction to which the Borrower or the Beneficiaries, or any of the Mortgaged Property is or hereafter shall become a party or by which the Borrower or the Beneficiaries or any of the Mortgaged Property is or hereafter shall become bound.

(D) The Borrower has duly filed and shall continue to timely file all federal, state and other governmental and similar returns which the Borrower is required by law to file with respect to the Mortgaged Property and the operation and business of leasing the Mortgaged Property to an independent third party tenant. All taxes and other sums which are shown to be payable under such returns shall be timely and fully paid and the Borrower shall maintain adequate reserves in an amount to pay fully all such liabilities which hereafter may accrue.

(E) All of the Leases, if any, are and shall remain genuine, in all respects what they purport to be, free of set-offs, counterclaims or disputes and are valid and enforceable in accordance with their terms. All parties to the Leases have and shall have the capacity to contract thereunder. Except for security deposits provided for under the Leases, and revealed by the Borrower to the Lender in writing, no advance payments have been or shall be made thereunder.

(F) After due inquiry, there is no known litigation, action, claim or proceeding pending or threatened which might, in any way, manner or respect, materially or adversely affect the Mortgaged Property, the operation or the business thereof, Lender's Encumbrances thereon, the collectivity of the obligations under the Mortgage Loan Notes, the ability of the Borrower to

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repay the obligations under the Mortgage Loan Notes or the financial condition of the Mortgaged Property or the operation or business thereof.

(G) Except as listed on Exhibit B, the location, existence and use of the Premises and the Equipment are and shall remain in compliance with all applicable laws, rules, ordinances and regulations, including, without limitation, building and zoning laws, and all covenants and restrictions of record.

(H) The Borrower and the Beneficiaries are and shall remain in peaceful possession of and will forever warrant and defend the Mortgaged Property from and against any and all claims thereon or thereto of any and all parties.

(I) Neither the Borrower nor the Beneficiaries, nor to the best of the Borrower's or the Beneficiaries' knowledge, any previous owner of the Premises has received any written notice of a violation with respect to any law governing the use, storage or disposal of any hazardous waste, toxic substances or related materials ("Hazardous Materials"). For the purposes of this representation and warranty, Hazardous Materials shall include, but shall not be limited to, substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environment Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9061 *et seq.*, Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1802, The Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 *et seq.*, and those substances defined as "hazardous waste" in Section 1003(j) of the Illinois Environmental Protection Act (415 ILCS 5/1 *et seq.*) and the regulations adopted and publications promulgated pursuant to said laws. The Borrower and the Beneficiaries shall indemnify and hold the Lender and its successors and assigns harmless from and against all liability, including all foreseeable and unforeseeable consequential damages, directly, or indirectly arising out of the use, generation, storage or disposal of Hazardous Materials, including without limitation, the cost of any required or necessary repair, cleanup or detoxification and the preparation of any closure or other required plans, whether such action is required or necessary prior to or subsequent to the execution of this Mortgage, to the full extent that such action is attributable, directly or indirectly to the use, generation, storage or disposal of Hazardous Materials on the Premises.

The Borrower and the Beneficiaries shall conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials, on, under, from, or affecting the Premises in accordance with all applicable federal, state, and local laws, ordinances, rules, regulations and policies to the Lender's satisfaction and in accordance with the orders and directives of all federal, state, and local governmental authorities and defend, indemnify and hold harmless the Lender, its employees, agents, officers and directors from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to (i) the presence, disposal, release or threatened release of any Hazardous Materials on, over, under, from, or affecting the Premises or the soil, water, vegetation, buildings, personal property, persons or animals thereon; (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; (iii) any lawsuit brought or

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threatened, settlement reached or government order relating to such Hazardous Materials; and/or (iv) any violation of laws, orders, regulations, requirements or demands of government authorities, or any policies or requirements of the Lender, which are based upon or in any way related to such Hazardous Materials including, without limitation, attorney's and consultant's fees, investigation and laboratory fees, court costs, and litigation expenses.

(J) Within thirty (30) days of its filing date during the term of the Mortgage Loan Notes, the Beneficiaries shall provide to the Lender the Annual Personal Federal Income Tax Return of Mary F. Faucher and all applicable schedules, including Schedule E, and any attachments due for the Lender's review. In the event an extension is filed, a copy of that extension should be supplied to the Lender within thirty (30) days of such filing.

(K) Within thirty (30) days of its filing date during the term of the Mortgage Loan Notes, the Beneficiaries shall supply the Lender with Schedule E from the annual IRS 1041 of Trust B of Edward F. Faucher, Jr. Declaration of Trust dated August 4, 1980.

(L) Within ninety (90) days of the end of each calendar year during the term of the Mortgage Loan Notes, the Guarantor shall provide to the Lender the annual personal financial statement of the Guarantor.

(M) The Lender, or its representatives, will have the right to inspect the Premises upon notice and at all reasonable times, and access will be permitted to the Lender, or its representatives, for that purpose.

(N) The Beneficiaries shall supply the Lender with a copy, certified by the Beneficiaries, of the existing lease between the Borrower, as Lessor, and 225 W. Ontario Inc., as Lessee, in form and substance acceptable to the Lender.

(O) The Beneficiaries shall cause the Borrower to open an operating account for the mortgaged Property at the Lender during the term of the Mortgage Loan Notes.

3.2. The Borrower covenants with and warrants and represents to the Lender that the Borrower is lawfully seized, possessed and the owner of and has good and inalienable, marketable fee-simple title to the Mortgaged Property, free and clear of all Encumbrances except (i) the Encumbrances of the Lender, and (ii) those Encumbrances described on Exhibit C attached hereto and made a part hereof.

3.3. The Borrower and the Beneficiaries covenant with and warrant and represent to the Lender as follows:

(A) The Borrower and the Beneficiaries will not change the use or character of or abandon the Mortgaged Property and at all times hereafter shall keep the Mortgaged Property in good condition and repair and will not commit or suffer waste and will make all necessary repairs, replacements and renewals (including replacing any of the Equipment and/or repairing, restoring and rebuilding any buildings or improvements, how or hereafter on the Premises which



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may become damaged or be destroyed) to the Mortgaged Property so that the value and operating efficiency thereof shall at all times hereafter be maintained and preserved. The Borrower and the Beneficiaries shall not remove any fixture or demolish any building or improvement located in or on the Premises. The Borrower and the Beneficiaries shall pay for and complete, within a reasonable time, any building or improvement at any time in the process of erection upon the Premises, shall refrain from impairing or diminishing the value of the Mortgaged Property and shall make no material alterations to the Mortgaged Property which in the opinion of the Lender diminishes its value, except as required by law or municipal ordinances with respect to the Premises and the use thereof. The Borrower and the Beneficiaries shall comply with all requirements of law and all municipal ordinances governing the Mortgaged Property and the use thereof.

