

# UNOFFICIAL COPY

3577737

ILL 663

NOTE IDENT 663

## MORTGAGE

THIS INDENTURE, made and entered into as of the 16<sup>th</sup> day of December, 1986, by and between MILWAUKEE GOLF DEVELOPMENT COMPANY, an Illinois limited partnership, having an address of 9101 N. Greenwood Avenue, Suite 210, Niles, Illinois 60648 (hereinafter called the "Mortgagor"), and TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA, a New York corporation, having an office at 730 Third Avenue, New York, New York 10017 (hereinafter called the "Mortgagee");

### W I T N E S S E T H:

THAT, WHEREAS, the Mortgagor is justly indebted to the Mortgagee for money borrowed as evidenced by one certain Mortgage Note in the principal sum of THIRTY-EIGHT MILLION AND 00/100 DOLLARS (\$38,000,000.00), of even date herewith, payable to the order of the Mortgagee (hereinafter called the "Note") at its office aforesaid or at such other place as may be designated in writing by the legal holder thereof, and pursuant to which the Mortgagor promises to pay the said principal sum with interest thereon, from date of disbursement at the rate or rates set forth therein in monthly installments, as provided in said Note until the entire principal and all other sums due thereon (said entire principal, interest and other sums being hereinafter collectively called the "Debt") have been paid, but in any event, the balance remaining unpaid, plus all accrued and unpaid interest shall be due and payable on the first day of January, 1997;

NOW, THEREFORE, in order to secure payment of the Debt at the time and in the manner set forth in the Note and the performance of the covenants herein contained, and also to secure the payment of any and all other indebtedness, direct or contingent, that may now or hereafter become owing from the Mortgagor to the Mortgagee, (provided that in no event shall the principal amount secured hereby exceed the sum of two hundred per cent (200%) of the face amount of the Note plus amounts advanced pursuant to the terms of this Mortgage to protect the security of this Mortgage) the Mortgagor does by these presents CONVEY, MORTGAGE AND WARRANT unto the Mortgagee, its successors and assigns forever, the real property lying, being and situate in the Village of Niles, County of Cook, State of Illinois, more particularly described in EXHIBIT A, attached hereto and made a part hereof (hereinafter called the "Premises"), together with all of the buildings and improvements of every kind and description now or hereafter located thereon (hereinafter called the "Improvements");

TOGETHER WITH all right, title and interest of the Mortgagor in and to the following property, rights and interests (the Premises and the Improvements, together with such following property, rights and interests being hereinafter collectively called the "Mortgaged Property"):

- (a) all right, title and interest of the Mortgagor, including any after-acquired title or reversion, in and to the beds of ways, roads, streets, avenues and alleys adjoining the Mortgaged Property and in and to all strips, gaps and gores adjoining the Premises on all sides thereof;
- (b) all and singular the tenements, hereditaments, easements, appurtenances, passages, waters, water rights, water courses, riparian rights, other rights, liberties and privileges thereof or in any way now or hereafter appertaining, including homestead or any other claim at law or in equity as well as any after-acquired title, franchise, or license and the reversion and reversions, remainder and remainders thereof, in any way belonging, relating or pertaining to the Mortgaged Property;
- (c) all leases and other agreements affecting the use or occupancy of the Premises now or hereafter entered into (hereinafter called the "Leases") and the rents, issues, proceeds and profits thereof (hereinafter called the "Rents"), including the right to receive and apply the Rents to the payment of the Debt;
- (d) all materials owned by the Mortgagor and intended for construction, re-construction, alterations and repairs of the Improvements, all of which materials shall be deemed to be included within the Mortgaged Property immediately upon the delivery thereof to the Premises,

101  
NOTE IDENT 663  
7073686  
H R

158827  
# 138221  
Covenants affect property of  
+ other property  
7-22-86

3577737

# UNOFFICIAL COPY

ILL.-663

and all fixtures, building materials and articles of personal property now or hereafter owned by the Mortgagor and attached to or contained in or stored on or off the Premises and used in connection with the Premises including but not limited to, all furniture, furnishings, apparatus, machinery, motors, elevators, fittings, radiators, gas ranges, mechanical refrigerators, awnings, shades, screens, office equipment, blinds, carpeting and other furnishings, and all plumbing, heating, lighting, cooking, laundry, ventilating, refrigerating, incinerating, air-conditioning and sprinkler equipment and fixtures and appurtenances thereto; and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Improvements in any manner; it being mutually agreed that all the aforesaid property owned by the Mortgagor and now or hereinafter located on the Premises, shall, so far as permitted by law, be deemed to be fixtures and a part of the realty, security for the payment of the Debt and covered by this Mortgage, and as to the balance of the aforesaid property, this Mortgage is hereby deemed to be as well a Security Agreement for the purpose of creating hereby a security interest in said property, securing the Debt for the use and benefit of the Mortgagee;

- 357737
- (e) all awards and other compensations heretofore or hereafter to be made to the present and all subsequent owners of the Mortgaged Property for any taking by eminent domain, either permanent or temporary, of all or any part of the Mortgaged Property or any easement or appurtenance thereof, including severance and consequential damage and change in grade of streets, which said awards and compensation are hereby assigned to the Mortgagee, and the Mortgagor hereby appoints the Mortgagee its Attorney-in-Fact, coupled with an interest, and authorizes directs and empowers such Attorney, at the option of the Attorney, on behalf of the Mortgagor or heirs, personal representatives, successors or assigns of the Mortgagor to adjust or compromise the claim for any award and to collect and receive the proceeds thereof, to give proper receipts and acquittances therefor and, after deducting expenses of collection, to apply the net proceeds as a credit upon any portion, as selected by the Mortgagee, of the Debt notwithstanding the fact that the amount owing thereon may not then be due and payable or that the Debt is otherwise adequately secured;
- (f) all proceeds of and unearned premiums on any insurance policies covering the Mortgaged Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property; and
- (g) the right, in the name and on behalf of the Mortgagor, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of the Mortgagee in the Mortgaged Property.

ILL.-663

TO HAVE AND TO HOLD the above described Mortgaged Property unto the Mortgagee, its successors and assigns, forever, for the uses and purposes herein set forth, the Mortgagor hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Illinois;

**PROVIDED, HOWEVER,** that if the Mortgagor shall pay the Debt as provided in the Note and shall pay all other sums hereinafter provided for, and shall well and truly keep and perform all of the covenants herein contained, then this Mortgage and the Note shall be released at the cost of the Mortgagor, otherwise to remain in full force and effect.

**AND THE MORTGAGOR COVENANTS WITH AND REPRESENTS AND WARRANTS TO THE MORTGAGEE AS FOLLOWS:**

1. The Mortgagor will pay the Debt at the times and in the manner herein and in the Note provided.

2. Except as set forth in Schedule B to the Chicago Title Insurance Company title policy insuring this Mortgage, the Mortgagor has a good and merchantable title in fee simple to the Mortgaged Property free and clear of all encumbrances, with full right and authority to convey, mortgage and warrant the same, and will warrant and defend the title against the claims of all persons whomsoever; and the Mortgagor will execute, acknowledge, and deliver all and every such further assurances unto the Mortgagee of the title to all and singular the Mortgaged Property, hereby conveyed and intended so to be or which the Mortgagor may be or shall hereinafter be bound so to do, and such covenants shall run with the land.

