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Cook County Recorder 89.00



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THIS DOCUMENT WAS DRAFTED BY  
AND WHEN RECORDED RETURN TO:

Donald P. Norwich  
OPPENHEIMER WOLF & DONNELLY LLP  
Plaza VII, Suite 3400  
45 South Seventh Street  
Minneapolis, MN 55402

7797972  
MORTGAGE  
AND  
SECURITY AGREEMENT  
AND  
FIXTURE FINANCING STATEMENT

35  
THIS INDENTURE (hereinafter referred to as "Mortgage"), made and given this 26th day of February, 1999, by CHICAGO TITLE LAND TRUST COMPANY, NOT INDIVIDUALLY, BUT SOLELY AS TRUSTEE UNDER TRUST AGREEMENT DATED MAY 27, 1997 AND KNOWN AS TRUST NO. 1103307 ("Mortgagor"), whose post office address is 171 N. Clark Street, Chicago, Illinois 60601, Attn: Land Trust Department, to MILLER & SCHROEDER INVESTMENTS CORPORATION, a Minnesota corporation ("Mortgagee"), whose post office address is 300 Pillsbury Center, 220 South Seventh Street, Minneapolis, Minnesota 55402.

CTI 01  
PRELIMINARY RECITALS:

lot 2  
A. 910 South Michigan Avenue Limited Partnership, an Illinois limited partnership ("Beneficiary") is the sole beneficiary of a Land Trust created with Chicago Title Land Trust Company, not individually but solely as trustee ("Trustee") under Trust Agreement dated May 27, 1997 and known as Trust No. 1103307 (the "Trust")

B. The Beneficiary has made application to and the Mortgagee has agreed to loan to the Trust and Beneficiary the sum of up to Thirty-Three Million and no/100 Dollars (\$33,000,000.00) (the "Loan") to pay the costs of converting an existing building on the Premises described herein into a multifamily residential condominium project.

BOX 333-CTI

C. Pursuant to a Declaration of Condominium Ownership For the Michigan Avenue Lofts Condominium and Provisions Related to Certain Non-Condominium Property filed as Document No. 98774537 in the Cook County Recorder's Office, Cook County, Illinois, as amended by Recharacterization Amendment No. 1 to Declaration of Condominium Ownership For the Michigan Avenue Lofts Condominium and Provisions Related to Certain Non-Condominium Property, as amended by Recharacterization Amendment No. 2 to Declaration of Condominium Ownership For the Michigan Avenue Lofts Condominium and Provisions Related to Certain Non-Condominium Property, as amended by Recharacterization Amendment No. 3 to Declaration of Condominium Ownership For the Michigan Avenue Lofts Condominium and Provisions Related to Certain Non-Condominium Property (the "Declaration"), the Trustee, at the direction of the Beneficiary has subjected portions of the Project to the provisions of the Illinois Condominium Act, 765 ILCS 605, (the "Act") creating the "Michigan Avenue Lofts Condominium" ("Condominium").

D. Pursuant to a certain Construction Loan Agreement between the Mortgagor and Mortgagee dated of even date herewith ("Construction Loan Agreement") the Mortgagee has agreed to make the Loan to the Mortgagor for the purpose of defraying the costs of converting the Premises into residential condominium units ("Units") for purchase.

E. The Loan is evidenced by a Promissory Note dated of even date herewith executed and delivered by the Mortgagor and the Beneficiary to the Mortgagee in the principal sum of Thirty-Three Million and no/100 Dollars (\$33,000,000.00) ("Note").

F. The Note bears interest at a variable per annum rate of interest all as more fully set forth in the Note ("Interest Rate") except that during the period of and continuance of a default under the Note or Event of Default under this Mortgage the Note shall bear interest at a per annum rate of interest of Four Percent (4%) in excess of the interest rate then in effect on the Note whether or not the Mortgagee has exercised its option to accelerate the maturity of the Note and declare the entire unpaid Indebtedness Secured Hereby (as hereinafter defined) due and payable as more fully set forth in the Note ("Default Rate").

G. As security for the repayment of the Loan as evidenced by the Note the Mortgagor is executing and delivering this Mortgage.

H. The Note is payable in monthly installments of interest with a final installment payment of principal and interest due on February 28, 2000 ("Maturity Date").

I. As used herein the term "Note Rate" shall mean the rate of interest then in effect on the Note whether the Interest Rate or Default Rate, as the case may be.

NOW, THEREFORE, that the said Mortgagor in consideration of the debt hereinafter described and the sum of One and 00/100 Dollars (\$1.00) to Mortgagor in hand paid by the said Mortgagee, the receipt whereof is hereby acknowledged, does hereby MORTGAGE, GRANT, BARGAIN, SELL AND CONVEY unto the said Mortgagee, its successors and assigns, forever, AND GRANTS TO THE MORTGAGEE A SECURITY INTEREST IN all of the following

properties hereinafter set forth (all of the following being hereafter collectively referred to as the "Premises"):

A  
REAL PROPERTY

All the tracts or parcels of real property lying and being in the County of Cook, State of Illinois, all as more fully described in Exhibit "A" attached hereto and made a part hereof, together with all the estates and rights in and to the real property and in and to lands lying in streets, alleys and roads adjoining the real property and all buildings, structures, improvements, fixtures and annexations, access rights, easements, rights of way or use, servitudes, licenses, tenements, hereditaments and appurtenances now or hereafter belonging or pertaining to the real property; together with all water rights (whether riparian, appropriative or otherwise whether or not appurtenant) now or hereafter relating to or used in connection with the real property, and all shares of stock, if any, evidencing such rights.

B  
PERSONAL PROPERTY

All buildings, improvements, personal property, fixtures, fittings and furnishings, and now or hereafter attached to, located at, or placed in the improvements on the real property described herein including, without limitation all machinery, fittings, fixtures, apparatus, equipment or articles used to supply heating, gas, electricity, air conditioning, water, light, waste disposal, power, refrigeration, ventilation, and fire and sprinkler protection; all maintenance supplies and repair equipment; all draperies, carpeting, floor coverings, screens, storm windows and window coverings, blinds, awnings, shrubbery and plants; all elevators, escalators and shafts, motors, machinery, fittings and supplies necessary for their use; all building materials and supplies now or hereafter delivered to the Premises (it being understood that the enumeration of any specific articles of property shall in no way be held to exclude any items of property not specifically enumerated), as well as renewals, replacements, proceeds, additions, accessories, increases, parts, fittings, insurance payments, awards and substitutes thereof, together with all interest of Mortgagor in any such items hereafter acquired, as well as the Mortgagor's interest in any lease, or conditional sales agreement under which the same is acquired, all of which personal property mentioned herein shall be deemed fixtures and accessory to the freehold and a part of the realty and not severable in whole or in part without material injury to the Premises.

C  
RENTS, INCOME, LEASES AND PROFITS

All rents, income, contract rights, leases and profits now due or which may hereafter become due under or by virtue of any lease, license or agreement, whether written or verbal, for the use or occupancy of the Premises or any part thereof together with all tenant security deposits.

D  
INSURANCE PROCEEDS

All awards, payments, proceeds now or hereafter payable under any policy of insurance insuring the Premises including but not limited to the proceeds of casualty insurance, title insurance, business interruption/rents insurance or other insurance maintained with respect to the Premises.

E  
JUDGMENTS AND AWARDS

All awards, compensation and settlements in lieu thereof made as a result of the taking by power of eminent domain of the whole or any part of the Premises, including any awards for damages sustained to the Premises, for a temporary taking, change of grade of streets or taking of access.

F  
INTANGIBLES

All contracts, licenses, permits, management records, files, consents, governmental approvals and intangibles used, useful or required in the ownership and management of the Premises together with all soil reports, building permits, variances, licenses, utility permits and other permits and agreements relating to the construction or equipping of the improvements on the Premises, or the operation or maintenance of the Premises, including, without limitation, all warranties and contract rights.

G  
CONSTRUCTION CONTRACTS

Each contract or agreement for the design, construction and equipping of the improvements to be constructed on the Premises, together with all rights, title and interest of Mortgagor in and to any existing or future changes, extensions, revisions, modifications, guarantees or performance, or warranties of any kind thereunder.

H  
PLANS AND SPECIFICATIONS

All plans and specifications, all surveys, site plans, working drawings and papers, relating to the Premises and the construction and equipping of the improvements on the Premises, including without limitation, all architectural and site plans prepared.

I  
BUILDING SUPPLIES

All building supplies and materials ordered or purchased for use in connection with the construction and equipping of the improvements on the Premises.

J

SERVICE AGREEMENTS

All rights and interests of Mortgagor in and under any and all service and other agreements relating to the operation, maintenance, and repair of the Premises or the buildings and improvements thereon.

K

LOGO

All right and interest in and to the use of the name and logo "Michigan Avenue Lofts Condominium".

L

CONTRACT RIGHTS AND PURCHASE PROCEEDS

All contracts for the sale of condominium units in the Premises between the Mortgagor, as seller, and third parties, as purchasers, for the purchase of individual condominium units in the Premises together with the proceeds payable thereunder including each purchase agreement now or hereafter entered into, all deposits paid under any purchase agreement and the purchase price payable on each unit purchase.

It is specifically understood that the enumeration of any specific articles of property shall in nowise exclude or be held to exclude any items of property not specifically mentioned. All of the Premises hereinabove described, real, personal and mixed, whether affixed or annexed or not, and all rights hereby conveyed and mortgaged are intended to be as a unit and are hereby understood and agreed and declared to be appropriated to the use of the Premises, and shall for the purposes of this Mortgage be deemed to be real estate and conveyed and mortgaged hereby.

TO HAVE AND TO HOLD THE SAME, together with the possession and right of possession of the Premises, unto the Mortgagee, its successors and assigns, forever.