(B) The Borrower and the Beneficiaries promptly shall pay and discharge, as and when due and payable, before any penalty attaches, all Charges, that may be at any time levied, assessed or imposed upon or against the Mortgaged Property, or any part thereof, and shall deliver to the Lender duplicate receipts evidencing payment thereof at least thirty (30) days before delinquency. If the Lender is required by legislative enactment or judicial decision to pay any Charge in or to any state, municipality or government on the Mortgaged Property (or on any interest therein), this Mortgage, the Mortgage Loan Notes, the Other Agreements or Borrower's Liabilities, all of Borrower's Liabilities shall become and be due and payable, at the election of the Lender, thirty (30) days after the mailing of notice of such election to the Borrower; provided, however, said election and right to elect will be unavailing and this Mortgage, the Mortgage Loan Notes and the Other Agreements will be and remain in full force and effect as though said law had not been enacted or said decision had not been rendered if, notwithstanding such law or decision, the Borrower lawfully may pay such charge to or for the Lender and does, in fact, pay, when payable, so much thereof as, taken with interest as aforesaid, does not exceed the maximum amount of interest permitted by applicable law. If at any time the United States of America shall require internal revenue stamps to be affixed to this Mortgage, the Mortgage Loan Notes or the Other Agreements, the Borrower will pay for the same, together with any interest or penalties imposed in connection therewith. The Borrower and the Beneficiaries further covenants to hold harmless and agrees to indemnify the Lender, and the Lender's successors or assigns, against any liability incurred by reason of the imposition of any tax on the issuance of the Mortgage Loan Notes.

(C) The Borrower and the Beneficiaries shall keep the Mortgaged Property free and clear of all Encumbrances (including, without limitation, mechanics liens and other similar liens or claims for liens) of any and every kind and nature except those described in Paragraph 3.2 above, and shall promptly pay or cause to be paid, as and when due and payable or when declared due and payable, any indebtedness which may become or be secured by such an encumbrance and, immediately upon request by the Lender, shall deliver to the Lender evidence satisfactory to the Lender of the payment and discharge thereof, and shall deliver a title indemnity issued by a title company acceptable to the Lender. To prevent default hereunder, the Borrower and the Beneficiaries may indemnify the Lender, by a means determined solely by and acceptable to the Lender, against loss by reason of such an Encumbrance which the Borrower may desire to contest. If, in accordance with the terms of this Mortgage, the Lender makes

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payment of any such Encumbrance, the Lender shall be subrogated to the rights of such claimant, notwithstanding that the Encumbrances may be released of record.

(D) The Borrower shall not, at any time or times hereafter, pledge, hypothecate or otherwise encumber all or any portion of the Mortgaged Property or the Borrower's interest therein, except for the list of permitted encumbrances contained in the attached Exhibit C which is attached hereto and made a part hereof. Without the prior written consent of the Lender, the Borrower shall not sell or otherwise transfer all or any portion of the Mortgaged Property or the Borrower's interest therein. The Lender, in its sole discretion, may deliver or withhold such consent based upon the Lender's determination, to its sole satisfaction, of the credit worthiness and ability of the proposed assignee, transferee or purchaser to satisfy, perform and discharge Borrower's Liabilities in a proper and timely fashion and manner. The Lender, in its sole discretion, may condition the delivery of its consent upon the Borrower agreeing to provide for such additional terms and conditions in this Mortgage, the Mortgage Loan Notes or Other Agreements as may be acceptable to the Lender, in its sole discretion.

3.4. If the Borrower or the Beneficiaries, immediately after written demand from the Lender, shall neglect or refuse to keep the Mortgaged Property in good operating condition and repair or to replace or maintain the same as herein agreed, to pay the premiums for the insurance which is required to be maintained hereunder, to pay and discharge all Encumbrances as herein agreed or otherwise defaults in the performance of Borrower's Obligations, the Lender, at its sole discretion, may cause such repairs or replacements to be made, obtain such insurance, pay such Encumbrances or perform such Obligations. Any amounts paid by the Lender in taking such action shall accrue interest at a per annum rate of interest thereon (computed on the basis of a 360-day year and charged for actual days elapsed) equal to "Default Rate" as this term is defined in the Mortgage Loan Notes from the due date of the Borrower's payment until repaid by the Borrower to the Lender. The Lender shall have the right to require such payments to be made on demand at any time and, until paid, all such payments shall constitute a part of Borrower's Liabilities secured by this Mortgage. Notwithstanding the foregoing, such advances by the Lender shall not be deemed to relieve the Borrower from any default hereunder or impair any right or remedy consequent thereon. The exercise of the right to take such action shall be optional with the Lender and not obligatory upon the Lender and the Lender shall not in any case be liable to the Borrower or the Beneficiaries for failure or refusal to exercise any such right. In making any payments pursuant to the exercise of any such right, the Lender may rely upon any bills delivered to it by the Borrower or any such payee and shall not be liable for any failure to make payments in any amounts other than as set forth in any such bills.

## 4. TAXES, INSURANCE AND CONDEMNATION

4.1. (A) The Borrower, at all times, shall keep and maintain the Mortgaged Property fully insured (without co-insurance) against loss or damage by, or abatement of rental income resulting from, fire, lightning, windstorm and such other hazards, casualties and contingencies as the Lender, from time to time, may require in companies, form, amounts and for such periods as are satisfactory to the Lender, but, in any event, for not less than the greater of the replacement cost of the Mortgaged Property, or the balance of the Borrower's Liabilities. During any period

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of construction at or on the Premises, the Borrower shall supply the Lender with a Builder's Risk policy of insurance in an amount and from a company acceptable to the Lender. All such policies and renewals thereof shall contain, in form and substance acceptable to the Lender, a standard mortgagee clause also naming the Lender as the lender's loss payee as well as a standard waiver of subrogation endorsement, and an insurance binder shall be delivered to the Lender, with premiums therefor paid in full by the Borrower. All policies shall provide that they are noncancelable by the insurer without first giving at least thirty (30) days written notice to the Lender of any intended cancellation. The Borrower will give immediate written notice to the Lender of any loss or damage to the Mortgaged Property caused by any casualty. In case of policies about to expire, the Borrower will deliver to and deposit with the Lender a binder for new insurance or a renewal notice or renewal declaration page not less than forty-five (45) days prior to the respective dates of expiration. In the event of foreclosure of title to the Mortgaged Property in extinguishment of Borrower's Liabilities, all right, title and interest of the Borrower in and to any policies then in force shall pass to the purchaser, grantee or assignee.