3. The Mortgagor will keep the Mortgaged Property free from statutory liens of every kind; will pay, before delinquency and before any penalty for nonpayment attaches thereto, all taxes, assessments, water rates, sewer rentals and other governmental or municipal or public dues, charges, fines or impositions which are or may be levied against all or any part thereof, except when payment for all such items has theretofore been made under paragraph 23, hereof; will deliver to the Mortgagee, receipted bills evidencing payment thereof; will pay, in full, under protest and in the manner provided by statute, any tax, assessment, rate, rental, charge, fine or imposition aforesaid which the Mortgagor may desire to contest; and in the event of the passage after the date of this Mortgage of any law of the State of Illinois deducting from the value of land for the purposes of taxation of mortgages or deeds of trust or debts secured by mortgages or deeds of trust for state or local purposes, or the manner of the collection of any such taxes so as to impose a tax upon or otherwise to affect this Mortgage or upon the rendition by any court of competent jurisdiction of a decision that any undertaking by the Mortgagor, as in this paragraph provided, is legally inoperative, then, in any such event, the Debt, at the option of the Mortgagee and upon thirty (30) days prior written notice, shall become immediately due, payable and collectible, provided, however, said option and right shall be unavailing and the Note and this Mortgage shall remain in effect, in any event, if the Mortgagor lawfully may pay all such taxes, assessments and charges, including interest and penalties thereon, to or for the Mortgagee and does in fact pay same when payable. An assessment which has been made payable in installments at the application of the Mortgagor or any lessee of the Mortgaged Property, shall nevertheless, for the purpose of this paragraph, be deemed due and payable in its entirety on the day the first installment becomes due or payable or a lien.

4. The Mortgagor will keep the Improvements, including, without limitation, all building materials delivered to the Premises but not yet used or installed, insured as may be required from time to time by the Mortgagee against loss or damage by, or abatement of rental income resulting from fire, earthquake, vandalism, malicious mischief, sprinkler leakage and such other hazards, casualties and contingencies (including, but not limited to, war risk insurance, if available, at reasonable rates) in such amounts and for such periods as may be required by the Mortgagee and will pay promptly when due any

357737

# UNOFFICIAL COPY

ILL.-663

premiums on such insurance, except when payment for such premiums has theretofore been made under paragraph 23 hereof. All such insurance shall be carried in companies approved by the Mortgagee and the policies (or certificates thereof acceptable to the Mortgagee) and renewals thereof shall be deposited with and held by the Mortgagee and have attached thereto a standard mortgagee clause in favor of the Mortgagee entitling the Mortgagee to collect any and all proceeds payable under all such insurance. All of such insurance shall also have a standard waiver of subrogation endorsement and shall all be in form acceptable to the Mortgagee. The Mortgagor shall not carry separate insurance concurrent in kind or form and contributing, in the event of loss with any insurance required hereunder. Upon a change in ownership or occupancy of the Mortgaged Property in accordance with the terms and conditions of this Mortgage, immediate notice thereof by mail shall be delivered to all insurers, and in the event of loss or damage to the Mortgaged Property as a result of a casualty (whether or not such casualty is covered by insurance), the Mortgagor will give immediate notice thereof to the Mortgagee. The Mortgagor hereby authorizes the Mortgagee, at its option, to collect, adjust and compromise any losses under any of the insurance aforesaid and after deducting costs of collection to apply the proceeds (subject to Paragraph 58 hereof) at its option as follows: (1) to payment of the Debt in such priority and proportions as the Mortgagee in its discretion shall deem proper, or (2) to restoring the Improvements in which event the Mortgagee shall not be obligated to see to the proper application thereof nor shall the amount so released or used be deemed a payment of the Debt or any portion thereof, or (3) to deliver same to the owner of the said Mortgaged Property. Any insurance proceeds at any time held by the Mortgagee pursuant to this Mortgage may be commingled with the general assets of Mortgagee and the Mortgagee shall not be liable for the payment of any interest or other return thereon. Upon a foreclosure of this Mortgage or other transfer of title to the Mortgaged Property in extinguishment of the Debt all right, title and interest of the Mortgagor in and to any insurance policies then in force shall pass to the purchaser or grantee. The Mortgagee is hereby irrevocably authorized to assign, in the Mortgagor's name, to such purchaser or grantee, all such policies, which may be amended or rewritten to show the interest of such purchaser or grantee.

5. The Mortgagor will carry and maintain such liability and indemnity (including, but without limitation, water damage insurance and the so-called assumed and contractual liability coverage) as may be required from time to time by the Mortgagee in forms, amounts and with companies satisfactory to the Mortgagee. Certificates of such insurance, premiums prepaid, shall be deposited with the Mortgagee and shall contain a provision for ten (10) days prior written notice to the Mortgagee prior to any cancellation thereof.

6. Following the initial construction or renovation presently underway, none of the Improvements shall be altered, removed or demolished nor shall any fixtures or appliances on, in or about the Improvements be severed, removed, sold, mortgaged or otherwise encumbered without the prior consent of the Mortgagee and in the event of the demolition or destruction in whole or in part of any of the fixtures, chattels or articles of personal property covered hereby, the Mortgagor will promptly replace same by similar fixtures, chattels and articles of personal property at least equal in quality and condition to those replaced, free from any security interest in or encumbrance thereon or reservation of title thereto. The Mortgagor shall not permit, commit or suffer any waste, impairment or deterioration of the Mortgaged Property or any part thereof. The Mortgagor shall (a) keep and maintain the Mortgaged Property and every part thereof with the Improvements, fixtures, machinery and appurtenances in thorough repair and condition, (b) effect such repairs to the Mortgaged Property as the Mortgagee may require, (c) from time to time, make all needful and proper replacements so that said buildings, fixtures, machinery and appurtenances will, at all times, be in good condition, fit and proper for the respective purposes for which they were originally erected or installed, (d) comply with all statutes, orders, requirements or decrees relating to the Mortgaged Property by any Federal, state or municipal authority, (e) observe and comply with all conditions and requirements necessary to preserve and extend any

357737

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

ILL.-663

and all easements, rights, licenses, permits (including but not limited to zoning variances, special exceptions and non-conforming uses), privileges, franchises and concessions which are applicable to the Mortgaged Property or which have been granted or contracted for by the Mortgagor in connection with any existing or presently contemplated use of the Mortgaged Property, and (f) permit Mortgagee or its agents, at all reasonable times, to enter upon and inspect the Mortgaged Property.