PROVIDED NEVERTHELESS, that if the Mortgagor, its successors or assigns, shall:

- (i) pay to the Mortgagee, its successors or assigns, the sum of Thirty-Three Million and no/100 Dollars (\$33,000,000.00), according to the terms of the Note, or so much as is from time to time disbursed thereon the terms and conditions of which are incorporated herein by reference and made a part hereof, together with any extensions or renewals thereof, due and payable with interest thereon at the Note Rate, the balance of said principal sum together with interest thereon being due and payable in any event on the Maturity Date; and
- (ii) pay to the Mortgagee, its successors or assigns, at the times demanded and with interest thereon at the Note Rate, all sums advanced (a) in protecting the lien of this Mortgage, (b) in payment of taxes on the Premises, (c) in payment of insurance premiums covering improvements thereon, (d) in payment of principal

and interest on prior liens, in payment of expenses and attorney's fees herein provided for and (e) all sums advanced for any other purpose authorized herein; and

- (iii) keep and perform all of the covenants and agreements herein contained; and
- (iv) keep and perform all of the terms and conditions of any instrument given as collateral for the Loan; and
- (v) keep and perform all of the terms and conditions of the Construction Loan Agreement;

then the Mortgagee shall release this Mortgage. The Note, all such sums and all such obligations, together with interest thereon, are herein collectively referred to as the "Indebtedness Secured Hereby".

BUT PROVIDED FURTHER, notwithstanding anything to the contrary herein contained, that the maximum amount of the Indebtedness Secured Hereby which may at any time be secured hereby is limited to and shall not in any event exceed the sum of \$100,000,000.00.

AND IT IS FURTHER COVENANTED AND AGREED AS FOLLOWS:

1.

GENERAL COVENANTS, AGREEMENTS, WARRANTIES

1.1 Payment of Indebtedness: Observance of Covenants. Mortgagor shall duly and punctually pay each and every installment of principal and interest on the Note and all other Indebtedness Secured Hereby, as and when the same shall become due, and shall duly and punctually perform and observe all of the covenants, agreements and provisions contained herein, in the Note and any other instrument given as security for the payment of the Note.

1.2 Maintenance: Repairs. Mortgagor shall not abandon the Premises, shall keep and maintain the Premises in good condition, repair and operating condition, normal wear and tear excluded, free from any waste or misuse, and shall promptly repair or restore any buildings, improvements or structures now or hereafter on the Premises which may become damaged or destroyed to their condition prior to any such damage or destruction. Mortgagor further agrees that excepting the requirements imposed upon it under the Construction Loan Agreement to complete the improvements as defined therein, it will not expand any improvements on the Premises, erect any new improvements or make any material alterations in any improvements which shall alter the basic structure, adversely affect the market value or change the existing architectural character of the Premises, nor remove or demolish any improvements without suitable replacement thereof, and shall complete within a reasonable time any buildings now or at any time in the process of remodeling on the Premises; provided nothing herein shall preclude Mortgagor from constructing improvements necessary or desirable to the use of the Premises for Mortgagor's business purposes which are non-structural in nature and which do not constitute



material alterations to the Premises or affect the nature of use, structure or utility of the Premises or decrease the market value of the Premises.

1.3 Compliance with Laws. Mortgagor shall comply with all requirements of law, municipal ordinances and regulations affecting the Premises, shall comply with all private restrictions and covenants affecting the Premises and shall not acquiesce in or seek any rezoning classification affecting the Premises.

1.4 Payment of Operating Costs: Prior Mortgages and Liens. Mortgagor shall pay all operating costs and expenses of the Premises, shall keep the Premises free from levy, attachment, mechanics', materialmen's and other liens ("Liens") and shall pay when due all indebtedness which may be secured by mortgage, lien or charge on the Premises.

1.5 Payment of Impositions. Mortgagor shall pay when due and in any event before any penalty attaches all taxes, assessments, governmental charges, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever assessed or charged against or constituting a lien on the Premises or any interest therein ("Impositions") and will upon demand furnish to the Mortgagee proof of the payment of any such Impositions. In the event of a court decree or an enactment after the date hereof by any legislative authority of any law imposing upon a mortgagee the payment of the whole or any part of the Impositions 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 a mortgagee's interest in mortgaged premises, so as to impose such Imposition on the Mortgagee or on the interest of the Mortgagee in the Premises, then, in any such event, Mortgagor shall bear and pay the full amount of such Imposition, provided that if for any reason payment by Mortgagor of any such Imposition would be unlawful, or if the payment thereof would constitute usury or render the Indebtedness Secured Hereby wholly or partially usurious, Mortgagee, at its option, may declare the whole sum secured by this Mortgage with interest thereon to be immediately due and payable, without prepayment premium, or Mortgagee, at its option, may pay that amount or portion of such Imposition as renders the Indebtedness Secured Hereby unlawful or usurious, in which event Mortgagor shall concurrently therewith pay the remaining lawful and non-usurious portion or balance of said Imposition.

1.6 Contest of Impositions, Liens and Levies. Mortgagor shall not be required to pay, discharge or remove any Imposition or any Lien so long as the Mortgagor shall in good faith contest the same or the validity thereof by appropriate legal proceedings which shall operate to prevent the collection of the Lien or Imposition so contested and the sale of the Premises, or any part thereof, to satisfy the same, provided that the Mortgagor shall, prior to the date such Lien or Imposition is due and payable, have given such reasonable security as may be demanded by the Mortgagee to insure such payments plus interest or penalties thereon, and prevent any sale or forfeiture of the Premises by reason of such nonpayment. Any such contest shall be prosecuted with due diligence and the Mortgagor shall promptly after final determination thereof pay the amount of any such Lien or Imposition so determined, together with all interest and penalties which may be payable in connection therewith. Notwithstanding these provisions Mortgagor shall (and if Mortgagor shall fail so to do, Mortgagee, may but shall not be required to) pay any

such Lien or Imposition notwithstanding such contest if in the reasonable opinion of the Mortgagee, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed.

1.7 Protection of Security. Mortgagor shall promptly notify Mortgagee of and appear in and defend any suit, action or proceeding that affects the Premises or the rights or interest of Mortgagee hereunder and the Mortgagee may elect to appear in or defend any such action or proceeding. Mortgagor agrees to indemnify and reimburse Mortgagee from any and all loss, damage, expense or cost arising out of or incurred in connection with any such suit, action or proceeding, including costs of evidence of title and reasonable attorney's fees and such amounts together with interest thereon at the Note Rate shall become additional "Indebtedness Secured Hereby" and shall become immediately due and payable.

1.8 Annual Statements. Mortgagor shall furnish to the Mortgagee the following information at the following times:

- (a) Within 120 days after the calendar year end, the annual financial statement of Beneficiary, which shall include the balance sheet of Beneficiary as at the end of such year and related statements of income and expenses, statements of changes in financial position, a statement of changes in capital accounts and a statement of allocation of distribution of profits and losses, all in reasonable detail, compiled in accordance with GAAP (or tax accounting reconciled to GAAP) by a reputable accounting firm.
- (b) Within 120 days after the calendar year end, the annual financial statement of Vilas Development Corp., which shall include the balance sheet of Vilas Development Corp. as at the end of such year and related statements of income and expenses, statements of changes in financial position, a statement of changes in capital accounts and a statement of allocation of distribution of profits and losses, all in reasonable detail, compiled in accordance with GAAP (or tax accounting reconciled to GAAP) by a reputable accounting firm.
- (c) Within 120 days after the calendar year end, the annual financial statement of Sowmya Construction Corporation which shall include the balance sheet of Sowmya Construction Corporation as at the end of such year and related statements of income and expenses, statements of changes in financial position, a statement of changes in capital accounts and a statement of allocation of distribution of profits and losses, all in reasonable detail, audited in accordance with GAAP (or tax accounting reconciled to GAAP) by a reputable accounting firm.
- (d) Within one hundred twenty (120) days after the calendar year-end, a current financial statement of Ganesan Visvabharathy which statement shall include an itemization of all assets and liabilities of the Ganesan Visvabharathy scheduled by item and type, all investments and contingent liabilities and adequate to disclose the net worth of Ganesan Visvabharathy at such point in time. Such financial statement shall be personally certified by the Ganesan Visvabharathy and shall be



supplemented by the annual federal income tax return of Ganesan Visvabharathy, including all schedules, for the preceding taxable year as and when filed with the Internal Revenue Service.

- (e) Within reasonable promptness after each calendar month a listing of the current number of units under presale, amounts of sale price and deposits collected together with the name and address of the unit purchaser and a copy of the unit purchase contract for that purchaser.
- (f) Within 45 days after the end of each calendar quarter, the quarterly operating statement of the Premises including an income and expense statement and summary of operations conducted on the Premises all compiled in accordance with GAAP.
- (g) Within 30 days after each calendar year end, the annual financial statement of the Michigan Avenue Lofts Condominium Association.

1.9 Additional Assurances. Mortgagor agrees upon reasonable request by the Mortgagee to execute and deliver such further instruments, deeds and assurances including financing statements under the Uniform Commercial Code and will do such further acts as may be necessary or proper to carry out more effectively the purposes of this Mortgage and without limiting the foregoing, to make subject to the lien hereof any property agreed to be subjected hereto or covered by the granting clause hereof, or intended so to be. Mortgagor agrees to pay any recording fees, filing fees, note taxes, mortgage registry taxes or other charges arising out of or incident to the filing or recording of this Mortgage, such further assurances and instruments and the issuance and delivery of the Note.

1.10 Current Compliance With Laws. The Premises to be improved pursuant to the Construction Loan Agreement will comply with all material requirements of laws, including requirements of any Federal, State, County, City or other governmental authority having jurisdiction over the Mortgagor or the Premises and including, but not limited to, any applicable zoning, occupational safety and health, the Americans with Disability Act, energy and environmental laws, ordinances and regulations; and the Mortgagor has obtained all necessary consents, permits and licenses to construct, occupy and operate the Premises for its intended purposes.

1.11 Title. Mortgagor is the lawful owner of and has good and marketable fee simple absolute title to the Premises and will warrant and defend title to the same free of all liens and encumbrances, other than the Encumbrances permitted under the policy of Mortgagee's title insurance issued to Mortgagee in connection with this Mortgage and has good right and lawful authority to grant, bargain, sell, convey, mortgage and grant a security interest in the Premises as provided herein.