(B)(1) Full power is hereby conferred on the Lender:

- (a) to settle and compromise all claims under all policies;
- (b) to demand, receive and receipt for all monies becoming due and/or payable under all policies;
- (c) to execute, in the name of the Borrower or in the name of the Lender, any proofs of loss, notices or other instruments in connection with all claims under all policies; and
- (d) to assign all policies to any holder of Borrower's Liabilities or to the grantee of the Mortgaged Property in the event of the foreclosure of this Mortgage or other transfer of title to the Mortgaged Property.

(2) In the event of payment under any of the policies, the proceeds of the policies shall be paid by the insurer to the Lender and the Lender, in its sole and absolute discretion, may:

- (a) apply such proceeds, wholly or partially, after deducting all costs of collection, including reasonable attorney's fees, either:
  - (i) toward the alteration, reconstruction, repair or restoration of the Mortgaged Property or any portion thereof; or
  - (ii) as a payment on account of Borrower's Liabilities (without affecting the amount or time of subsequent payments required to be made by the Borrower to the Lender under the Mortgage Loan Notes or the Other Agreements), whether or not then due or payable; or

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(b) deliver the same to the Borrower.

4.2. (A) Upon both an occurrence of an Event of Default and notice by the Lender, the Borrower covenants and agrees to deposit in an escrow established with the Lender on the eighth (8th) day of each month until the indebtedness secured by this Mortgage is fully paid, a sum equal to one-twelfth (1/12th) of the annual taxes and assessments (general and special) on the Mortgaged Property, as reasonably determined by the Lender. In addition to the foregoing, if requested by the Lender, the Borrower shall deposit with the Lender an amount of money, which together with the aggregate of the monthly deposits to be made pursuant to the above as of one month prior to the date on which the total annual taxes and assessments for the current calendar year become due, shall be sufficient to pay in full the total annual taxes with assessments estimated by the Lender to become due and payable with respect to the Mortgaged Property for the current calendar year. Such deposits are to be held without any allowance of interest and are to be used for the payment of taxes and assessments (general and special) on the Mortgaged Property next due and payable when they become due. If the funds so deposited are insufficient to pay any such taxes and assessments (general and special) for any year when the same shall become due and payable, the Borrower shall, within ten (10) days after receipt of demand therefor, deposit additional funds as may be necessary to pay such taxes and assessments (general and special) in full. If the funds so deposited exceed the amount required to pay such taxes and assessments (general and special) for any year, the excess shall be applied on a subsequent deposit or deposits. Said deposits need not be kept separate and apart from any other funds of the Lender.

(B) The Borrower shall supply the Lender on an annual basis, with reasonable proof, as acceptable to the Lender, that the total annual Charges arising with respect to the Mortgaged Property have been paid in full. To prevent an Event of Default hereunder, the Borrower shall pay in full under protest, in the manner provided by statute, any Charge which the Borrower may desire to contest.

(C) If any of the Charges are not paid as provided for, the Borrower shall deposit with the Lender such monies as are necessary to pay, in full, such Charges, and the Lender shall have the right to use such monies in payment of same.

(D) If an Event of Default occurs, as that term is defined herein, or upon the request of the Lender, the Borrower shall establish with the Lender an escrow for deposit of funds for the payment of insurance premiums for all insurance policies required to be obtained and maintained by the Borrower pursuant to this Mortgage with respect to the Mortgaged Property and such other Charges as the Lender shall deem reasonable. Such insurance escrow shall be in such amount and shall be subject to such terms and conditions as the Lender, in its sole and absolute discretion, may determine.

(E) In making any payment hereby authorized relating to the Charges, the Lender may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof.

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4.3. (A) All awards now or hereafter made by any public or quasi-public authority to or for the benefit of the Borrower in any way, manner or respect affecting, arising from or relating to the Mortgaged Property, or any portion thereof, by virtue of an exercise of the right of eminent domain by such authority (including, without limitation, any award for taking of title, possession or right of access to a public way, or for any change of grade of streets affecting the Mortgaged Property) hereby are assigned to the Lender as additional security for the payment of Borrower's Liabilities (and for such purpose, the Borrower hereby grants to the Lender a security interest therein);

(B) The Lender shall and hereby is authorized, directed and empowered to collect and receive the proceeds of any such awards from the authorities making the same and to give proper receipts therefor (in the Borrower's name, in the Lender's name or in both names), and may, in its sole and absolute discretion, use such proceeds for any one or more of the following purposes:

(1) apply the same, or any part thereof, to Borrower's Liabilities, whether or not then matured and without affecting the amount or time of subsequent payments required to be made by the Borrower to the Lender under the Mortgage Loan Notes or the Other Agreements;

(2) use the same, or any part thereof, to satisfy, perform or discharge any of Borrower's Obligations;

(3) use the same, or any part thereof, to replace, repair or restore any or all of the Mortgaged Property to a condition satisfactory to the Lender; or

(4) release the same to the Borrower.

(C) The Borrower, immediately upon request by the Lender, shall make, execute and deliver and/or cause to be made, executed and delivered to and/or for the benefit of the Lender any and all assignments and other instruments sufficient to assign, and cause the payment directly to the Lender of, all such awards, free and clear of all Encumbrances except those Encumbrances described in Paragraph 3.2 above. Notwithstanding any taking by eminent domain, alteration of the grade of any street or other injury to or decrease in value of the Mortgaged Property by any public or quasi-public authority or corporation, the Borrower shall continue to pay all of Borrower's Liabilities, as and when due and payable, until any such award or payment shall have been actually received by the Lender, and any reduction in Borrower's Liabilities resulting from the application by the Lender of such award or payment as herein set forth shall be deemed to take effect only on the date of such receipt. If, prior to the receipt by the Lender of such award or payment, the Mortgaged Property shall have been sold on foreclosure of this Mortgage, the Lender shall have the right to receive such award or payment to the extent of any deficiency found to be due upon such sale, with legal interest thereon, whether or not a deficiency judgment on this Mortgage shall have been sought or recovered or denied, and the reasonable attorney's fees, costs, expenses and disbursements incurred by the Lender in connection with the collection of such award or payment.