7. The Mortgagor will not voluntarily create or permit to be created or filed against the Mortgaged Property, or any portion thereof, any mortgage lien, deed of trust lien or other lien or liens inferior or superior to the lien of this Mortgage. The Mortgagor will keep and maintain the Mortgaged Property free from the claim of all persons supplying labor or materials which will enter into the construction of any and all Improvements now being erected or to be erected on the Premises, notwithstanding by whom such labor or materials may have been contracted. Upon the failure of the Mortgagor to perform these covenants, or any part thereof, thereupon the Debt shall, at the option of the Mortgagee, immediately become due and payable, anything contained herein to the contrary notwithstanding.

8. If the Mortgaged Property or any part thereof, including any easement therein or appurtenance thereof, shall be taken or damaged, permanently or temporarily, by reason of any public improvement or condemnation proceeding, including severance and consequential damage and change in grade of streets, or in any other manner, the Mortgagee (subject to paragraph 59 hereof) shall be entitled to all compensation, award or payment or relief therefor and the Mortgagor does hereby appoint the Mortgagee its Attorney-In-Fact, coupled with an interest, and authorizes, directs and empowers such Attorney, at its option on behalf of the Mortgagor, its successors or assigns, to commence, appear in and prosecute, in its own name, any action or proceeding, to adjust or compromise any claim therefor and to collect and receive the proceeds thereof, to give proper receipts and acquittances therefor and, after deducting expenses of collection, to apply the net proceeds as a credit upon any portion, as selected by the Mortgagee, of the Debt notwithstanding the fact that the amount owing thereon may not then be due and payable or that the Debt is otherwise adequately secured. The Mortgagor will give the Mortgagee immediate notice of the actual or threatened commencement of any such proceeding and will deliver to the Mortgagee copies of any and all papers served in connection with any such proceeding. The Mortgagor further covenants and agrees to make, execute and deliver to the Mortgagee at any time or times, upon request, free, clear and discharged of any encumbrance of any kind whatsoever, any and all further assignments and/or other instruments deemed necessary by the Mortgagee for the purpose of validly and sufficiently assigning all awards and other compensation heretofore or hereafter to be made to the Mortgagee (including the assignment of any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for payment thereof) for any taking, either permanent or temporary, under any such proceeding.

9. If the ownership of the Mortgaged Property or any portion thereof becomes vested by operation of law or otherwise in a person other than the Mortgagor, the Mortgagee may, without notice to the Mortgagor, deal with such successor or successors in interest with reference to any of the terms, covenants, or conditions contained in this Mortgage and to the Debt in the same manner as with the Mortgagor without in any way vitiating or discharging the Mortgagor's liability hereunder or upon the Debt. No sale of the Mortgaged Property or any part thereof or release of any person liable for payment of the Debt or any portion thereof and no forbearance on the part of the Mortgagee and no extension of the time for the payment of the Debt given by the Mortgagee shall operate to release, discharge, modify, change or affect the original liability of the Mortgagor either in whole or in part.

10. Upon a default in any of the terms, covenants or conditions herein or in the Note, the Mortgagee may, at its option, and whether electing to

3577737

UNOFFICIAL COPY

Property of Cook County Clerk's Office

ILL.-663

declare the entire Debt due and payable or not, perform the same without waiver of any other remedy, and any amount paid or advanced by the Mortgagee in connection therewith, or any other expenses incurred in the protection of the Mortgaged Property and the maintenance of the lien of this Mortgage including the cost, expense and attorneys' fees paid in any suit for such purposes, with interest thereon at the rate per annum of 14 7/8 percent (hereinafter called the "Default Rate") shall be repayable by the Mortgagor upon demand, shall be a lien upon the Mortgaged Property prior to any right or title to, interest in or claim thereon attaching or accruing subsequent to the lien of this Mortgage and shall be secured by this Mortgage.

11. The Mortgagor does hereby expressly waive and renounce the benefit of all laws now existing or that may hereafter be enacted providing for any appraisal before sale of all or any portion of the Mortgaged Property, commonly known as Appraisal laws, and also the benefit of all laws that may be hereafter enacted in any way extending the time for the enforcement of the collection of the Debt or creating or extending a period of redemption from any sale made in collecting the Debt, commonly known as Stay laws and Redemption laws, and the Mortgagor hereby agrees and contracts that the laws of the State of Illinois, save as above excepted, now in force relative to the collection of the Debt and the application to the payment thereof are expressly adopted and made a part hereof.

12. All right, title and interest of the Mortgagor in and to all Leases, including, without limitation, any Leases for parking spaces, together with all of the Rents due or becoming due thereunder have been transferred and assigned simultaneously herewith to the Mortgagee as further security for the payment of the Debt under the provisions of a certain Assignment of Lessor's Interest in Lease(s) of even date herewith executed and delivered by the Mortgagor to the Mortgagee and to be recorded simultaneously herewith, the terms, covenants and conditions of which are hereby expressly incorporated herein by reference and made a part hereof with the same force and effect as though the same were more particularly set forth herein.

13. If at any time the United States Government or any other governmental subdivision having jurisdiction shall require internal revenue or other documentary stamps hereon or on the Note or shall require payment of the United States Interest Equalization Tax, if any, upon the Debt, or any portion thereof, then the Debt shall be and become immediately due and payable at the election of the Mortgagee thirty (30) days after mailing of notice of such election to the Mortgagor; provided, however, said election shall be unavailing and this Mortgage and the Note shall be and remain in effect, if the Mortgagor lawfully may pay for such stamps or such tax, including interest and penalties thereon, to or for the Mortgagee and does in fact pay, when payable, for all such stamps or such tax, as the case may be, including interest and penalties thereon. The Mortgagor further agrees to deliver to the Mortgagee, upon demand, evidence of citizenship and such other evidence as may be required by any governmental agency having jurisdiction in order to determine whether the obligation secured hereby is subject to or exempt from any such tax. The provisions of this paragraph shall survive payment in full of the Debt.

14. The Mortgagor, within ten (10) days after request by mail, will furnish to the Mortgagee a written statement, duly acknowledged, certifying as to the amount due upon this Mortgage and the Note, and whether, to the best knowledge, information and belief of the Mortgagor, any offsets or defenses exist against payment of the Debt.

15. The Mortgagor and all subsequent owners of the Mortgaged Property shall keep and maintain full and correct books and records showing in detail the earnings and expenses of the Mortgaged Property and shall permit the Mortgagee or its representatives, to examine such books and records and all supporting vouchers and data at any time (during normal business hours), and from time to time, at its offices, as hereinbefore identified, or at such other location as may be mutually agreed upon. Within ten (10) days after demand therefor and, in

3577737



# UNOFFICIAL COPY

ILL.-663

any event, within one hundred twenty (120) days following the expiration of the Mortgagor's first fiscal year thereafter, the Mortgagor will furnish to the Mortgagee a statement showing in detail all such earnings and expenses since the last such statement, prepared and certified by an independent certified public accountant in accordance with generally accepted accounting principles and verified by the affidavit of the Mortgagor or then owner, or if the same be a corporation, by an affidavit of its principal executive officer, including also, if so requested, statements for all tenants of the Improvements which supply the Mortgagor with sales reports showing all sales made therein, together also with a current rent roll of the Improvements, prepared and certified as aforesaid by the Mortgagor, showing with respect to each tenancy: the name of the tenant, the space occupied, the date and term of such lease, the amount of annual rental and additional rental and all renewal and termination options, and if the Mortgagor or any subsequent owner shall refuse or fail to furnish any statement as aforesaid or if such statement shall be inaccurate or false or if the Mortgagor or the subsequent owner shall fail to permit the Mortgagee or its representatives to inspect the said books and records on request, the Mortgagee may consider such acts of the Mortgagor as a default hereunder and proceed in accordance with the rights and remedies afforded it at law and under the provision of this instrument.