1.12 Construction Loan Agreement. This Mortgage secures an obligation incurred for the construction of an improvement on land and is a "Construction Mortgage" within the meaning of Section 9-313(1)(c) of the Illinois Uniform Commercial Code (810 ILCS 5/9-

313(1)(c). This Mortgage is the Mortgage referred to in and is also given as security for the due and punctual performance, observance and payment by the Mortgagor of the terms and conditions set forth in the Construction Loan Agreement the terms and conditions of which are incorporated herein by reference. In addition to its remedies hereunder, the Mortgagee may, but shall not be required to, avail itself of any or all of the rights and remedies available to it under the Construction Loan Agreement, and any sums expended by the Mortgagee in availing itself of such rights and remedies shall bear interest thereon at the rate specified in the Construction Loan Agreement and shall be so much additional Indebtedness Secured Hereby, and shall be payable to the Mortgagee immediately upon demand; provided that, no such payment by the Mortgagee shall be considered as waiving the event of default.

1.13 Personal Property Replacement. Mortgagor will keep the Personal Property in good order and repair and condition and will maintain adequate reserves for replacement of the same. As and when any item of Personal Property becomes worn or obsolete the Mortgagor shall replace the same with a replacement item of Personal Property of same utility and value.

1.14 Unit Sale Contracts. Mortgagor assigns to Mortgagee, as further and additional security for the Indebtedness Secured Hereby, the interest of Mortgagor as seller under all contracts for the sale of condominium apartment units in the Premises, whether existing on the date hereof or hereafter entered into by Mortgagor; and Mortgagor will

- (a) Fulfill or perform each and every term, covenant, and provision of each such contract to be fulfilled or performed by the seller thereunder;
- (b) Give prompt notice to Mortgagee of any notice received by Mortgagor of default by the seller under any such contract, together with a complete copy of any such notice;
- (c) Enforce, short of termination thereof, the performance or observance of each and every term, covenant, and provision of any such contract by the buyer thereunder to be performed or observed; and
- (d) Not terminate any such contract without the consent of Mortgagee.

1.15 Unit Releases. As used herein "Unit Sale" shall mean the sale of a individual condominium unit in the Condominium. The Mortgagee shall release from the lien of this Mortgage the Unit that is the subject of the Unit Sale provided there is simultaneously paid to the Mortgagee with such partial release the entire Purchase Price out of which (i) three percent (3%) is to be deposited in the Closing Contingency Reserve established under the Construction Loan Agreement up to a maximum of \$1,800,000.00; (ii) \$150.00 per Unit Sale is to be paid to Mortgagee as a processing fee, (iii) ninety percent (90%) of the Purchase Price is to be applied as a prepayment of the unpaid principal balance of the Loan without Premium, (iv) to the funding of the Litigation Reserve as established under the Constructon Loan Agreement, and (v) any remainder is to be paid to the Mortgagor. As used herein the terms "Purchase Price" and "Upgrades" shall have the meaning as defined in the Construction Loan Agreement.

1.16 Unit Price. Each Unit shall be sold at a Purchase Price not less than that set forth in the prices set forth in the schedule heretofore delivered to Mortgagee.

2.

INSURANCE AND ESCROWS

2.1 Insurance. Mortgagor shall obtain, pay for and keep in full force and effect during the term of this Mortgage at its sole cost and expense the following policies of insurance:

- (a) All risk/open perils special form property insurance with extended coverages including any building contents, sprinkler coverage, Ordinance of Law coverage (including demolition cost, loss to undamaged portions of any buildings and increased cost of construction) with limits of 100% replacement cost and with no co-insurance provision or if the insurance carrier requires, co-insurance provisions with an agreed amount endorsement in amount acceptable to Mortgagee;
- (b) insurance against loss or damage from (i) leakage of sprinkler systems and (ii) explosion of steam boilers, air conditioning equipment, high pressure piping, machinery and equipment, pressure vessels or similar apparatus now or hereafter installed in any improvements on the Premises and including broad form boiler and machinery insurance (without exclusion for explosion) covering all boilers or other pressure vessels, machinery and equipment (including electrical equipment, sprinkler systems, heating and air conditioning equipment, refrigeration equipment and piping) located in, on or about the Premises and any improvements thereon in an amount at least equal to the full replacement cost of such equipment and the building or buildings housing the same;
- (c) flood insurance if any part of the Premises now or subsequently determined to be) is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (and amendment or successor act thereto) in an amount at least equal to the lesser of the full replacement cost of all buildings and equipment on the Premises, the outstanding principal amount of the Note or the maximum limits of coverage available with respect to the buildings and equipment under said Act;
- (d) Rents Loss or Business Interruption insurance covering risk of loss due to the occurrence of any hazards insured against under the required fire and extended coverage insurance in an amount equal to one (1) year's loss of income as such income may change from time to time due to changes in income from the Premises ;
- (e) commercial general public liability insurance (including product liability, completed operations, contractual liability, host liquor liability, broad form property damage, and personal injuries, including death resulting therefrom) and

with single limit coverage for personal and bodily injury and property damage of at least \$1,000,000.00 for each occurrence with \$10,000,000 Umbrella Coverage;

- (f) As to individual condominium units such additional insurance as required by the Declaration and maintained by the condominium association;
- (g) Such other coverages appropriate to the Premises, its location and use as Mortgagee may from time to time require such as earthquake, mine subsidence, sinkhole, personal property supplemental liability, or coverages of other property - specific risks.

and while any improvements are in the process of construction on the Premises:

- aa) Builder's Risk Insurance - Builder's Risk Insurance written on a completed value basis in an amount equal to the full replacement cost of the Improvements at the date of completion with coverage available on the so-called non-reporting "all risk" form of policy, including coverage against collapse and water damage, with standard non-contributing mortgagee clauses, such insurance to be in such amounts and form and written by such companies as shall be approved by Mortgagee, and the originals of such policies (together with appropriate endorsement thereto, evidence of payment of premiums thereon and written agreements by the insurer or insurers therein to give Mortgagee ten (10) days' prior written notice of any intention to cancel).
- bb) Contractor's Comprehensive General Liability Insurance [including operations, product liability, contingent liability operations, operations of subcontractors, completed operations, contractual liability insurance and comprehensive automobile liability insurance (including hired and non-owned liability)] and with single limit coverage for personal and bodily injury and property damage of at least \$1,000,000.00 for each occurrence with \$10,000,000 Umbrella Coverage;
- cc) Workmen's Compensation - Statutory workmen's compensation coverage in the required amounts.

Such insurance policies shall be written on forms and with insurance companies satisfactory to Mortgagee, shall be in amounts sufficient to prevent the Mortgagor from becoming a co-insurer of any loss thereunder, and shall bear a satisfactory mortgagee clause in favor of the Mortgagee with loss proceeds under any such policies to be made payable to the Mortgagee. Blanket policies must include limits by property location. All required policies of insurance or acceptable certificates thereof together with evidence of the payment of current premiums therefor shall be delivered to and be held by the Mortgagee. The Mortgagor shall, within thirty (30) days prior to the expiration of any such policy, deliver other original policies or certificates of the insurer evidencing the renewal of such insurance together with evidence of the payment of current premiums therefor. In the event of a foreclosure of this Mortgage or any acquisition of the Premises by the Mortgagee all such policies and any proceeds payable

therefrom, whether payable before or after a foreclosure sale, or during the period of redemption, if any, shall become the absolute property of the Mortgagee to be utilized at its discretion. In the event of foreclosure or the failure to obtain and keep any required insurance the Mortgagor empowers the Mortgagee to effect the above insurance upon the Premises at Mortgagor's expense and for the benefit of the Mortgagee in the amounts and types aforesaid for a period of time covering the time of redemption from foreclosure sale, and if necessary therefor, to cancel any or all existing insurance policies. Mortgagor agrees to pay Mortgagee such fees as may be permitted under applicable law for the costs incurred by Mortgagee in determining, from time to time, whether the Premises are located within an area having special flood hazards. Such fees shall include the fees charged by any organization providing for such services.

2.2 Escrows. Mortgagor shall deposit with the Mortgagee, or at Mortgagee's request, with its servicing agent, on the first day of each and every month hereafter as a deposit to pay the costs of taxes, assessments and insurance premiums next due on the Premises, including each Unit ("Charges"):

- (a) Initially a sum such that the amounts to be deposited pursuant to (b) next and such initial sum shall equal the estimated Charges for the next due payment; and
- (b) Thereafter an amount equal to one-twelfth (1/12th) of the estimated annual Charges due on the Premises.

Mortgagee will, upon the presentation to the Mortgagee by the Mortgagor of the bills therefor, pay the Charges from such deposits or will upon presentation of receipted bills therefor, reimburse the Mortgagor for such payments made by the Mortgagor. In the event the deposits on hand shall not be sufficient to pay all of the estimated Charges when the same shall become due from time to time, or the prior deposits shall be less than the currently estimated monthly amounts, then the Mortgagor shall pay to the Mortgagee on demand any amount necessary to make up the deficiency. The excess of any such deposits shall be credited to subsequent payments to be made for such items. If a default or an event of default shall occur under the terms of this Mortgage the Mortgagee may, at its option, without being required so to do, apply any deposits on hand to the Indebtedness Secured Hereby, in such order and manner as the Mortgagee may elect. When the Indebtedness Secured Hereby has been fully paid any remaining deposits shall be returned to the Mortgagor as its interest may appear. All deposits are hereby pledged as additional security for the Indebtedness Secured Hereby, shall be held for the purposes for which made as herein provided, may be held by Mortgagee or its servicing agent and may be commingled with other funds of the Mortgagee, or its servicing agent, shall be held without any allowance of interest thereon and shall not be subject to the decision or control of the Mortgagor. Neither Mortgagee nor its servicing agent shall be liable for any act or omission made or taken in good faith. In making any payments, Mortgagee or its servicing agent may rely on any statement, bill or estimate procured from or issued by the payee without inquiry into the validity or accuracy of the same. If the taxes shown in the tax statement shall be levied on property more extensive than the Premises, then the amounts escrowed shall be based on the entire tax bill and Mortgagor shall have no right to require an apportionment and Mortgagee or its servicing agent may pay the entire tax bill notwithstanding that such taxes pertain in part to



other property and the Mortgagee shall be under no duty to seek a tax division or apportionment of the tax bill.