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## 5. LEASES AND RENTS

5.1. So long as there shall not have occurred an Event of Default under this Mortgage, or any event which, with notice or lapse of time or both would become an Event of Default under this Mortgage, the Borrower shall have the right to collect all of the Rents arising from the Leases, or renewals thereof. If requested by the Lender, the Borrower shall cause any proposed tenant for all or any portion of the Premises to execute, prior to or contemporaneously with the execution of a lease, a Subordination, Non-Disturbance and Attornment Agreement in a form and substance as shall be reasonably required by the Lender.

5.2. At all times, the Lender or any of the Lender's agents shall have the right to verify the validity, amount or any other matter relating to any or all of the Leases, by mail, telephone, telegraph or otherwise, in the name of the Borrower, the Lender, a nominee of the Lender or in any or all of said names.

5.3. Unless the Lender notifies the Borrower thereof in writing that it dispenses with any one or more of the following requirements, the Borrower shall: (a) promptly upon the Borrower's receipt or learning thereof, inform the Lender, in writing, of any assertion of any claims, offsets or counterclaims by any of the obligors of the Leases; (b) not permit or agree to any material extension, compromise or settlement or make any material change or modification of any kind or nature of or with respect to the Leases or the terms thereof; and (c) promptly upon the Borrower's receipt or learning thereof, furnish to and inform the Lender of all material adverse information relating to or affecting the financial condition of any obligor of the Leases.

5.4. Upon the occurrence of an Event of Default under this Mortgage:

(A) Immediately upon demand by the Lender, the Borrower shall deliver to the Lender the originals of the Leases, with appropriate endorsement and/or other specific evidence of assignment thereto to the Lender, which endorsement and/or assignment shall be in form and substance acceptable to the Lender.

(B) The Lender, then or at any time or times thereafter, at its sole election, without notice thereof to the Borrower, may notify any or all of the obligors of the Leases that the Leases have been assigned to the Lender and the Lender (in its name, in the name of the Borrower or in both names) may direct said obligors thereafter to make all payments due from them under the Leases directly to the Lender.

(C) The Borrower, immediately upon demand by the Lender, irrevocably, shall direct all obligors of the Leases then and thereafter to make all payments then and thereafter due from them under the Leases directly to the Lender.

(D) The Lender shall have the right at any time or times thereafter, at its sole election, without notice thereof to the Borrower, to enforce the terms of the Leases and obtain payment of and collect the Rents, by legal proceedings or otherwise, in the name of the Borrower, the Lender or in both names.

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(E) The Borrower, irrevocably, hereby designates, makes, constitutes and appoints the Lender (and all Persons designated by the Lender) as the Borrower's true and lawful attorney and agent-in-fact, with power, without notice to the Borrower and at such time or times thereafter as the Lender, at its sole election, may determine, in the name of the Borrower, the Lender, or in both names: (i) to demand payment of the Rents and performance of the Leases; (ii) to enforce payment of the Rents and performance of the Leases, by legal proceedings or otherwise; (iii) to exercise any or all of the Borrower's rights, interests and remedies in and under the Leases and to collect the Rents; (iv) to settle, adjust, compromise, extend or renew the Leases and/or the Rents; (v) to settle, adjust or compromise any legal proceeding brought to collect the Rents or obtain performance of the Leases; (vi) to take control, in any manner, of the Rents; (vii) to prepare, file and sign the Borrower's name on any Proof of Claim in bankruptcy, or similar document in a similar proceeding, against any obligor of the Leases; (viii) to endorse the name of the Borrower upon any payments or proceeds of the Rents and to deposit the same to the account of the Lender; and (ix) to do all acts and things necessary, in the Lender's sole discretion, to carry out any or all of the foregoing.

(F) All of the foregoing payments and proceeds received by the Lender shall be utilized by the Lender, at its sole election and in its sole discretion, for any one or more of the following purposes: (i) to be held by the Lender as additional collateral for the payment of Borrower's Liabilities; (ii) to be applied to Borrower's Liabilities, in such manner and fashion and to such portions thereof as the Lender, at its sole election, shall determine; (iii) to be applied to such obligations of the Borrower or the Mortgaged Property or the operation or business thereof as the Lender, at its sole election, shall determine appropriate or warranted under the then existing circumstances; or (iv) to be remitted to the Borrower.

## 6. DEFAULT

6.1. The occurrence of any one or more of the following events shall constitute an "Event of Default" under this Mortgage:

(A) If the Borrower fails or neglects to perform, keep or observe any of Borrower's Obligations, or any other term, provision, condition, covenant, warranty or representation contained in this Mortgage, in the Mortgage Loan Notes or in the Other Agreements, which is required to be performed, kept or observed by the Borrower, provided however, that for monetary default the Borrower shall have ten (10) days to cure after the due date of said monetary obligation, and for all non-monetary defaults the Borrower shall have a period not to exceed thirty (30) days after written notice of such failure of performance or observance to cure the same and a default shall not be deemed to exist during said thirty (30) day period, unless the continued operation or safety of the Premises, or the priority, validity or enforceability of this Mortgage or the lien hereof or the lien of any other of the "Loan Documents", as that term is defined in the Mortgage Loan Notes, or the value of the Premises is impaired, threatened or jeopardized;

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(B) If any material statement, report or certificate made or delivered by the Borrower or the Beneficiaries, or any of their officers, employees or agents, to the Lender is proven to have been not true and correct in all material respects;

(C) If the Borrower fails to pay Borrower's Liabilities within ten (10) days of when same is due, when due and payable or declared due and payable;

(D) If the Mortgaged Property or any other of the Borrower's assets are attached, seized, subjected to a writ of distress warrant, or are levied upon, or come within the possession of any receiver, trustee, custodian or assignee for the benefit of creditors and the same is not terminated or dismissed within twenty (20) days thereafter;