16. The lien of this Mortgage shall take precedence of and be a prior lien to any other lien of any character, whether vendor's, materialman's or mechanic's lien, hereafter incurred on the Mortgaged Property and if the money or any part thereof loaned by the Mortgagee as set forth herein shall be used directly or indirectly to pay off and satisfy, or take up in whole or in part, any lien or encumbrance heretofore existing on the Mortgaged Property, the Mortgagee shall be subrogated to any and all rights, superior titles, liens and equities owned or claimed by any owner or holder of said outstanding liens or encumbrances, however remote, regardless of whether said liens or encumbrances are acquired by assignment or are released by the holder thereof upon payment. It is further covenanted and agreed that the securities herein given and the lien hereby created shall not affect or be affected by any other or further security taken or to be taken for the same indebtedness or any part thereof.

17. If the Mortgagor shall make a general assignment for the benefit of creditors, or shall file a voluntary petition in bankruptcy, or shall be adjudicated a bankrupt or insolvent, or shall file a petition or answer seeking, consenting to, or acquiescing in, reorganization, arrangement, adjustment, composition, liquidation, dissolution or similar relief, under any present or future statute, law or regulation relating to bankruptcy, insolvency, reorganization or relief of debtors, or if the Mortgagor shall file an answer admitting, or shall fail to deny, the material allegations of a petition against it for any such relief, or if any such proceeding against the Mortgagor seeking any such relief shall not have been dismissed within sixty (60) days after the commencement thereof, or if a trustee, receiver or liquidator of the Mortgagor or of any substantial part of its properties or assets shall be appointed with the consent or acquiescence of the Mortgagor, or if any such appointment, if not so consented to or acquiesced in, shall remain unvacated or unstayed for any aggregate of sixty (60) days, then the entire Debt, shall, at the option of the Mortgagee, become immediately due and payable.

18. The Mortgagee, without notice and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior mortgage or other liens thereon, may release any part of the security described herein or may release any person liable for any portion of the Debt without in any way affecting the priority of this Mortgage, to the full extent of that portion of the Debt remaining unpaid hereunder, upon any part of the security not expressly released. The Mortgagee may also agree with any party obligated on the Debt or having any interest in the security described herein to extend the time for payment of any part or all of the Debt, and such agreement shall not, in any way, release or impair the lien of this Mortgage, but shall extend the same as against the title of all parties having any

3577737

ILL.-663

interest in said security, which interest is subject to this Mortgage and the lien hereof.

19. The Mortgagor shall save the Mortgagee harmless from all costs and expenses, including reasonable attorney's fees and costs of a title search, continuation of abstract and preparation of survey, *incurred by reason of any action, suit, proceeding, hearing, motion or application before any court or administrative body (excepting an action to foreclose this Mortgage or to collect the Note and all other amounts secured hereby) in and to which the Mortgagee may be or become a party by reason hereof, including, but not limited to, condemnation, bankruptcy, probate and administration proceedings, as well as any other of the foregoing wherein proof of claim is by law required to be filed or in which it becomes necessary to defend or uphold the terms of this Mortgage or otherwise purporting to affect the security hereof or the rights or powers of the Mortgagee and all money paid or expended by the Mortgagee in this regard together with interest thereon from date of such payment at the Default Rate shall be added to the Debt and shall be without notice immediately due and payable by the Mortgagor.*

20. If the Mortgagor fails to make any payment or do any required act as herein provided, then the Mortgagee may, but without obligation to do so, and without notice to or demand upon the Mortgagor, (a) make or do the same in such manner and to such extent as the Mortgagee may deem necessary to protect the security hereof, the Mortgagee being authorized to enter upon the Mortgaged Property for such purposes, (b) commence, appear in and/or defend any action or proceeding purporting to affect the security hereof or the rights or powers of the Mortgagee hereunder, (c) pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of the Mortgagee affects any part of the Mortgaged Property. All sums expended and acts performed by the Mortgagee pursuant to this paragraph shall not be deemed a waiver of any default by the Mortgagor hereunder and the full amount of any such payment shall bear interest from the date thereof until paid at the Default Rate and all said costs, charges and expenses so incurred or paid, together with such interest, shall be added to the Debt, shall be a lien upon the Mortgaged Property and shall be deemed to be secured by this Mortgage.

21. The Mortgagor, within five (5) days after request by mail, shall execute, acknowledge and deliver to the Mortgagee a Security Agreement, Financing Statement or other similar security instrument, in form satisfactory to the Mortgagee, covering all property of any kind whatsoever owned by the Mortgagor located at, on or appurtenant to the Premises which, in the sole opinion of the Mortgagee, is essential to the operation of the Improvements and concerning which there may be doubt whether title to same has been conveyed by or a security interest created by this Mortgage, under the laws of the State of Illinois, and will further execute, acknowledge and deliver any financing statement, renewal, affidavit, continuation statement, certificate or other document as the Mortgagee may request in order to perfect, preserve, maintain, continue and extend the security interest under and the priority of such security instrument. The Mortgagor further agrees to pay to the Mortgagee on demand all reasonable costs and expenses incurred by the Mortgagee in connection with the preparation, execution, recording and filing of any such documents.

22. The mailing of a written notice or demand addressed to the Mortgagor at the address set forth in the preamble of this Mortgage, or directed to the Mortgagor at the last address actually furnished to the Mortgagee and mailed by the United States mails, via registered or certified mail, return receipt requested, shall be sufficient notice and demand in any case arising under this instrument and required by the provisions hereof or by law.

23. In order more fully to protect the security of this Mortgage, the Mortgagor shall pay to the Mortgagee, in addition to the monthly payments required under the terms of the Note and concurrently therewith, monthly until the Note is fully paid, a sum equal to the premiums that will next become due and payable on policies of rent and/or use and occupancy insurance, fire and

3577737

ILL.-663

other hazard insurance covering the Mortgaged Property (as required hereby) plus a sum equal to all water rates, sewer rents, taxes, assessments and other impositions next due on the Premises (all as estimated by the Mortgagee) less all sums already paid therefor, divided by the number of months to elapse before one month prior to the date when such premiums, water rates, sewer rents, taxes, assessments and other impositions shall become due and payable. All such sums shall be held by the Mortgagee to pay when due said premiums, water rates, sewer rents, taxes, assessments and impositions and without any interest, income or profit accruing to the Mortgagor and the Mortgagee, to the extent permitted by law, waives any and all rights to demand, collect and receive any income, interest or profit on such money so paid to the Mortgagee.