## 3.

UNIFORM COMMERCIAL CODE SECURITY AGREEMENT

3.1 Security Agreement. This Mortgage shall constitute a security agreement as defined in the Illinois Uniform Commercial Code ("Code") in the items described in the Granting Clauses of this Mortgage ("Collateral"). Any Collateral installed in or used in the Premises are to be used by the Mortgagor solely for Mortgagor's business purposes or as the equipment and fixtures leased or furnished by the Mortgagor, as landlord, to tenants of the Premises and such Collateral will be kept at the buildings on the Premises and will not be removed therefrom without the consent of the Mortgagee and may be affixed to such buildings but will not be affixed to any other real estate. The remedies of the Mortgagee hereunder are cumulative and separate, and the exercise of any one or more of the remedies provided for herein or under the Uniform Commercial Code shall not be construed as a waiver of any of the other rights of the Mortgagee including having any Collateral deemed part of the realty upon any foreclosure thereof. If notice to any party of the intended disposition of the Collateral is required by law in a particular instance, such notice shall be deemed commercially reasonable if given at least ten (10) days prior to such intended disposition and may be given by advertisement in a newspaper accepted for legal publications either separately or as part of a notice given to foreclose the real property or may be given by private notice if such parties are known to Mortgagee. Neither the grant of a security interest pursuant to this Mortgage nor the filing of a financing statement pursuant to the Code shall ever impair the stated intention of this Mortgage that all Collateral comprising the Premises and at all times and for all purposes and in all proceedings both legal or equitable shall be regarded as part of the real property mortgaged hereunder irrespective of whether such item is physically attached to the real property or any such item is referred to or reflected in a financing statement. Mortgagor will on demand deliver all financing statements that may from time to time be required by Mortgagee to establish, perfect and continue the priority of Mortgagee's security interest in the Collateral and shall pay all expenses incurred by Mortgagee in connection with the renewal or extensions of any financing statements executed in connection with the Premises; and shall give advance written notice of any proposed change in Mortgagor's name, identity or structure and will execute and deliver to Mortgagee prior to or concurrently with such change all additional financing statements that Mortgagee may require to establish and perfect the priority of Mortgagee's security interest.

3.2 Maintenance of Property. Subject to the provisions of this section, in any instance where Mortgagor in its sound discretion determines that any Collateral subject to a security interest under this Mortgage has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary for the operation of the Premises, Mortgagor may, at its expense, remove and dispose of it and substitute and install other items not necessarily having the same function, provided, that such removal and substitution shall not impair the operating utility and unity of the Premises. All substituted items shall become a part of the Premises and subject to the lien of the Mortgage. Any amounts received or allowed Mortgagor upon the sale or other disposition of the removed items of Collateral shall be applied first against the cost of acquisition and installation

of the substituted items. Nothing herein contained shall be construed to prevent any tenant from removing from the Premises trade fixtures, furniture and equipment installed by the tenant and removable by the tenant under its terms of the lease, on the condition, however, that the tenant shall at its own cost and expense, repair any and all damages to the Premises resulting from or caused by the removal thereof.

3.3 Fixture Filing. THIS MORTGAGE SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS CONSTITUTING A PART OF THE COLLATERAL WHICH ARE OR ARE TO BECOME FIXTURES RELATED TO THE PREMISES. FOR PURPOSES OF THE UNIFORM COMMERCIAL CODE THE FOLLOWING INFORMATION IS FURNISHED:

- (a) The name and address of the record owner of the real estate described in this instrument is:

Chicago Title Land Trust Company, not individually, but solely as  
Trustee under Trust Agreement dated May 27, 1997 and  
known as Trust No. 1103307  
171 N. Clark Street  
Chicago, Illinois 60601  
Attn: Land Trust Department

- (b) The name and address of the Debtor is:

Chicago Title Land Trust Company, not individually, but solely as  
Trustee under Trust Agreement dated May 27, 1997 and  
known as Trust No. 1103307  
171 N. Clark Street  
Chicago, Illinois 60601  
Attn: Land Trust Department

910 South Michigan Avenue Limited Partnership  
17W300 22nd Street  
Oak Brook Terrace, Illinois 60181  
Attn: Ganesan Visvabharathy

Debtor's Federal Tax ID No., 36-3944996

- (c) the name and address of the Secured Party is:

Miller & Schroeder Investments Corporation  
300 Pillsbury Center  
220 South Sixth Street  
Minneapolis, Minnesota 55402

- (d) Information concerning the security interest evidenced by this instrument may be obtained from the Secured Party at its address above:
- (e) This document covers goods which are or are to become fixtures.

## 4.

APPLICATION OF INSURANCE AND AWARDS

4.1 Damage or Destruction of the Premises. Mortgagor shall give the Mortgagee prompt notice of any damage to or destruction of the Premises and in case of loss covered by policies of insurance the Mortgagee is hereby authorized at its option to settle and adjust any claim arising out of such policies and collect and receipt for the proceeds payable therefrom, provided, that the Mortgagor may itself adjust and collect for any losses arising out of a single occurrence aggregating not in excess of Seventy-Five Thousand and 00/100 (\$75,000.00) Dollars. Any expense incurred by the Mortgagee in the adjustment and collection of insurance proceeds (including the cost of any independent appraisal of the loss or damage on behalf of Mortgagee) shall be reimbursed to the Mortgagee first out of any proceeds. Subject to any controlling provisions of the Declaration, the proceeds or any part thereof shall be applied to reduction of the Indebtedness Secured Hereby then most remotely to be paid, whether due or not, without the application of any prepayment premium, or to the restoration or repair of the Premises, the choice of application to be solely at the discretion of Mortgagee.

4.2 Condemnation. Mortgagor shall give the Mortgagee prompt notice of any actual or threatened condemnation or eminent domain proceedings affecting the Premises and hereby assigns, transfers, and sets over to the Mortgagee the entire proceeds of any award or claim for damages or settlement in lieu thereof for all or any part of the Premises taken or damaged under such eminent domain or condemnation proceedings, the Mortgagee being hereby authorized to intervene in any such action and to collect and receive from the condemning authorities and give proper receipts and acquittances for such proceeds. Mortgagor will not enter into any agreements with the condemning authority permitting or consenting to the taking of the Premises or agreeing to a settlement unless prior written consent of Mortgagee is obtained. Any expenses incurred by the Mortgagee in intervening in such action or collecting such proceeds, including reasonable attorney's fees, shall be reimbursed to the Mortgagee first out of the proceeds. Subject to any controlling provisions in the Declaration, the proceeds or any part thereof shall be applied upon or in reduction of the Indebtedness Secured Hereby then most remotely to be paid, whether due or not, without the application of any prepayment premium, or to the restoration or repair of the Premises, the choice of application to be solely at the discretion of Mortgagee.

4.3 Disbursement of Insurance and Condemnation Proceeds. Any restoration or repair shall be done under the supervision of an architect acceptable to Mortgagee and pursuant to plans and specifications approved by the Mortgagee. In any case where Mortgagee may elect to apply the proceeds to repair or restoration or permit the Mortgagor to so apply the proceeds they shall be held by Mortgagee for such purposes and will from time to time be disbursed by Mortgagee to defray the costs of such restoration or repair under such safeguards and controls as Mortgagee may establish to assure completion in accordance with the approved plans and specifications and

free of liens or claims. Mortgagor shall on demand deposit with Mortgagee any sums necessary to make up any deficits between the actual cost of the work and the proceeds and provide such lien waivers and completion bonds as Mortgagee may reasonably require. Any surplus which may remain after payment of all costs of restoration or repair may at the option of the Mortgagee be applied on account of the Indebtedness Secured Hereby then most remotely to be paid, whether due or not, without application of any prepayment premium or shall be returned to Mortgagor as its interest may appear, the choice of application to be solely at the discretion of Mortgagee.

## 5.

LEASES AND RENTS

5.1 Mortgagor to Comply with Leases. Mortgagor will, at its own cost and expense:

- (a) Provide the Mortgagee copies of all lease(s) of the Premises;
- (b) Faithfully abide by, perform and discharge each and every obligation, covenant and agreement under any lease(s) to be performed by the landlord thereunder;
- (c) Enforce or secure the performance of each and every material obligation, covenant, condition and agreement of said lease(s) by the tenants thereunder to be performed;
- (d) Not borrow against, pledge or further assign any rents due under said lease(s);
- (e) Not permit the prepayment of any rents for more than the next accruing installment of Rents, nor anticipate, discount, compromise, forgive or waive any Rents; and
- (f) Not consent to a subordination of any lease(s) to any party other than Mortgagee and then only if specifically required by the Mortgagee.

5.2 Mortgagee's Right to Perform Under Leases. Should the Mortgagor fail to perform, comply with or discharge any obligations of Mortgagor under any lease or should the Mortgagee become aware of or be notified by any tenant under any lease of a failure on the part of Mortgagor to so perform, comply with or discharge its obligations under said lease, Mortgagee may, but shall not be obligated to, and without further demand upon the Mortgagor, and without waiving or releasing Mortgagor from any obligation in this Mortgage contained, remedy such failure, and the Mortgagor agrees to repay upon demand all sums incurred by the Mortgagee in remedying any such failure together with interest at the then rate in effect on the Note. All such sums, together with interest as aforesaid shall become so much additional Indebtedness Secured Hereby, but no such advance shall be deemed to relieve the Mortgagor from any default hereunder.