(E) If the Borrower or the Beneficiaries are enjoined, restrained or in any way prevented by court order from conducting all or any material part of its business affairs or if a petition under any section or chapter of the Bankruptcy Reform Act of 1978, as amended, or any similar law or regulation is filed against the Borrower or the Beneficiaries, or if the Borrower or the Beneficiaries shall make an assignment for the benefit of creditors, or if any case or proceeding is filed against the Borrower or the Beneficiaries for their dissolution or liquidation and such injunction, restraint or petition is not dismissed or stayed within thirty (30) days after the entry or filing thereof;

(F) If an application is made by the Borrower for the appointment of a receiver, trustee or custodian for the Mortgaged Property or any other of the Borrower's assets;

(G) If an application is made by any Person other than the Borrower for the appointment of a receiver, trustee, or custodian for the Mortgaged Property or any other of the Borrower's assets and the same is not dismissed within thirty (30) days after the application thereof;

(H) If a notice of lien, levy or assessment is filed of record with respect to all or any of the Borrower's assets by the United States or any department, agency or instrumentality thereof or by any state, county, municipal or other governmental agency, including, without limitation, the Pension Benefit Guaranty Corporation or if any Charges owing at any time or times hereafter to any one of them becomes an Encumbrance upon the Mortgaged Property or any other of the Borrower's assets and the same is not released or contested in such manner as to stay the enforcement thereof within thirty (30) days after the same becomes an Encumbrance;

(I) The occurrence of a default or an Event of Default under any of the Other Agreements, if such default is not cured within the time, if any, specified therefor in such agreement, instrument or document;

(J) The occurrence of a non-monetary Event of Default under either the Individual Guaranty of Mary F. Faucher (the "Individual Guaranty") or the Mortgage Loan Notes if such default is not cured within the time, if any, specified therefor in such agreement, all of which shall be dated contemporaneously herewith, and between either any Beneficiaries and/or



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the Borrower and/or the Lender, provided however, that the Borrower shall have a period not to exceed thirty (30) days after written notice of such failure of performance or observance to cure the same and a default shall not be deemed to exist during said thirty (30) day period, unless the continued operation or safety of the Premises, or the priority, validity or enforceability of this Mortgage or the lien hereof or the lien of any other of the Loan Documents, or the value of the Premises is impaired, threatened or jeopardized;

(K) The Borrower shall not without the prior written consent of the Lender sell, transfer, convey, encumber, hypothecate or assign the title to all or any portion of the Premises, or the rents, issues or profits therefrom, whether by operation of law, voluntarily, or otherwise, and shall not contract to do any of the foregoing (any such sale, transfer, conveyance, encumbrance, assignment or agreement to do any of the foregoing being herein referred to as an "Ownership Transfer"). The acceptance of any payment after such transfer, conveyance, encumbrance, hypothecation or assignment shall not be construed as the consent of the Lender or any holder of the Mortgage Loan Notes to such transfer, conveyance, encumbrance, hypothecation or assignment, nor shall it affect the right to proceed with such action as the Lender or any holder of the Mortgage Loan Notes may deem necessary;

(L) The Borrower shall not, without the prior written consent of the Lender, further mortgage, grant a deed of trust, pledge or encumber, whether by operation of law or otherwise, all or any interest in the Mortgaged Property. The acceptance of any payment after such mortgage, grant, pledge or encumbrance shall not be construed as the consent of the Lender or any holder of the Mortgage Loan Notes to mortgage, grant, pledge or encumbrance, nor shall it affect the right to proceed with such action as the Lender or any holder of the Mortgage Loan Notes may deem necessary;

6.2. Upon the occurrence of an Event of Default, and after any applicable grace period, if any, specified in the agreement giving rise to the Event of Default, without notice to or demand of the Borrower, all of Borrower's Liabilities shall become immediately due and payable, and the Lender, in its sole discretion and at its sole election, without notice of such election, and without demand, may do any one or more of the following:

(A) Collect Borrower's Liabilities at once by foreclosure or otherwise, without notice of broken covenant or condition (and in case of such default and the exercise of such option, Borrower's Liabilities shall bear interest, from the date of such default, at the rate provided in Paragraph 3.4 hereof).

(B) Enter upon and take immediate possession of the Mortgaged Property, expel and remove any Persons, goods or chattels occupying or upon the same, receive all Rents, and issue receipts therefor, manage, control and operate the Mortgaged Property as fully as the Borrower might do if in possession thereof, including, without limitation, the making of all repairs and replacements deemed necessary by the Lender and the leasing of the same, or any part thereof, from time to time, making full or partial payments of principal or interest on prior Encumbrances, if any, and discharging, compromising or settling any tax lien or other prior lien or title or claim thereof, or redeeming from any tax rate or forfeiture affecting the Premises or

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contesting any tax or assessment, and after deducting all reasonable attorney's fees and all costs and expenses incurred in the protection, care, maintenance, management and operation of the Mortgaged Property, apply the remaining net income, if any, to Borrower's Liabilities or upon any deficiency decree entered in any foreclosure proceeding. At the option of the Lender, such entry and taking of possession shall be accomplished either by actual entry and possession or by written notice at the address of the Borrower last appearing on the records of the Lender. The Borrower agrees to surrender possession of the Mortgaged Property to the Lender immediately upon the occurrence of an Event of Default. If the Borrower shall remain in physical possession of the Mortgaged Property, or any part thereof, after any such default, such possession shall be as a tenant at sufferance of the Lender, and the Borrower agrees to pay to the Lender, or to any receiver appointed as provided below, after such default, a reasonable monthly rental for the Mortgaged Property, or the part thereof so occupied by the Borrower, to be applied as provided above in the first sentence of this Subparagraph, and to be paid in advance on the first day of each calendar month, and, in default of so doing, the Borrower may be dispossessed by the usual summary proceedings. In the event the Borrower shall so remain in possession of all, or any part of, the Mortgaged Property, said reasonable monthly rental shall be in amounts established by the Lender in its sole discretion. This covenant shall be effective irrespective of whether any foreclosure proceeding shall have been instituted and irrespective of any application for, or appointment of, a receiver.