All payments mentioned in this paragraph and all payments to be made under the Note shall be added together and the aggregate amount thereof shall be paid by the Mortgagor each month in a single payment to be applied by the Mortgagee to the following items in the order set forth:

- (a) Ground rents and additional rents, if any, taxes, assessments, water rates, sewer rents and other impositions, rent and/or use occupancy insurance, fire and other hazard insurance premiums; and
- (b) Interest on the Note; and
- (c) Amortization of the principal of the Note.

The Mortgagee shall have the right to make any such payment for ground rents or additions rents, taxes, assessments, water rates, sewer rents and other governmental impositions notwithstanding that at such time any tax, assessment, water rate, sewer rent or other imposition is then being protested or contested by the Mortgagor, unless, upon not less than forty-five (45) days prior to the due date thereof, the Mortgagor shall have notified the Mortgagee in writing of such protest or contest, in which event, the Mortgagee shall make such payment under protest in the manner described by law or shall withhold such payment; provided, however, that such protest or contest shall preclude enforcement of collection and the sale of the Mortgaged Property, or any portion thereof in satisfaction of such water rate, sewer rent, tax, assessment or governmental imposition. If such protest or contest shall or might result in penalty, interests or other charges, the Mortgagor shall likewise deposit monthly pro-rata the amount of any such penalty, interest and additional charges.

Any deficiency in the amount of any such aggregate monthly payment shall constitute an event of default under this Mortgage and the entire Debt shall immediately become due and payable at the option of the Mortgagee.

Any excess funds accumulated in accordance with this paragraph remaining after payment of the items specified herein shall be credited to subsequent monthly payments of the same nature required thereunder, but if any such item shall exceed the estimate therefor, the Mortgagor shall without demand make good the deficiency, and the failure to make good the deficiency on or before the date on which payment of such item is required to be made shall constitute an event of default hereunder and under the Note and the entire Debt shall immediately become due and payable at the option of the Mortgagee. If the Mortgaged Property is sold under foreclosure or is otherwise acquired by the Mortgagee after default, any remaining balance of the accumulations provided for above shall be applied in reduction of the principal balance of the Note as of the date of commencement of foreclosure proceedings or as of the date the Mortgaged Property is otherwise acquired.

24. If the Mortgagor shall hereafter sell and leaseback all or any part of the Mortgaged Property and whether or not the lien of this Mortgage shall be or shall hereafter have been made subordinate to any occupancy leases or subleases of the Premises, and whether or not the Mortgagee shall have granted or shall at any time grant non-disturbance to such leases or subleases,

3577737

# UNOFFICIAL COPY

ILL.-663

then the said leaseback and any deed of trust or mortgage affecting said leaseback (a) shall be made or shall become subordinate to said occupancy leases and subleases, and (b) shall provide for non-disturbance of said leases and subleases, and all said leases and subleases shall provide for attornment to the entity that shall take over its landlord's interest.

25. The Mortgagor shall provide, improve, grade, surface, and thereafter maintain, clean, repair, police and adequately light all parking areas within the Premises, together with any sidewalks, aisles, streets, driveways and sidewalk cuts therein. It is also covenanted and agreed that these parking areas, as well as the parking areas located on Sears Parcel No. 1 and Sears Parcel No. 2, as defined in the Sears REA (the parking areas on the Premises and the Sears Parcels being hereinafter collectively referred to as the "Parking Areas") shall be reserved and used solely and exclusively for the purposes of providing ingress, egress and parking facilities for the exclusive use of tenants, customers and invitees of the Premises and the Sears Parcels, for automobiles and other passenger vehicles, and further that as part of said Parking Areas there shall be provided sufficient paved areas for ingress and egress and right of way to and from the adjacent public thoroughfares. The Mortgagor covenants that the said Parking Areas shall not be (a) reduced so as to cause the parking area to be unable to accommodate the number of automobiles required to be maintained hereby, (b) obstructed (other than temporary obstructions for street repairs and repairs to parking areas and other temporary uses permitted under the REA), (c) redesignated or (d) relocated, and the same shall not be leased or the right to use same granted to any person without the prior written consent of the Mortgagee and that said Parking Areas shall always be of sufficient size to accommodate not less than 5,381 standard size American make automobiles (or 5,089 in the event a fourth department store is constructed within the Premises as hereinafter set forth), unless a greater number of spaces shall be required by any governmental agency having jurisdiction over the Premises, in which case the Mortgagor covenants and agrees to at all times maintain such greater number of spaces. The Mortgagor further covenants that no lease or other arrangement shall be made affecting the said Parking Areas which will cause a default under any lease to a tenant of any portion of the Premises. The covenants, restrictions and reservations hereinabove set forth shall run with the land and shall continue in full force and effect so long as any part of the Debt shall remain unpaid. The refusal or failure of the Mortgagor, its successors or assigns, or any subsequent owner of the Premises, to comply with the foregoing shall constitute a default hereunder and the entire Debt shall, at the option of the Mortgagee, become immediately due and payable.

26. The Mortgagor represents and warrants that, as of the date hereof, it has received no notice of any violation of any covenants and restrictions affecting the Mortgaged Property, and that the easements of record do not adversely affect in any way any of the Improvements. The Mortgagor further covenants and agrees that so long as this Mortgage shall remain a lien on the Mortgaged Property, or any portion thereof, it will do all things necessary to avoid the violation of any such covenants and restrictions or to prevent such easements from adversely affecting the integrity and structural condition of the Improvements.

27. The rights and remedies herein provided are cumulative.

28. Upon any default by the Mortgagor under this Mortgage and following the acceleration of maturity of the Debt as herein provided, a tender of payment in the amount necessary to satisfy the entire Debt made at any time prior to foreclosure sale by the Mortgagor, or its successors or assigns, or by anyone in behalf of the Mortgagor, its successor or assigns, shall constitute an evasion of the payment terms of the Note, shall be deemed to be a voluntary prepayment thereunder, and such payment, to the extent permitted by law, will therefore include the premium required under the prepayment privilege, if any, contained in the Note, or if at that time there shall be no such prepayment privilege permitted, then such payment will include a premium for such payment equal to six (6%) percent of the then unpaid principal balance of the Note.



# UNOFFICIAL COPY

ILL.-663

29. The Mortgagee in making any payment herein and hereby authorized, in the place and stead of the Mortgagor relating to taxes, assessments, water rates, sewer rentals and other governmental or municipal charges, fines, impositions or liens asserted against the Mortgaged Property, may do so according to any bill statement or estimate procured from the appropriate public office or report furnished by a realty tax service without inquiry into the accuracy of the bill, statement or estimate or into the validity of same, or otherwise relating to any other purpose herein and hereby authorized, but not enumerated in this paragraph and may do so whenever, in its sole judgement and jurisdiction, such advances are necessary or desirable to protect the full security intended to be created by this Mortgage, and provided further that in connection with any such advance, the Mortgagee, at its option, may and is hereby authorized to obtain a continuation report of title prepared by a title insurance company, the cost and expense of which shall be repayable by the Mortgagor upon demand and shall be secured hereby.