5.3 Assignment of Leases and Rents. Upon an Event of Default the Mortgagee may declare all Indebtedness Secured Hereby immediately due and payable, may revoke the licenses

granted Mortgagor hereunder and may, at its option, without notice, either in person or by agent, with or without taking possession of or entering the Premises, with or without bringing any action or proceeding, or by a receiver to be appointed by a court, collect all of the rents and enforce the payment thereof, and all of the rights of the Mortgagor under the lease(s) and all of the rights of the Mortgagee hereunder, and may enter upon, take possession of, manage and operate said Premises, or any part thereof; may cancel, enforce or modify the lease(s), and fix or modify rents, and do any acts which the Mortgagee deems proper to protect the security hereof with or without taking possession of said Premises, and may apply the same to the costs and expenses of operation, management and collection, including reasonable attorney's fees, to the payment of the fees and expenses of any agent, or receiver so acting, to the payment of taxes, assessments, insurance premiums and expenditures for the management and upkeep of the Premises, to the performance of the landlord's obligation under the lease(s) and to any Indebtedness Secured Hereby all in such order as the Mortgagee may determine. The entering upon and taking possession of said Premises, the collection of such rents, and the application thereof as aforesaid, shall not cure or waive any default or waive, modify or affect notice of default under this Mortgage or invalidate any act done pursuant to such notice nor in any way operate to prevent the Mortgagee from pursuing any remedy which it now or hereafter may have under the terms or conditions of this Mortgage or the Note or any other instrument securing the same.

5.4 Present Assignment and License. The assignment of the rents and leases contained herein is a perfected, absolute and present assignment of the rents and lease(s), provided the Mortgagee grants to the Mortgagor a revocable license to:

- (a) collect, but not prior to accrual, the rents, and to retain, use and enjoy the same; and
- (b) take "in the ordinary course of business" Leasing Actions provided prompt notification is given to the Mortgagee of any such Leasing Action.

As used herein the term "in the ordinary course of business" means acting as a prudent and responsible landlord would under similar circumstances with due regard for the maintenance of the income stream provided by the lease(s). As used herein the term "Leasing Actions" shall mean all of the following rights of the Mortgagor:

- (i) the right to waive, excuse, condone or in any manner release or discharge the tenants of or from the obligations, covenants, conditions and agreements by any tenant to be performed under the lease(s);
- (ii) the right to terminate any lease(s);
- (iii) the right to amend or modify any lease(s) or alter the obligations of the parties thereunder without the consent of the Mortgagee;
- (iv) the right to accept a surrender of any lease(s) prior to its expiration date; and



- (v) the right to exercise the remedies of the landlord under the lease(s) by reason of any default by the tenant(s) thereunder.

The Mortgagee at its sole election may revoke any such licenses granted to Mortgagor upon the occurrence of an Event of Default.

## 6.

### RIGHTS OF MORTGAGEE

6.1 Right to Cure Default. If the Mortgagor shall fail to comply with any of the covenants or obligations of this Mortgage, the Mortgagee may, but shall not be obligated to, without further notice to Mortgagor, and without waiving or releasing Mortgagor from any obligation in this Mortgage contained, remedy such failure, and the Mortgagor agrees to repay upon demand all sums incurred by the Mortgagee in remedying any such failure together with interest at the then rate in effect on the Note. All such sums, together with interest as aforesaid shall become so much additional Indebtedness Secured Hereby, but no such advance shall be deemed to relieve the Mortgagor from any failure hereunder.

6.2 No Claim Against the Mortgagee. Nothing contained in this Mortgage shall constitute any consent or request by the Mortgagee, express or implied, for the performance of any labor or services or for the furnishing of any materials or other property in respect of the Premises or any part thereof, nor as giving the Mortgagor or any party in interest with Mortgagor any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would create any personal liability against the Mortgagee in respect thereof or would permit the making of any claim that any lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the lien of this Mortgage.

6.3 Inspection. Mortgagor will permit the Mortgagee's authorized representatives to enter the Premises at reasonable times for the purpose of inspecting the same; provided the Mortgagee shall have no duty to make such inspections and shall not incur any liability or obligation for making or not making any such inspections.

6.4 Waivers; Releases; Resort to Other Security, Etc. Without affecting the liability of any party liable for payment of any Indebtedness Secured Hereby or performance of any obligation contained herein, and without affecting the rights of the Mortgagee with respect to any security not expressly released in writing, the Mortgagee may, at any time, and without notice to or the consent of the Mortgagor or any party in interest with the Premises or the Note:

- (a) release any person liable for payment of all or any part of the Indebtedness Secured Hereby or for performance of any obligation herein;
- (b) make any agreement extending the time or otherwise altering the terms of payment of all or any part of the Indebtedness Secured Hereby or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof;

- (c) accept any additional security;
- (d) release or otherwise deal with any property, real or personal, including any or all of the Premises, including making partial releases of the Premises; or
- (e) resort to any security agreements, pledges, contracts of guarantee, assignments of rents and leases or other securities, and exhaust any one or more of said securities and the security hereunder, either concurrently or independently and in such order as it may determine.

6.5 Waiver of Appraisalment, Homestead, Marshaling. The Mortgagor waives to the full extent lawfully allowed the benefit of any homestead, appraisalment, evaluation, stay and extension laws now or hereinafter in force. Mortgagor waives any rights available with respect to marshaling of assets so as to require the separate sales of any portion of the Premises, or as to require the Mortgagor to exhaust its remedies against a specific portion of the Premises before proceeding against the other and does hereby expressly consent to and authorize the sale of the Premises or any part thereof as a single unit or parcel or as separate parcels.

## 7.

### EVENTS OF DEFAULT AND REMEDIES

7.1 Events of Default. It shall be an event of default ("Event of Default") under this Mortgage upon the happening of any of the following:

- (a) failure to make any payment on the Note whether principal, interest or late charge, when and as the same becomes due (whether at the stated maturity or at a date fixed for any installment payment or any accelerated payment date or otherwise); or
- (b) a "Default" as defined therein shall occur under the Note and shall not have been cured within the time permitted therein to cure; or
- (c) failure to pay, perform or comply with when due any other Indebtedness Secured Hereby; or
- (d) failure to comply with or perform any of the other terms, conditions or covenants of this Mortgage and such failure shall continue for a period of thirty (30) days after notice thereof to Mortgagor; provided, if the same is not susceptible of cure within said time limits and the same may be cured within a reasonable period of time thereafter the time period shall be extended for such additional time as is reasonably necessary to effectuate such cure provided such curative action is promptly taken in good faith and diligently prosecuted to completion and the security afforded hereby and the interest of the Mortgagee is not in jeopardy or be subject to forfeiture; or

- (e) the Mortgagor, the Beneficiary or any guarantor or surety of the Note shall fail to pay its/his/her debts as they become due, make an assignment for the benefit of its/his/her creditors, or shall admit in writing its/his/her inability to pay its/his/her debts as they become due, or shall file a petition under any chapter of the Federal Bankruptcy Code or any similar law, state or federal, now or hereafter existing, or shall become "insolvent" as that term is generally defined under the Federal Bankruptcy Code, or shall in any involuntary bankruptcy case commenced against it/him/her file an answer admitting insolvency or inability to pay its/his/her debts as they become due, or shall fail to obtain a dismissal of such case within sixty (60) days after its commencement or convert the case from one chapter of the Federal Bankruptcy Code to another chapter, or be the subject of an order for relief in such bankruptcy case, or be adjudged a bankrupt or insolvent, or shall have a custodian, trustee or receiver appointed for, or have any court take jurisdiction of its/his/her property, or any part thereof, in any proceeding for the purpose of reorganization, arrangement, dissolution or liquidation, and such custodian, trustee or receiver shall not be discharged, or such jurisdiction shall not be relinquished, vacated or stayed within sixty (60) days of the appointment; or
- (f) an event of default shall occur under any other instrument securing the Note and shall not have been cured within the time permitted therein to cure; or
- (g) a judgment, writ or warrant of attachment or execution, or similar process shall be entered and become a lien or be issued or levied against the Premises and shall not be released or fully bonded within forty-five (45) days after its entry, issue or levy; or
- (h) any representation or warranty made by Mortgagor herein, in the Note or in any other instrument given as security for the Note shall be false, materially breached or dishonored; or
- (i) any guarantor or surety for the Note shall be adjudged incompetent or a conservator, custodian or guardian be appointed to handle his/her affairs or shall die and a replacement credit acceptable to Mortgagee is not substituted or satisfactory provisions are not made for the substitution of the liability of such persons estate for the repayment of the Indebtedness Secured Hereby; or
- (j) the Mortgagor or any guarantor or surety for the Note shall be dissolved, liquidated or wound up or shall fail to maintain its existence as a going concern in good standing; or
- (k) if any guarantor or surety for the Note shall fail to keep or perform any covenant, undertaking or agreement on its part under any separate guaranty, indemnity or other surety arrangement given in connection with the Note; or

- (l) the Mortgagor shall default under or shall fail to comply with any of the terms, conditions or provisions of the Construction Loan Agreement referred to in this Mortgage; or
- (m) any Constituent Document (as defined in Article 8) is terminated or rescinded without the prior written consent of the Mortgagee; or
- (n) the Mortgagor as declarant under the Condominium Instrument(s) defaults under any of its obligations under the Condominium Instrument(s).

7.2 Mortgagee's Right to Accelerate. If an Event of Default shall occur the Mortgagee may declare the entire unpaid principal balance of the Note together with all other Indebtedness Secured Hereby to be immediately due and payable and thereupon all such unpaid principal balance of the Note together with all accrued interest thereon at the Note Rate and all other Indebtedness Secured Hereby shall be and become immediately due and payable.

7.3 Right to Foreclose. If an Event of Default shall occur the Mortgagee may, either with or without entry or taking possession, proceed by suit or suits at law or in equity or by any other appropriate proceedings or remedy to enforce payment of the Indebtedness Secured Hereby or the performance of any other term hereof or any other right and the Mortgagor hereby authorizes and fully empowers the Mortgagee to foreclose this Mortgage by judicial proceedings either in one parcel or separate lots and parcels, all in accordance with and in the manner prescribed by law, and out of the proceeds arising from sale and foreclosure to retain the principal and interest due on the Note and the Indebtedness Secured Hereby together with all such sums of money as Mortgagee shall have expended or advanced pursuant to this Mortgage or pursuant to statute together with interest thereon at the Note Rate and all costs and expenses of such foreclosure, including attorney's fees, with the balance, if any, to be paid to the persons entitled thereto by law. In any such proceeding the Mortgagee may apply all or any portion of the Indebtedness Secured Hereby to the amount of the purchase price.