(C) File one or more suits at law or in equity for the foreclosure of this Mortgage or to collect Borrower's Liabilities. In the event of the commencement of any such suit by the Lender, the Lender shall have the right, either before or after sale, without notice and without requiring bond (notice and bond being hereby waived), without regard to the solvency or insolvency of the Borrower at the time of application and without regard to the then value of the Mortgaged Property or whether the same is then occupied, to make application for and obtain the appointment of a receiver for the Mortgaged Property and the Lender may be appointed as such receiver. Such receiver shall have the power to collect the Rents during the pendency of such suit and, in case of a sale and a deficiency, during the full statutory period of redemption (whether there be redemption or not) as well as during any further time when the Borrower, except for the intervention of such receiver, would be entitled to collect the Rents, and shall have all other powers which may be necessary or usual in such cases for the protection, possession, control, management and operation of the Mortgaged Property. The court before which such suit is pending may from time to time authorize the receiver to apply the net income in his hands in payment, in whole or in part, of Borrower's Liabilities, including any Charge which may be or become superior to Borrower's Liabilities. In case of a sale pursuant to foreclosure, the Premises may be sold as one parcel.

(D) In the event of the commencement of any suit by the Lender to foreclose this Mortgage, the Lender may apply to the court in which such proceedings are pending for entry of an order placing the Lender in possession of the Mortgaged Property. In the event an order is entered placing the Lender in possession of the Mortgaged Property, the Lender may thereupon enter upon and take immediate possession of the Mortgaged Property, expel and remove any Persons, goods or chattels occupying or upon the same, receive all Rents, and issue receipts therefor, manage, control and operate the Mortgaged Property, including, without limitation,

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make all repairs and replacements deemed necessary by the Lender and lease the same, or any part thereof, from time to time, and, after deducting all reasonable attorney's fees and all costs and expenses incurred in the protection, care, maintenance, management and operation of the Mortgaged Property, apply the remaining net income, if any, to Borrower's Liabilities or upon any deficiency decree entered in such foreclosure proceedings. At the option of the Lender, such entry and taking of possession shall be accomplished either by actual entry and possession or by written notice of entry of the order placing the Lender in possession served personally upon or sent by registered mail to the Borrower at the address of the Borrower last appearing on the records of the Lender. If the Borrower shall remain in physical possession of the Mortgaged Property after entry of an order placing the Lender in possession, the Borrower's possession shall be as a tenant at sufferance of the Lender, and the Borrower agrees to pay to the Lender, or to any other Person authorized by the Lender, after entry of such order, a reasonable monthly rental for the Mortgaged Property, or the part thereof so occupied by the Borrower, to be applied as provided above in the first sentence of Subparagraph (B) and to be paid in advance on the first (1st) day of each calendar month, and, in default of so doing, the Borrower may be dispossessed by the usual summary proceedings. In the event the Borrower shall so remain in possession of all or of any part of the Mortgaged Property, said reasonable monthly rental shall be in amounts established by the Lender in its sole discretion.

(E) The Lender may, at any time and from time to time, appropriate and apply toward the payment of Borrower's Liabilities, in such order of application as the Lender may elect, any and all balances, credits, deposits, accounts or monies of or in the name of the Borrower and/or the Beneficiaries now or hereafter with or credited by or payable or due from the Lender and any and all property of every kind or description, including, but not limited to, any monies, cash, cash equivalents, securities, instruments, documents or other assets of or in the name of the Borrower and/or the Beneficiaries, now or hereafter, for any reason or purpose whatsoever, in the possession or control of, or in transit to the Lender or any agent or bailee for the Lender.

6.3. Upon the occurrence of an Event of Default under this Mortgage, there will be added to and included as part of Borrower's Liabilities (and allowed in any decree for sale of the Mortgaged Property or in any judgment rendered upon this Mortgage or the Mortgage Loan Notes) the following: all of the costs and expenses of taking possession of the Mortgaged Property and of the holding, using, leasing, maintaining, repairing, improving and selling the same, including, without limitation, the costs, charges, expenses and reasonable attorney's fees specified in Paragraph 6.4 below; receiver's fees; any and all expenditures which may be paid or incurred by or on behalf of Lender for appraiser's fees, documentary and expert evidence, stenographer's charges, publication costs, fees and expenses (which may be estimated as to items to be expended after entry of a foreclosure decree) for examination of title, abstracts of title, title searches, guaranty policies, Torrens certificates and similar data and assurances with respect to the title to the Mortgaged Property; all prepayment or like premiums, if any, provided for in the Mortgage Loan Notes or Other Agreements; and all other fees, costs and expenses which the Lender deems necessary to prosecute any remedy it has under this Mortgage, or to inform bidders at any sale which may be had pursuant to its rights hereunder, of the true condition of title or of the value of the Mortgaged Property. All such costs, charges, expenses, prepayment or like

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premiums, fees and other expenditures shall be a part of Borrower's Liabilities, secured by this Mortgage, payable on demand and shall bear interest at the rate specified in Paragraph 3.4 hereof from the date of the Lender's payment thereof until repaid to the Lender. Notwithstanding anything contained herein to the contrary, in no event shall Borrower's Liabilities exceed an amount equal to Ten Million and No/100 Dollars (\$10,000,000.00).

6.4. If foreclosure proceedings are instituted upon this Mortgage, or if the Lender shall be a party to, shall intervene, or file any petition, answer, motion or other pleading in any suit or proceeding relating to this Mortgage, the Mortgage Loan Notes, the Other Agreements or Borrower's Liabilities, or if the Lender shall incur or pay any expenses, costs, charges or attorney's fees by reason of the employment of counsel for advice with respect to this Mortgage, the Mortgage Loan Notes, the Other Agreements or Borrower's Liabilities, and whether in court proceedings or otherwise, such expenses and all of the Lender's reasonable attorney's fees shall be part of Borrower's Liabilities, secured by this Mortgage, payable on demand and shall bear interest at the rate specified in Paragraph 3.4 hereof from the date of the Lender's payment thereof until repaid to the Lender.

6.5. The proceeds of any foreclosure sale of the Mortgaged Property shall be applied and distributed, first, on account of the fees, charges, costs and expenses described in Paragraphs 6.3 and 6.4 above, second, to the balance of Borrower's Liabilities, and third, the surplus, if any, to the Borrower.