30. The failure of the Mortgagee to exercise the option of acceleration or maturity following any default as herein provided, or to exercise any other option granted to the Mortgagee in any one or more instances, or the acceptance by the Mortgagee of partial payments under the Note or hereunder, shall not constitute a waiver of such default nor extend or affect the grace period, if any, with respect thereto, but such option shall remain continuously in force as long as such default continues. Acceleration of maturity once declared hereunder by the Mortgagee may, at the option of the Mortgagee be rescinded by written acknowledgment to such effect by the Mortgagee, but the tender and acceptance of partial payments as aforesaid alone shall not in any way affect or rescind such acceleration nor extend or affect any grace period.

31. The Mortgagor agrees that all Leases and other agreements for the use and occupancy of any portion of the Premises or the Improvements made by the Mortgagor during the term of this Mortgage shall be submitted to the Mortgagee for approval and no such lease or agreement shall be entered into without the Mortgagee's prior written consent.

32. At the option of the Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to the priority of entitlement to insurance proceeds or any award in condemnation) to any and all Leases of all or any part of the Mortgaged Property upon the execution by the Mortgagee and recording thereof, at any time hereafter, at the sole cost and expense of the Mortgagor, in the appropriate places in and for the town, city or county wherein the Premises are situate, of a unilateral declaration to that effect.

33. The Mortgagor hereby waives, to the full extent permitted by law, the pleading of any statute of limitations as a defense to any and all obligations secured by this Mortgage.

34. All property of every kind or description acquired by the Mortgagor after the date hereof which, by the terms hereof, is required or intended to be subject to the lien of this Mortgage, shall immediately upon the acquisition thereof and without any further deed of trust, mortgage, conveyance, assignment or transfer, become subject to the lien of this Mortgage. Nevertheless, the Mortgagor will do, execute, acknowledge and deliver all and every such further acts, conveyances, deeds of trust, mortgages and assurances as the Mortgagee shall reasonably request for accomplishing the purposes of this Mortgage.

35. Mortgagor represents and warrants that the Mortgaged Premises are and at all times will be the subject of validly issued and outstanding building permits and certificates of occupancy and that the Mortgaged Premises and the use thereof are (and Mortgagor covenants that they will remain) permitted by and are consistent with any and all zoning, ecological, environmental and use



ILL.-663

restrictions and all other governmental laws, rules and regulations applicable to the Premises and Mortgagor agrees that these covenants, representations and warranties shall be fully accurate and in force continually hereafter for so long as the indebtedness secured hereby is unpaid.

36. Notwithstanding anything contained in this Mortgage or in the Note to the contrary, it is hereby expressly understood and agreed that if the Mortgagee shall at any time take action to enforce collection of the Debt, or any other indebtedness arising hereunder, the Mortgagee shall proceed to foreclose this Mortgage instead of instituting suit upon the Note and if, as a result of such foreclosure and sale of the Mortgaged Property, a lesser sum is realized therefrom than the amount then due and owing under this Mortgage and the Note, the Mortgagee shall not institute any action, suit, claim or demand, in law or in equity, against the Mortgagor for or on account of such deficiency. Nothing in this paragraph contained shall in any way affect or impair the lien of this Mortgage, or any representation or warranty of title made herein, all of which shall remain in full force and effect and shall inure to the benefit of the Mortgagee, its successors and assigns, and to any insurer of title of the Mortgaged Property.

37. The Mortgagor hereby represents, covenants and warrants that (a) the Mortgagor is a party to that certain agreement entitled "Amended and Restated Agreement" dated as of February 21, 1985 by and between the Mortgagor and Sears, Roebuck and Co., recorded on March 18, 1985 as Document No. 27477633 and filed on March 18, 1985 as Document No. LR 3424765 (said agreement herein called the "Sears REA"), and that the Sears REA is in full force and effect and unmodified and constitutes the entire agreement among the parties thereto with respect to the matters therein contained, (b) all sums required to be paid by the Mortgagor pursuant to the provisions of the Sears REA have been paid to the extent they were payable prior to the date hereof, (c) the Mortgagor has not sent or received any notice alleging a default by any party to the Sears REA under any of its obligations thereunder and the parties to the Sears REA are in full compliance with their respective obligations thereunder to the best of the Mortgagor's knowledge, and (d) the Mortgagor will warrant and defend the estate created in the Mortgagor under the Sears REA against all and every person or persons lawfully claiming or who may claim the same or any part thereof, subject only to the observance and performance of all of the terms, covenants and conditions thereof on the part of the Mortgagor to be observed and performed. The Mortgagor shall (i) pay all sums hereafter required to be paid by the Mortgagor pursuant to the provisions of the Sears REA, if any, (ii) diligently perform and observe all of the terms, covenants and conditions of the Sears REA on the part of the Mortgagor to be performed and observed unless such performance or observance shall be waived or not required under the Sears REA to the end that all things shall be done which are necessary to keep unimpaired the rights of the Mortgagor under the Sears REA, and (iii) promptly notify the Mortgagee of the receiving of any notice under the Sears REA by the Mortgagor of any default by the Mortgagor in the performance or observance of any of the terms, covenants or conditions of the Sears REA on the part of the Mortgagor to be performed or observed and deliver to the Mortgagee a true copy of each such notice. The Mortgagor shall not, without the prior consent of the Mortgagee, surrender the estate created by the Sears REA or terminate or cancel the Sears REA or modify, change, supplement, alter or amend the Sears REA in any respect, either orally or in writing, and the Mortgagor hereby assigns to the Mortgagee, as further security for the payment of the Debt and for the performance and observance of the terms, covenants and conditions of this Mortgage, all of the rights, privileges and prerogatives of the Mortgagor, under the Sears REA, and Mortgagor agrees not to surrender the estate created by the Sears REA or to terminate, cancel, modify, change, supplement, alter or amend the Sears REA and any such surrender of the estate created by the Sears REA or termination, cancellation, modification, change, supplement, alteration or amendment of the Sears REA without the prior consent of the Mortgagee shall be void and of no force and effect. If the Mortgagor shall default in the performance or observance of any term, covenant or condition of the Sears REA on the part of the Mortgagor to be performed or observed, then, without limiting the generality

3577737

ILL.-663

of other provisions of this Mortgage, and without waiving or releasing the Mortgagor from any of its obligations hereunder, the Mortgagee shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all of the terms, covenants and conditions of the Sears REA on the part of the Mortgagor to be performed or observed to be promptly performed or observed on behalf of the Mortgagor, to the end that the rights of the Mortgagor in, to and under the Sears REA shall be kept unimpaired and free from default. If the Mortgagee shall make any payment or perform any act or take action in accordance with the preceding sentence, the Mortgagee will notify the Mortgagor of the making of any such payment, the performance of any such act, or the taking of any such action. The Mortgagor shall, from time to time, use its best efforts to obtain from the other parties to the Sears REA such certificates of estoppel with respect to compliance by the Mortgagor and such other parties with the terms of the Sears REA as may be requested by the Mortgagee. If the Mortgagor shall default under the Sears REA or if the Sears REA and the estate of the Mortgagor thereunder are surrendered, terminated, cancelled, modified, changed, supplemented, altered or amended without the prior consent of the Mortgagee, or if the Mortgagor shall otherwise default under the provisions of this paragraph, any such occurrence shall constitute a default under this Mortgage, and the Debt, at the election of the Mortgagee, shall be immediately due and payable.