7.4 Waiver of Appraisement, Homestead, Redemption. The Mortgagor hereby covenants and agrees that it will not at any time insist or plead, or in any manner whatever claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor claim, take or insist upon any benefit of advantage of or from any law now or hereafter in force providing for the valuation or appraisement of the Property, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or after such sale or sales claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshaling thereof, upon foreclosure sale or other enforcement-hereof. Mortgagor hereby specifically waives all rights of redemption from sale pursuant to any order or decree of foreclosure of this Mortgage on its own behalf and on behalf of each Owner of Redemption, as defined in Section 5/15-1212 of the Illinois Code of Civil Procedure (735 ILCS 5/15-1212), and all other persons, to the full extent permitted by Section 5/15-1601 of the Illinois Code of Civil Procedure (735 ILCS 5/15-1601) and any successor provisions. The Mortgagor will not invoke

or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power or remedy herein or otherwise granted or delegated to the Mortgagee, but will suffer and permit the execution of every other right, power and remedy as though no such law or laws had been made or enacted. If the Mortgagor is a trustee, Mortgagor represents that the provisions of this Section (including the waiver of redemption rights) were made at the express direction of Mortgagor's beneficiaries and the persons having the power of direction over Mortgagor and are made on behalf of the Trust estate of Mortgagor and all beneficiaries of Mortgagor, as well as all other persons mentioned above.

7.5 Receiver. If an Event of Default shall occur, the Mortgagee shall be entitled as a matter of right without notice and without giving bond and without regard to the solvency or insolvency of the Mortgagor, or waste of the Premises or adequacy of the security of the Premises, and whether or not proceedings have been brought to enforce this Mortgage to have a Receiver appointed and who shall in addition to all the rights and powers granted to it under the terms of its receivership shall have all the rights and powers granted the Mortgagee hereunder including the right to the possession of the Premises, to collect the rents, income and profits therefrom and otherwise deal with and manage the Premises as to rents, income and profits and apply the same to the payment of taxes, assessments, insurance premiums and expenditures for the management, repair and upkeep of the Premises, to the performance of landlord's obligations under any leases and to the Indebtedness Secured Hereby.

7.6 Rights Under Uniform Commercial Code. In addition to the rights available to a mortgagee of real property Mortgagee shall also have all the rights, remedies and recourse available to a secured party under the Uniform Commercial Code including the right to proceed under the provisions of the Uniform Commercial Code governing default as to any property which is subject to the security interest created by the Mortgage or to proceed as to such personal property in accordance with the procedures and remedies available pursuant to a foreclosure of real estate.

7.7 Due on Sale or Mortgaging, Etc. In the event of a Transfer without the written consent of the Mortgagee being first obtained, whether voluntarily, involuntarily, or by operation of law, then at the sole option of the Mortgagee, the Mortgagee may upon notice to the Mortgagor declare the entire Principal Balance together with accrued interest, due and payable in full. A consent by the Mortgagee as to any one Transfer shall not be deemed to be a waiver of the right to require consent to a future Transfer. As used herein, the term "Transfer" shall include any sale, pledge, assignment, mortgage, encumbrance, security interest, consensual lien, hypothecation, transfer or divesture or otherwise of or in i) the Premises or ii) in the beneficial interest in the Trust or iii) the Beneficiary or iv) any underlying ownership interest in the Beneficiary or v) any entity controlling, managing or in control of the Beneficiary, either directly or indirectly, including an interest taken as security. Notwithstanding the foregoing Transfers of limited partnership interests in the Mortgagor shall be permitted provided Vilas Development Corp. remains as general partner of the partnership with at least a 51% interest in the profits, losses and distributions of the partnership and Ganesan Visvabharathy remains the sole owner and stockholder of Vilas Development Corp.



7.8 Rights Cumulative. Each right, power or remedy herein conferred upon the Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, available to Mortgagee, at law or in equity, or under any other agreement, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagee and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy. No delay or omission by the Mortgagee in the exercise of any right, power or remedy arising hereunder or arising otherwise shall impair any such right, power or remedy or the right of the Mortgagee to resort thereto at a later date or be construed to be a waiver of any default or event of default under this Mortgage or the Note.

7.9 Right to Discontinue Proceedings. In the event Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted under this Mortgage and shall thereafter elect to discontinue or abandon the same for any reason, Mortgagee shall have the unqualified right to do so and in such event Mortgagor and Mortgagee shall be restored to their former positions with respect to the Indebtedness Secured Hereby. This Mortgage, the Premises and all rights, remedies and recourse of the Mortgagee shall continue as if the same had not been invoked.

## 8.

### SUBMISSION TO ACT

8.1 Condominium Act. Mortgagor represents and warrants that a portion of the Premises is a condominium pursuant to the Declaration and constitutes all of the existing Dwelling Units and all of the Common Elements comprising the Michigan Avenue Lofts Condominium. The Declaration, as recorded in the official records of Cook County, State of Illinois, Articles of Incorporation of the Condominium Association, Bylaws and Plats establishing and describing the Condominium, are collectively referred to below as the "Condominium Instruments". Mortgagor will take all steps necessary to continue to develop the Premises as a residential condominium in strict compliance with the Act and the Declaration and any rules and regulations of any governmental authorities having jurisdiction over such development. Mortgagor shall cause to be prepared and filed, where required, as amendments to the "Condominium Instruments" such instruments as are required under the Act to add the future Units as and when constructed.

8.2 Condominium Sales Program. In strict compliance with the provisions of the Act and any other applicable ordinances, statutes, regulations, or requirements of regulatory authorities having jurisdiction the Mortgagor will undertake and diligently pursue a program for the sale of the Units. Mortgagor shall promote, offer for sale, and exert its best efforts to sell all the Units on the terms and for not less than the prices set forth in the schedule heretofore delivered to Mortgagee. Each such sale of a Unit shall be pursuant to a valid and enforceable sales contract and the Mortgagor shall diligently proceed to close the sale comprehended thereby.

8.3 Escrow Agent. Unless Mortgagee directs otherwise, all deposits, payments or advances in the payment of the purchase price of the initial sale of a Unit shall be held in an

escrow account maintained with CIB Bank, Chicago, Illinois and in strict compliance with the provision of the Act.

8.4 Operating Account. Unless Mortgagee directs otherwise, the operating accounts for the Premises shall be maintained with CIB Bank, Chicago, Illinois.

8.5 Compliance with the Escrow Agreement, Etc. Mortgagor will not do, permit, or suffer any act or omission which would constitute a violation of, or give any person any right to maintain any action for rescission of any sale of, or agreement to sell, any such Unit. Mortgagor shall comply with and fulfill all provisions of any escrow agreement, Unit sales contracts, and any other documents in connection with the sale of a Unit on the part of the Mortgagor to be complied with or fulfilled.

8.6 Compliance with Act. Mortgagor shall at all times comply with the provisions of the Act.

8.7 Approval by Mortgagee. Mortgagor shall obtain Mortgagee's prior written approval of any documents to be recorded in the Cook County Recorder of Deeds for the purpose of submitting any portion of the Premises to the Act as well as all literature, brochures, and materials of any kind used in sales of Units. Upon such approval and provided no Event of Default exists, the Mortgagee will consent to the recording of the Condominium Instruments.

8.8 Monthly Sales Reports. Mortgagor shall submit to Mortgagee, on or about the first day of each month, a report disclosing the following information: (1) the number of Unit Purchase Agreements executed by buyers and seller; (2) the amount of moneys deposited with the escrow agent pursuant to such sales agreements; (3) the apartment numbers of apartments to which the foregoing information is applicable; and (4) such other information with respect to the sales program as Mortgagee may reasonably request.

8.9 Pre-Sales Requirement. Anything to the contrary notwithstanding, there shall be no advances of loan proceeds unless and until Mortgagor has obtained valid and binding sales contracts for at least 102 Units of Phase II (as defined in the Construction Loan Agreement), including Units currently sold, with bona fide purchasers not related to or affiliated with the Beneficiary or any of its affiliates or controlling persons or entities.

8.10 Condominium Obligations. Mortgagor shall perform all of Mortgagor's obligations, both as declarant and as an individual Unit Owner, under the Condominium Instruments. Mortgagor shall promptly pay, when due, all dues and assessments imposed pursuant to the Condominium Instruments.

8.11 Hazard Insurance. So long as the Owners Association maintains, with a "master" or "blanket" policy on the Condominium which is satisfactory to Mortgagee and which provides insurance coverage in the amounts, for the periods, and against the hazards Mortgagee requires; then Mortgagor's obligation to maintain hazard insurance coverage on the Property is deemed satisfied to the extent that that the required coverage is provided by the Owners Association policy.

8.12 Public Liability Insurance. Mortgagor shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount and extent of coverage to Mortgagee.