6.6. IN THE EVENT OF THE COMMENCEMENT OF JUDICIAL PROCEEDINGS TO FORECLOSE THIS MORTGAGE, THE BORROWER, ON BEHALF OF ITSELF, ITS SUCCESSORS AND ASSIGNS, THE BENEFICIARIES, AND EACH AND EVERY PERSON IT MAY LEGALLY BIND ACQUIRING ANY INTEREST IN OR TITLE TO THE MORTGAGED PROPERTY SUBSEQUENT TO THE DATE OF THIS MORTGAGE: (A) DOES HEREBY EXPRESSLY WAIVE ANY AND ALL RIGHTS OF APPRAISEMENT, VALUATION, STAY, EXTENSION AND (TO THE EXTENT PERMITTED BY LAW) REDEMPTION FROM SALE UNDER ANY ORDER OR DECREE OF FORECLOSURE OF THIS MORTGAGE; AND (B) DOES HEREBY AGREE THAT WHEN SALE IS HAD UNDER ANY DECREE OF FORECLOSURE OF THIS MORTGAGE, UPON CONFIRMATION OF SUCH SALE, THE MASTER IN CHANCERY OR OTHER OFFICER MAKING SUCH SALE, OR HIS SUCCESSOR IN OFFICE, SHALL BE AND IS AUTHORIZED IMMEDIATELY TO EXECUTE AND DELIVER TO ANY PURCHASER AT ANY SALE A DEED CONVEYING THE MORTGAGED PROPERTY, SHOWING THE AMOUNT PAID THEREFOR, OR IF PURCHASED BY THE PERSON IN WHOSE FAVOR THE ORDER OF DECREE IS ENTERED, THE AMOUNT OF HIS BID THEREFOR.

6.7. The Lender shall have the right from time to time to sue for any sums, whether interest, principal or other sums required to be paid by or for the account of the Borrower under the terms of this Mortgage or the Mortgage Loan Notes, as the same become due under this Mortgage or the Mortgage Loan Notes, or for any other of Borrower's Liabilities which shall become due, and without prejudice to the right of the Lender thereafter to bring an action of

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foreclosure, or any other action, for a default or defaults by the Borrower existing at the time such earlier action was commenced.

6.8. No right or remedy of the Lender hereunder is exclusive of any other right or remedy hereunder or now or hereafter existing at law or in equity, but is cumulative and in addition thereto and the Lender may recover judgment thereon, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting or affecting or impairing the security or any right or remedy afforded by this Mortgage. No delay in exercising, or omission to exercise, any such right or remedy will impair any such right or remedy or will be construed to be a waiver of any default by the Borrower hereunder, or acquiescence therein, nor will it affect any subsequent default hereunder by the Borrower of the same or different nature. Every such right or remedy may be exercised independently or concurrently, and when and so often as may be deemed expedient by the Lender. No terms or conditions contained in this Mortgage or the Mortgage Loan Notes may be waived, altered or changed except as evidenced in writing by the Borrower and the Lender.

6.9. The Lender shall release this Mortgage by proper instrument upon payment and discharge of all of Borrower's Liabilities, including all prepayment or like premiums, if any, provided for in the Mortgage Loan Notes and payment of all costs, expenses and fees, including reasonable attorney's fees, incurred by the Lender for the preparation, execution and/or recording of such release. Borrower's Liabilities may be prepaid at any time, subject to such limitations as are set forth in the Mortgage Loan Notes.

6.10. Upon occurrence of an Event of Default and acceleration of the maturity of Borrower's Liabilities as provided herein, a tender of payment thereof by the Borrower, or any other Person, or a payment thereof received upon or on account of a foreclosure of this Mortgage or the Lender's exercise of any of its other rights or remedies under this Mortgage, the Mortgage Loan Notes, the Other Agreements or under any applicable law or in equity shall be deemed to be a voluntary prepayment made by the Borrower of Borrower's Liabilities and, therefore, such payment must, to the extent permitted by law, include the premiums and other payments required under the prepayment privilege, if any, contained in the Mortgage Loan Notes or the Other Documents.

6.11. (A) Any agreements between the Borrower and the Lender are expressly limited so that, in no event whatsoever, whether by reason of disbursement of the proceeds of the loans secured hereby or otherwise, shall the amount paid or agreed to be paid to the Lender for the use, detention or forbearance of the loan proceeds to be disbursed exceed the highest lawful contract rate permissible under any law which a court of competent jurisdiction may deem applicable thereto.

(B) If failure of any provision herein, in the Mortgage Loan Notes or in the Other Agreements, at the time performance of such provision becomes due, involves exceeding such highest lawful contract rate, then ipso facto, the obligation to fulfill the same shall be reduced to such highest lawful contract rate. If by any circumstance the Lender shall ever receive as interest an amount which would exceed such highest lawful contract rate, the amount which

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may be deemed excessive interest shall be applied to the principal of Borrower's Liabilities and not to interest.

(C) The terms and provisions of this Paragraph shall control all other terms and provisions contained herein, in the Mortgage Loan Notes or in the Other Agreements.

6.12. Any failure of the Lender to insist upon the strict performance by the Borrower of any of the terms and provisions of this Mortgage, the Mortgage Loan Notes or the Other Agreements shall not be deemed to be a waiver of any of the terms and provisions thereof, and the Lender, notwithstanding any such failure, shall have the right at any time or times thereafter to insist upon the strict performance by the Borrower of any and all of the terms and provisions thereof to be performed by the Borrower. Neither the Borrower, nor any other Person now or hereafter obligated for the payment of the whole or any part of Borrower's Liabilities, shall be relieved of such obligation by reason of the sale, conveyance or other transfer of the Mortgaged Property or the failure of the Lender to comply with any request of the Borrower, or of any other Person, to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage, the Mortgage Loan Notes, the Other Agreements, or by reason of the release, regardless of consideration, of the whole or any part of the security held for Borrower's Liabilities, or by reason of any agreement or stipulation between any subsequent owner or owners of the Mortgaged Property and the Lender extending the time of payment of Borrower's Liabilities or modifying the terms of the Mortgage Loan Notes or the Other Agreements or this Mortgage without first having obtained the consent of the Borrower or such other Person, and, in the latter event, the Borrower, and all such other Persons, shall continue liable on account of Borrower's Liabilities and to make such payments according to the terms of any such agreement, extension or modification unless expressly released and discharged in writing by the Lender. The Lender, without notice, may release, regardless of consideration, any part of the security held for Borrower's Liabilities, without, as to the remainder of the security therefor, in any way impairing or affecting the lien of this Mortgage or the priority of such lien over any subordinate lien. The Lender may resort for the payment of Borrower's Liabilities to any other security therefor held by the Lender in such order and manner as the Lender may elect.