38. Mortgagor shall have the right to obtain the release of a parcel of not more than eleven (11) acres from the lien of this Mortgage for the purpose of conveying or leasing such parcel to a third party for construction of an additional department store. Such release shall be subject to Mortgagor's compliance with the following terms and conditions:

- 3577737
- (a) The proposed release shall be solely for the purposes of a conveyance or lease of the released parcel to a third party for the construction of an additional department store and the acreage to be released shall be limited solely to the area necessary to construct the additional department store and any requisite common areas for the store including parking, and Mortgagor agrees that the parcel to be released shall not include any part of the Premises on which additional mall stores or expansion of the enclosed mall may be constructed, it being the intent and understanding of the Mortgagor and Mortgagee that any expansion of the enclosed mall to connect with the department store to be constructed in the referred parcel and any new mall stores constructed in the expanded enclosed mall shall be encumbered by this Mortgage;
  - (b) At least sixty (60) days and not more than ninety (90) days prior to the proposed release Mortgagor shall deliver to Mortgagee a statement setting forth (i) the date of the proposed release; (ii) the name of the proposed grantee or lessee; (iii) a survey and legal description of the released parcel showing building integration with adjoining improvements; (iv) the name of the proposed department store occupant of the improvements to be erected on the site; and (v) any other information and/or exhibits which Mortgagee considers to be relevant or necessary;
  - (c) Mortgagor shall be in compliance with all of the terms, covenants and conditions of all existing department store leases, the Sears REA and all other easement agreements and the release shall not constitute a violation of same or impair any easements benefitting the remaining Premises;
  - (d) To the extent Mortgagee shall require, Mortgagor shall deliver certificates from all of the other parties to the Sears REA and existing department store leases acknowledging

# UNOFFICIAL COPY

ILL.-663

and agreeing to the sale or lease of the released parcel and the construction of the additional department store;

- (e) On the release date no default or event of default shall exist hereunder or under any other loan documents and the loan documents shall be in full force and effect;
- (f) Mortgagor shall deliver to Mortgagee as of the release date, at Mortgagor's expense, endorsements, in form and content satisfactory to Mortgagee, to the policies of title insurance insuring this Mortgage (i) extending the effective date of the policy or policies to the effective date of the release; (ii) confirming no change in the priority of this Mortgage on the balance of the Premises remaining encumbered thereby or the amount of coverage thereunder, (iii) waiving any defense resulting therefrom and (iv) to the extent of the value of such released parcel, waiving any right of subrogation of the insured under the policy or policies;
- (g) Prior to the date on which such release is to be granted, Mortgagor shall deliver to Mortgagee consents to the release by any and all other lienors upon all or any part of the parcel to be released;
- (h) The location and configuration of the released parcel shall be reasonably satisfactory to Mortgagee;
- (i) Simultaneously with or as soon as possible after the release but, in any event, no later than the next assessment date, the released parcel shall be assessed separate and apart from the Premises continuing to be encumbered by this Mortgage and shall constitute a separate tax parcel(s). The title company which issued the policy held by Mortgagee shall confirm same;
- (j) Mortgagee shall have received satisfactory evidence that the released parcel and the Premises continuing to be encumbered by this Mortgage shall each conform to all local and state regulations applicable to both parcels;
- (k) Mortgagor shall have paid all costs and expenses in connection with the granting of the release, including, but not limited to, all recording and title company charges and Mortgagor shall indemnify Mortgagee with respect to any and all such costs and expenses;
- (l) After the release there shall remain on the Premises continuing to be encumbered by this Mortgage, not less than 4.5 automobile parking spaces per 1,000 square feet of the leaseable area under this Mortgage, and in any event no less than 5,089 parking spaces, including reciprocal rights, if any.

39. The party or parties executing this Mortgage for and on behalf of the Mortgagor do hereby warrant and represent that they have full power and authority to execute this Mortgage and convey and encumber the Mortgaged Property as security for the payment of the Debt for the further uses and purposes in this Mortgage contained.

40. All covenants of the Mortgagor contained in this Mortgage shall run with the land.

41. If default shall be made in any payment due on the Note, or if there shall be default in the performance of any covenants or condition of this

# UNOFFICIAL COPY

ILL.-663

Mortgage, or if default shall be made under any other document or instrument which was executed and delivered to evidence, secure or guaranty, in whole or in part, payment of the Debt, then the entire Debt, including all payments made by the Mortgagee either for liens, taxes, assessments, insurance premiums, attorney's fees, repairs, costs, charges or otherwise shall, at the option of the Mortgagee, become due and payable, and may be collected at once by foreclosure or otherwise, without notice of broken covenant or condition; and the principal sum secured by this Mortgage, shall, in case of such default and the exercise of such option, bear interest from the date of said default, at the Default Rate until paid (less any proper credit for money paid) as agreed, assessed and liquidated damages for such default, and this Mortgage shall stand as security therefor and may thereupon be foreclosed to pay the same; and upon any such default it shall be lawful for the Mortgagee at its option to enter into and upon the Mortgaged Property or any part thereof and to receive all of the Rents and apply the same, less the necessary expenses for collection thereof, for the care, operation and preservation of the Mortgaged Property or, at its election, to apply all or any part thereof to a reduction of the Debt in such priority and proportions as the Mortgagee shall elect. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, guarantee policies, Torrens certificates, and similar data and assurances with respect to title as the Mortgagee may deem to be necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree, the true condition of the title to or the value of the Mortgaged Property. All expenditures and expenses of the nature in this paragraph mentioned shall become so much additional indebtedness secured hereby and immediately due and payable, with interest thereon at the Default Rate when paid or incurred by the Mortgagee.

42. Proceeds of any foreclosure sale of the Mortgaged Property shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding paragraph hereof; Second, all other items which under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; Third, all principal and interest remaining unpaid on the Note; Fourth, any overplus to the Mortgagor, its legal representatives, successors or assigns, as their rights may appear.