8.13 Special Provisions. Mortgagor hereby

- (a) agrees that the Condominium Instruments will not be modified or amended without the prior written consent of Mortgagee until the Indebtedness has been paid in full;
- (b) agrees that it shall own, operate and maintain the Premises in accordance with the terms of this Mortgage and operate the Premises solely as a residential condominium with appurtenant commercial space;
- (c) agrees that, if the Mortgagor executes a Replacement Reserve Agreement in favor of Mortgagee, Mortgagor is required to deposit into a Replacement Reserve account certain payments, the disposition of said funds being earned and controlled by the terms of the Replacement Reserve Agreement. Notwithstanding the Mortgagor's payment of annual assessments or special assessments levied under the terms of the Declaration or any other of the Condominium Instruments to provide any repairs to or maintenance of any of the common elements, Mortgagor agrees to fund the Replacement Reserve account pursuant to the terms of the Replacement Reserve Agreement;
- (d) agrees that the Premises granted, conveyed and assigned to Mortgagee hereunder shall include all rights, easements, rights of way, reservations and powers of the Mortgagor under the Condominium Act and the Condominium Instruments in Mortgagor's capacity as owner of the unsold Condominium Units and as Declarant as well as any rights that Mortgagor may have, in any capacity, under the Condominium Act and the Condominium Instruments and as developer of the Condominium in addition to Mortgagor's rights as owner of any of the units or the Condominium, specifically including but not limited to all rights to approve any amendments to the Condominium Instruments and all rights to expand the Condominium;
- (e) irrevocably constitutes and appoints Mortgagee as Mortgagor's proxy and attorney-in-fact (which appointment shall be deemed coupled with an interest) for and in its behalf to perform all of the obligations of Mortgagor and to exercise all of the rights and powers of Mortgagor under the Condominium Instruments without any liability therefor or thereunder. Mortgagor hereby instructs and grants and gives to Mortgagee full power and authority to do and perform all and every act and thing whatsoever authorized, permitted, requisite or necessary to be done by Mortgagor under the provisions of the Condominium Instruments to all intents and purposes the same as Mortgagor might do, hereby ratifying and confirming all such attorney shall lawfully do or choose to do or be done by virtue hereof, it being understood and agreed that the aforesaid provisions impose no

burden or obligation on the Mortgagee to do or perform any act whatsoever. It shall be a default under this Mortgage if (i) Mortgagor terminates or revokes or attempts to terminate or revoke the aforesaid appointment of Mortgagee as Mortgagor's proxy or attorney-in-fact either permanently or as to any election in the Condominium Act or Condominium Instruments or (ii) Mortgagor attempts to modify the terms of the Condominium Instruments without the prior written consent of Mortgagee. Notwithstanding anything in this paragraph to the contrary, the rights and powers of Mortgagor granted in this paragraph may not be exercised by Mortgagee prior to the occurrence of an Event of Default;

- (f) agrees nothing contained herein is intended to or shall be construed to constitute Mortgagee as the "Declarant" under the Condominium Act and/or the Condominium Instruments or as owner of the Condominium, a partner or joint venturer of Mortgagor;
- (g) agrees to indemnify and hold Mortgagee harmless from and against any and all losses, cost, liabilities, or damages (including attorney's fees and disbursements) arising out of (i) the failure of the Mortgagor to comply with any state or local law, ordinance, statute, or regulation by any governmental authority covering the condominium at the Premises; or (ii) any claim of any unit owner or tenant of any unit owner as a result of any violation, breach, misrepresentation, fraud, act, or omission of any obligation of Mortgagor as set forth in the Condominium Instruments.

9

#### HAZARDOUS SUBSTANCE

9.1 Definitions. As used herein, the following definitions shall apply:

- (a) "Hazardous Substance" shall mean any hazardous or toxic material, substance or waste, pollutant or contaminant which is regulated under any statute, law, ordinance, rule or regulation of any local, state, regional or Federal authority having jurisdiction over the property of the Mortgagor, or its use, including but not limited to any material, substance or waste which is (a) defined as a hazardous substance under any Environmental Laws; (b) a petroleum hydrocarbon including crude oil or any fraction thereof and all petroleum products; (c) polychlorinated biphenyls; (d) lead; (e) urea formaldehyde; (f) asbestos; (g) flammable explosives; (h) infectious materials; (i) radioactive materials; or (j) defined or regulated as a hazardous substance or hazardous waste under any rules or regulations promulgated under any of the foregoing Environmental Laws.
- (b) "Environmental Laws" shall mean any international, federal, state or local statute, law, regulation, order, consent, decree, judgment, permit, license, code, covenant, deed restriction, common law, treaty, convention, ordinance or other requirement relating to public health, safety or the environment, including, without limitation,

those relating to releases, discharges or emissions to air, water, land or groundwater, to the withdrawal or use of groundwater, to the use and handling of polychlorinated biphenyls or asbestos, to the disposal, treatment, storage or management of hazardous or solid waste, or Hazardous Substances or crude oil, or any fraction thereof, or to exposure to toxic or hazardous materials to the handling, transportation, discharge or release of gaseous or liquid Hazardous Substances and any regulation, order, notice or demand issued pursuant to such law, statute or ordinance, in each case applicable to the property of the Mortgagor or its affiliates, if any, including without limitation the following: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984, the Hazardous Materials Transportation Act, as amended, the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1976, the Safe Drinking Water Act, the Clean Air Act, as amended, the Toxic Substances Control Act of 1976, the Occupational Safety and Health Act of 1977, as amended, the Emergency Planning and Community Right-to-Know Act of 1986, the National Environmental Policy Act of 1975, the Oil Pollution Act of 1990, and any similar or implementing state law, and any state statute and any further amendments to these laws providing for financial responsibility for cleanup or other actions with respect to the release or threatened release of Hazardous Substances or crude oil, or any fraction thereof and all rules and regulations promulgated thereunder.

9.2 Covenants of Mortgagor. Mortgagor hereby covenants to Mortgagee that Mortgagor shall (a) comply and shall use its best efforts to cause all occupants of the Premises to comply with all federal, state and local laws, rules, regulations and orders with respect to the discharge, generation, removal, transportation, storage and handling of Hazardous Substances, (b) remove any Hazardous Substances immediately upon discovery of same, in accordance with applicable laws, ordinances and orders of governmental authorities having jurisdiction thereof, (c) pay or cause to be paid all costs associated with such removal; (d) prevent the migration of Hazardous Substances from or through the Premises onto or under other properties; (e) keep the Premises free of any lien imposed pursuant to any state or federal law, rule, regulation or order in connection with the existence of Hazardous Substances on the Premises; (f) not install or permit to be incorporated into any improvements in the Premises or to exist in or on the Premises any asbestos, asbestos-containing materials, urea formaldehyde insulation or any other chemical or substance which has been determined to be a hazard to health and environment; (g) not cause or permit to exist, as a result of an intentional or unintentional act or omission on the part of Mortgagor or any occupant of the Premises, a releasing, spilling, leaking, pumping, emitting, pouring, emptying or dumping of any Hazardous Substances onto the Premises or into waters or other lands; and (h) give all notifications and prepare all reports required by Environmental Laws or any other law with respect to Hazardous Substances existing on, released from or emitted from the Premises.



9.3 Representations of Mortgagor. The Mortgagor represents that, to the best of its knowledge following due inquiry as a duly diligent property owner, and except as disclosed by the Environmental Site Assessment delivered to and accepted by the Mortgagee, (i) the Premises has been and is free from contamination by Hazardous Substances except for (A) immaterial quantities of automotive motor oil leaked inadvertently from vehicles in the ordinary course of the operation of the Premises and cleaned up in accordance with reasonable property management procedures and any applicable law and (B) immaterial quantities of substances customarily and prudently used in the cleaning and maintenance of the Premises in accordance with any applicable law), (ii) no release of any such Hazardous Substance has occurred on or about the Premises, (iii) that the Premises currently complies, and will comply based on its anticipated use, with all current Environmental Laws, (iv) that, in connection with the ownership, operation, and use of the Premises, all necessary notices have been filed and all required permits, licenses and other authorizations have been obtained, including those relating to the generation, treatment, storage, disposal or use of Hazardous Substances, (v) that there is no present or to the best of Mortgagor's knowledge following inquiry as a duly diligent property owner, past or threatened investigation, inquiry or proceeding relating to the environmental condition of, or to events on or about, the Premises, and (vi) there are not to the best of Mortgagor's knowledge any underground storage tanks currently existing and to the extent such underground storage tanks are existing they are registered under the required Environmental Laws and do not contain any leakages, and (vii) Mortgagor has not received nor does it have any knowledge of any summons, citation, directive, letter or other communication, written or oral, from any local, state or federal governmental agency concerning (A) the existence of Hazardous Substances on the Premises or in the immediate vicinity; (B) the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of Hazardous Substances onto the Premises or into waters or other lands or (C) violation of Environmental Laws.

## 10.

MISCELLANEOUS

10.1 Release of Mortgage. When all Indebtedness Secured Hereby has been paid, this Mortgage and all assignments herein contained shall be void and this Mortgage shall be released by the Mortgagee at the cost and expense of the Mortgagor, otherwise to remain in full force and effect.

10.2 Choice of Law. Notwithstanding the place of execution of this instrument, the parties to this instrument have contracted for Illinois law to govern this instrument and it is controllingly agreed that this instrument is made pursuant to and shall be construed and governed by the laws of the State of Illinois without regard to the principles of conflicts of law.

10.3 Successors and Assigns. 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, shall run with the land and shall inure to the benefit of the Mortgagee and its successors and assigns. As used herein the words "successors and assigns" shall also be deemed to include the heirs, representatives, administrators and executors

of any natural person who is or becomes a party to this Mortgage. In the event that the ownership of the Premises becomes vested in a person or persons other than the Mortgagor, the Mortgagee shall not have any obligation to deal with such successor or successors in interest unless such transfer is permitted by this Mortgage and then only upon being notified in writing of such change of ownership. Upon such notification, the Mortgagee may thereafter deal with such successor in place of Mortgagor without any obligation to thereafter deal with Mortgagor and without waiving any liability of Mortgagor hereunder or under the Note. No change of ownership shall in any way operate to release or discharge the liability of the Mortgagor hereunder unless such release or discharge is expressly agreed to in writing by the Mortgagee.

10.4 Unenforceability of Certain Clauses. The unenforceability or invalidity of any provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid.

10.5 Captions and Headings. The captions and headings of the various sections of this Mortgage are for convenience only and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever 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.