## 7. MISCELLANEOUS

7.1. Every provision for notice, demand or request required in this Mortgage, the Mortgage Loan Notes or the Other Agreements or by applicable law shall be deemed fulfilled by written notice, demand or request personally served on (with proof of service endorsed thereon), or mailed to, as hereinafter provided, the party entitled thereto or on its successors or assigns. If mailed, such notice, demand or request shall be made by certified or registered mail, return receipt requested, addressed to such party at its address set forth below or to such other address as either party hereto shall direct by like written notice and shall be deemed to have been made on the fifth (5th) day following posting as aforesaid. For the purposes herein, notices shall be sent to the Borrower and the Lender as follows:

# UNOFFICIAL COPY

To Borrower: Mary F. Faucher  
145 Astoria Way  
Park Ridge, Illinois 60068

and to: Frank G. Siepker, Esq.  
Kelly, Olson, Michod & Siepker  
181 West Madison Street, Suite 4800  
Chicago, Illinois 60602

To Lender: The Northern Trust Company  
Attn: Private Banking  
8501 West Higgins Road  
Chicago, Illinois 60631

with a copy to: William C. Graft, Esq.  
William C. Graft & Associates, P.C.  
1901 North Roselle Road, Suite 800  
Schaumburg, Illinois 60195

7.2. All the covenants contained in this Mortgage will run with the land. Time is of the essence of this Mortgage and all provisions herein relating thereto shall be strictly construed.

7.3. This Mortgage and all provisions hereof, shall extend to and be binding upon the Borrower and Persons claiming under or through the Borrower, and the word "Borrower" when used herein shall include all such Persons and all Persons liable for the payment of Borrower's Liabilities or any part thereof, whether or not such Persons shall have executed this Mortgage or the Mortgage Loan Notes. The word "Lender" when used herein shall include the successors and assigns of Lender named herein and the holder or holders from time to time of the Mortgage Loan Notes.

7.4. This Mortgage was executed and delivered in, and, except as otherwise specifically stated in any given paragraph hereof, shall be governed as to validity, interpretation, construction, effect and in all other respects by the laws and decisions of the State of Illinois.

7.5. Any provision of this Mortgage which is unenforceable in any state in which this Mortgage may be filed or recorded or is invalid or contrary to the law of such state, or the inclusion of which would affect the validity, legality or enforcement of this Mortgage, shall be of no effect, and in such case all the remaining terms and provisions of this Mortgage shall subsist and be fully effective according to the tenor of this Mortgage, the same as though no such invalid portion had ever been included herein.

7.6. To the extent that any of Borrower's Liabilities represent funds utilized to satisfy any outstanding indebtedness or obligations secured by liens, rights or claims against the Mortgaged Property or any part thereof, the Lender shall be subrogated to any and all liens, rights, superior titles and equities owned or claimed by the holder of any such outstanding

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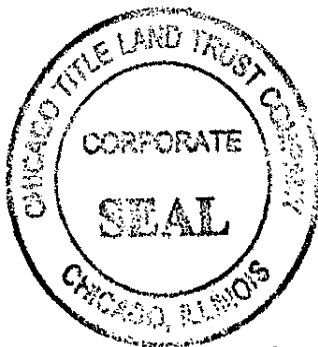
indebtedness or obligation so satisfied, however remote, regardless of whether said liens, rights, superior titles and equities are by the holder(s) thereof assigned to the Lender or released.

7.7. This Mortgage is executed by the Borrower, not personally but solely as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said Trustee in its personal and individual capacity hereby warrants that it as Trustee possesses full power and authority to execute this instrument), and it is expressly understood and agreed to by the Lender and by every person now or hereinafter claiming any right or security hereunder that nothing contained herein or in the Mortgage Loan Notes shall be construed as creating any liability on said Trustee in its individual capacity personally to pay the obligations under the Mortgage Loan Notes or any interest that may accrue thereon, or any indebtedness accruing hereunder or to perform any covenant, either expressed or implied, herein contained all such liability, if any, being expressly waived, but this waiver shall in no way affect the personal liability of any other party, including without limitation the Beneficiaries, under this Mortgage or the Mortgage Loan Notes or under any Guaranty given in connection with this Mortgage or the Mortgage Loan Notes.

7.8. The Borrower and the Beneficiaries hereby waive trial by jury in any action, proceeding or claim brought by any party to this Mortgage against the other or in respect of any matter whatsoever arising out of or in any way connected with this Mortgage. Furthermore, the Borrower and the Beneficiaries hereby consent to the jurisdiction of the Circuit Court of Cook County, or in the alternative, the Eastern Division of the U.S. District Court for the Northern District of Illinois, in the event that any claim may be brought relative to this Mortgage.

7.9. In the event of a release of this Mortgage, the Lender shall have the right to charge the Borrower a reasonable fee for preparing any release of this Mortgage, or any of the other documents pertaining to Borrower's Obligations.

7.10. No action for the enforcement of Borrower's Liabilities or Borrower's Obligations or any provision of this Mortgage shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Mortgage Loan Notes hereby secured.



Chicago Title and Trust Company n/k/a Chicago Title Land Trust Company, an Illinois corporation, not personally but solely as Trustee under Trust Agreement dated December 19, 1986 and known as Trust Number 1089390

By: Sheila Dawgert  
Its: ASST. VICE PRESIDENT

Attest:  
By: Jaqueline Loftus  
Its: Asst. Secretary

2735-D



# UNOFFICIAL COPY

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Sheila Davenport and Jacqueline Loftus of Chicago Title and Trust Company, not personally but solely as Trustee of Trust Agreement dated December 19, 1986 and known as Trust Number 1089390 (the "Borrower") who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Asst. Vice President and Asst. Secretary respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Borrower, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 8<sup>th</sup> day of June, 1999.



Gwendolyn L. Benson  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_

99566343

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## EXHIBIT A

### Legal Description

Lots 11 to 17, both inclusive, in Block 14 in Newberry's Addition, a subdivision in the East ½ of the West ½ of the Northeast ¼ of Section 9, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Property of Cook County Clerk's Office

**99566343**

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## EXHIBIT B

### List of Violations

1. Complaint for Equitable and Other Equitable Relief filed by the City of Chicago as Case No. 99M1-401411

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EXHIBIT C

List of Permitted Encumbrances

NONE

Property of Cook County Clerk's Office

**99566343**