10.6 Savings Clause. It is expressly stipulated and agreed to be the intent of Mortgagor, and Mortgagee at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits the Mortgagee to contract for, charge, take, reserve, or receive a greater amount of interest than under state law) and that this section shall control every other covenant and agreement in the Note, this Mortgage and any other loan documents delivered in connection with this instrument ("Loan Documents"). If the applicable law is ever judicially interpreted so as to render usurious any amount called for under the Note, this Mortgage or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the indebtedness evidenced by the Note ("Indebtedness"), or if the Mortgagee's exercise of the option to accelerate the maturity of the Note, or if any prepayment by Mortgagor results in Mortgagor having paid any interest in excess of that permitted by applicable law, then it is Mortgagor's and Mortgagee's express intent that all excess amounts theretofore collected by Mortgagee shall be credited on the principal balance of the Note and all other Indebtedness (or, if the Note and all other Indebtedness have been or would thereby be paid in full, refunded to Mortgagor), and the provisions of the Note and this Mortgage and the other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Mortgagee for the use, forbearance, or detention of the Indebtedness shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Indebtedness until payment in full so that the rate or amount of interest on account of the Indebtedness does not exceed the maximum lawful rate from time to time in effect and applicable to the Indebtedness for so long as the Indebtedness is outstanding. Notwithstanding anything to the contrary contained herein or in any of the other Loan

Documents, it is not the intention of the Mortgagee to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

10.7 Notices. Any notices and other communications permitted or required by the provisions of this Mortgage (except for telephonic notices expressly permitted) shall be in writing and shall be deemed to have been properly given or served by depositing the same with the United States Postal Service, or any official successor thereto, designated as Certified Mail, Return Receipt Requested, bearing adequate postage, or deposited with reputable private courier or overnight delivery service, and addressed as hereinafter provided. Each such notice shall be effective upon being deposited as aforesaid. The time period within which a response to any such notice must be given, however, shall commence to run from the date of receipt of the notice by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice sent. By giving to the other party hereto at least ten (10) days' notice thereof, either party hereto shall have the right from time to time to change its address and shall have the right to specify as its address any other address within the United States of America.

Each notice to Mortgagee shall be addressed as follows:

Miller & Schroeder Investments Corporation  
300 Pillsbury Center  
220 South Sixth Street  
Minneapolis, Minnesota 55402  
Attn: Vice President - Mortgage Department

Each notice to Mortgagor shall be addressed as follows:

Chicago Title Land Trust Company, not individually, but solely as  
Trustee under Trust Agreement dated May 27, 1997 and  
known as Trust No. 1103307  
171 N. Clark Street  
Chicago, Illinois 60601  
Attn: Land Trust Department

10.8 Adjustable Rate Note. The Note secured by this Mortgage provides for adjustments in its interest rate from time to time in accordance with its terms. Reference is made to the Note for the time, terms and conditions of the adjustments in the interest rate. Such times, terms and conditions are incorporated herein by reference.

10.9 Consent to Jurisdiction. The Mortgagor submits and consents to personal jurisdiction of the Courts of the State of Illinois and Courts of the United States of America sitting in such State for the enforcement of this instrument and waives any and all personal rights under the laws of any state or the United States of America to object to jurisdiction in the State of Illinois. Litigation shall be commenced in court of general jurisdiction in Cook County, Illinois

or the United States District Court for the Northern District of Illinois - Eastern Division, at the election of the Mortgagee. Nothing contained herein shall be deemed a consent to jurisdiction by the Mortgagor in any other state provided this shall not prevent Mortgagee from bringing any action against any other party or exercising any rights against any security given to Mortgagee or against the Mortgagor personally, or against any property of the Mortgagor within any other state nor prejudice the right of the Mortgagee to commence an action in the courts of another state or Federal District Court located in another state. Commencement of any such action or proceeding in any other state shall not constitute a waiver of consent to jurisdiction or of the submission made by the Mortgagor to personal jurisdiction within the State of Illinois.

10.10 Business Exception. The proceeds of the Note will be used for "business purposes" within the meaning of the Illinois Interest Act (815 ILCS 205/1 et. seq.).

10.11 Revolving Credit. This Mortgage secures a revolving credit arrangement as described in 735 ILCS 5/15-1302(b)(3).

**IN WITNESS WHEREOF**, the Mortgagor has caused these presents to be executed as of the date first above written.

**EXCULPATORY CLAUSE FOR CHICAGO TITLE LAND TRUST COMPANY, AS TRUSTEE  
UNDER TRUST 1103307 ATTACHED TO AND MADE A PART OF THE MORTGAGE DATED  
FEBRUARY 26, 1999, TO MILLER & SCHROEDER INVESTMENTS CORPORATION.**

It is expressly understood and agreed by and between the parties hereto, anything to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against CHICAGO TITLE LAND TRUST COMPANY, on account of this instrument or on account of any warranty, indemnity, representation, covenant or agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

Date: February 26, 1999

CHICAGO TITLE LAND TRUST COMPANY, as Trustee  
Under Trust No. 1103307

By:

*Carolyn Karpovich*  
Assistant Vice President

Attest:

By:

*Amendolyn J. Benson*  
Assistant Secretary



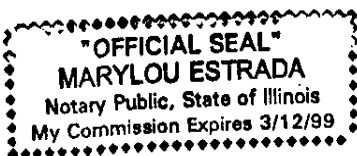
State of Illinois

County of Cook

SS.

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that the above named Assistant Vice President and Assistant Secretary of **CHICAGO TITLE LAND TRUST COMPANY**, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Assistant Vice President and Assistant 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 Company for the uses and purposes therein set forth; and the said Assistant Secretary then and there acknowledged that the said Assistant Secretary, as custodian of the corporate seal of said Company, caused the corporate seal of said Company to be affixed to said instrument as said Assistant Secretary's own free and voluntary act and as the free and voluntary act of said Company for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 26th day of February, 1999.



*Marylou Estrada*

NOTARY PUBLIC



**EXHIBIT "A"****Legal Description****PARCEL 1:**

UNIT NOS. 401, 402, 411, 412, 415, 511, 706, 708, 713, 714, 717, 718, 719, 1001, 1002, 1003, 1005, 1006, 1008, 1009, 1011, 1012, 1013, 1014, 1015, 1017, 1019, 1201, 1202, 1203, 1204, 1205, 1206, 1208, 1210, 1211, 1212, 1213, 1214, 1215, 1217, 1219, 1301, 1302, 1303, 1306, 1307, 1308, 1310, 1312, 1313, 1314, 1317, 1319, 1403, 1404, 1406, 1412, 1413, 1414, 1502, 1512, 1513, AND 1514 IN THE MICHIGAN AVENUE LOFTS CONDOMINIUM AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED REAL ESTATE: PARTS OF LOTS IN BLOCK 20 IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO IN THE SOUTHWEST 1/4 OF FRACTIONAL SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS; WHICH SURVEY IS ATTACHED AS EXHIBIT "C" TO THE DECLARATION OF CONDOMINIUM RECORDED AS DOCUMENT NUMBER 98774537 AND AS AMENDED FROM TIME TO TIME, TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS, ALL IN COOK COUNTY, ILLINOIS.

**PARCEL 2:**

LOT 1 AND LOT 4 (EXCEPT THE SOUTH 1/3 THEREOF), THE EAST 60 FEET OF LOT 2 AND THE EAST 60 FEET OF LOT 3 (EXCEPT THE SOUTH 1/3 THEREOF), ALL IN BLOCK 20 IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO, IN THE SOUTHWEST 1/4 OF FRACTIONAL SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS (EXCEPT THAT PART OF THE PROPERTY WHICH HAS BEEN SUBMITTED TO THE CONDOMINIUM ACT AS A PART OF THE MICHIGAN AVENUE LOFTS CONDOMINIUM).

**PARCEL 3:**

EASEMENTS FOR THE BENEFIT OF PARCELS 1 AND 2 FOR INGRESS, EGRESS, USE, MAINTENANCE, UTILITIES AND ENJOYMENT AS SET FORTH IN THE DECLARATION RECORDED AUGUST 31, 1998 AS DOCUMENT NUMBER 98774537.

**PARCEL 4:**

A NON-EXCLUSIVE DRIVEWAY EASEMENT FOR THE BENEFIT OF PARCELS 1 AND 2 AS CREATED BY DECLARATION AND GRANT DATED JANUARY 14, 1989 AND RECORDED JANUARY 13, 1989 AS DOCUMENT NUMBER 89021479, OVER, UPON AND ACROSS THE FOLLOWING DESCRIBED PREMISES: THE WEST 30 FEET OF THE EAST 90 FEET OF LOT 2 AND LOT 3 (EXCEPT THE SOUTH 1/3 OF LOT 3) ALL IN THE NORTH 2/3 OF BLOCK 20 IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO, IN THE SOUTHWEST 1/4 OF FRACTIONAL SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 5:

PARKING RIGHTS APPURTENANT TO PARCEL 1 AND 2 AS CREATED PURSUANT TO MEMORANDUM OF PARKING AGREEMENT DATED AS OF DECEMBER 1, 1987 A MEMORANDUM OF WHICH WAS RECORDED JANUARY 29, 1988 AS DOCUMENT NUMBER 88044136 AND AS AMENDED BY ASSIGNMENT AND AMENDMENT NUMBER 1 TO SAID PARKING AGREEMENT DATED JANUARY 13, 1989 A MEMORANDUM OF WHICH WAS RECORDED JANUARY 13, 1989 AS DOCUMENT 89021480, OVER, UPON AND ACROSS THE FOLLOWING DESCRIBED PREMISES:

(A) THE NORTH 2/3 OF BLOCK 20 IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO, EXCEPT FOR LOT 1, LOT 4 (EXCEPT THE SOUTH 1/3 THEREOF), THE EAST 60 FEET OF LOT 2 AND THE EAST 60 FEET OF LOT 3 (EXCEPT THE SOUTH 1/3 THEREOF) ALL IN FRACTIONAL SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS SAID LOTS ALL BEING LOCATED IN THE AFORESAID NORTH 2/3 OF BLOCK 20 AND:

(B) LOTS 1 TO 5, BOTH INCLUSIVE, IN C.L. HARMON'S SUBDIVISION OF LOTS 10 TO 14 AND A STRIP OF LAND (3) FEET WIDE NORTH OF AND ADJOINING SAID LOT 10 IN C.L. HARMON'S SUBDIVISION OF THE SOUTH 1/3 OF BLOCK 20 IN FRACTIONAL SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Pt N: 17-15-307-016-0000

P/A: 910 S. Michigan

Chicago, IL