43. In case of any foreclosure sale of the Mortgaged Property, the same may be sold in one or more parcels.

44. Upon or at any time after the filing of any bill to foreclose this Mortgage, the Court may, upon application, appoint a receiver of the Mortgaged Property. Such appointment may be made either before or after sale without notice, and without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the Debt and without regard to the then value of the Mortgaged Property whether the same shall be then occupied as a homestead or not, and without bond being required of the applicant. Such receiver shall have the power to take possession, control and care of the Mortgaged Property and to collect the Rents during the pendency of such foreclosure suit, and in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when the Mortgagor, its heirs, administrators, executors, successors or assigns, except for the intervention of such receiver, would be entitled to collect the Rents and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Mortgaged Property, during the whole of said period. The Court from time to time may authorize the receiver to apply the net income in his hands in payment in whole

3577737



# UNOFFICIAL COPY

ILL.-663

or in part of: (i) the Debt or by any decree foreclosing this Mortgage, or any tax, special assessment, or other lien which may be, or become superior to the lien hereof, or of such decree, provided such application is made prior to foreclosure sale; (ii) the deficiency in case of sale and deficiency. Any such proceedings shall in no manner prevent or retard the collection of the Debt by foreclosure or otherwise.

45. The Mortgagor (if a corporation or corporate trustee) hereby waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage, except decree or judgment creditors of the Mortgagor whose rights are otherwise provided and preserved by statute.

46. The Mortgagor warrant and agree, that the proceeds of the Note secured hereby will be used for the purposes specified in sub-section (1)(c) of Section 4, Illinois Act in Relation to the Rate of Interest (S.H.A. ch. 17, par. 6404 (c)) and that the principal obligation secured by this Mortgage constitutes a "business loan" coming within the definition and within the purview of the said subsection.

47. If any item, items or provisions contained in this instrument are in conflict with the laws of the State of Illinois, this instrument shall be affected only as to its application to such item, items, terms, or provisions, and shall in all other respects remain in full force and effect. Nothing contained herein shall require the Mortgagor to make any payment or do anything contrary to law, but if any clause or provision herein contained shall otherwise operate to invalidate this Mortgage in whole or in part, then such clauses and provisions only shall be held to naught as though not herein contained and the remainder of this Mortgage shall remain operative and in full force and effect.

48. It is hereby agreed that the Mortgagee is hereby subrogated to all of the rights, liens, remedies, equities superior title and benefits held, owned, possessed or enjoyed at any time by any owners or holders of the indebtedness discharged from funds advanced on the Note. The Mortgagor further agrees that if it becomes necessary for the Mortgagee to advance any sum greater than the amount of the Note secured hereby (which advancement may be for taking up vendor's or other liens, past due taxes, insurance premiums, liens for labor or materials for procuring deeds or any other instruments to protect the title of the Mortgagor), it may do so and this mortgage shall secure such advancement which the Mortgagor hereby agrees to pay upon demand.

49. IT IS SPECIFICALLY AGREED that time is of the essence of this instrument and that the waiver of the options, or of the obligations secured hereby, shall not at any time thereafter be held to be an abandonment of such rights. Notice of the exercise of any option granted to the Mortgagee herein, or in the Note, is not required to be given.

50. The Mortgagor forthwith upon the execution and delivery of this Mortgage, and thereafter, from time to time, will cause this Mortgage, and any security instrument creating a lien or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the interest of the Mortgagee in the Mortgaged Property. The Mortgagor will pay all filing, registration and recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any mortgage or deed of trust supplemental hereto, any security instrument with respect to the Mortgaged Property, and any instrument of further assurance, and all Federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any mortgage or deed of trust supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance. The Mortgagor shall hold harmless and indemnify the



# UNOFFICIAL COPY

ILL.-663

Mortgagee, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Mortgage.

51. Notwithstanding anything to the contrary contained herein, it is understood and agreed that the Mortgagee will not declare the Debt to be due and payable following any default hereunder until (a) fifteen (15) days have passed since the mailing or other actual communication of notice to the Mortgagor of the failure of the Mortgagor to comply with any obligation of the Mortgagor hereunder that requires the payment of money or which can be cured by the payment of money or (b) fifteen (15) days have passed since (i) the mailing or other actual communication of notice to the Mortgagor of the failure of the Mortgagor to duly and timely comply with any obligation of the Mortgagor hereunder that does not require the payment of money or which cannot be cured by the payment of money (hereinafter called a "Non-Monetary Default") and the Mortgagor has failed to cure said Non-Monetary Default to the satisfaction of the Mortgagee within said 15-day period, or (ii) the Mortgagor has, in the reasonable business judgment of the Mortgagee, ceased to diligently pursue the curing of the subject Non-Monetary Default following notice and prompt commencement by the Mortgagor of such curative action, whichever of b(i) or (ii) is later.

52. The Mortgagee shall have the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of the Mortgagor, which the Mortgagee, in its discretion, feels should be brought to protect its interest in the Mortgaged Property.

53. This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to constitute but one and the same instrument.

54. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage shall be used interchangeably in singular or plural form and the word the "Mortgagor" shall mean "each Mortgagor and/or any subsequent owner or owners of the Mortgaged Property or any part thereof or interest therein", the word the "Mortgagee" shall mean the "Mortgagee or any subsequent holder of the Note", the word "Note" shall mean "the Note or any other evidence of indebtedness secured by this Mortgage", the word "person" shall include any individual, corporation, partnership, trust, unincorporated association, government, governmental authority, or other entity, the word "Mortgaged Property" shall include any portions of the Mortgaged Property or interest therein and the word "Debt" shall mean all sums secured by this Mortgage. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

55. This Mortgage may not be modified, amended, changed, discharged or terminated orally, but only by an agreement in writing signed by the party against whom enforcement of the modification, amendment, change, discharge or termination is sought.

56. Notwithstanding anything herein or in the Note or in any related loan document to the contrary, it is not the intention of the parties hereto to charge, nor shall there at any time be charged or become due and or payable hereunder or under the Note any interest (whether fixed, contingent or otherwise) which would result in a rate of interest being charged which is in excess of the maximum rate permitted to be charged by law; and in the event that any sum in excess of the maximum legal rate of interest is paid or charged, the same shall, immediately upon discovery thereof, be deemed to have been a prepayment of principal (which prepayment shall be permitted, and be without premium or penalty) as of the date of such receipt, and all payments made thereafter shall be appropriately reapplied to interest and principal to give

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

ILL.-663

effect to the maximum rate permitted by law and after such reapplication, any excess payment shall be immediately refunded to the Mortgagor.

57. Mortgagor understands that in making the loan evidenced by the Note and secured by this Mortgage, Mortgagee is relying to a material extent upon the business expertise and net worth of Mortgagor and upon the continuing interest which Mortgagor has in the Mortgaged Property. Accordingly, in the event that Mortgagor or any general partner thereof shall, directly or indirectly, without the prior written consent of Mortgagee, voluntarily or involuntarily, (i) sell, convey, transfer or otherwise dispose of all or any part of its interest in the Mortgaged Property or (ii) further encumber, or suffer to exist, any lien, against all or any part of its interest in the Mortgaged Property, then, in either event, Mortgagee, at its option, may declare the entire Debt immediately due and payable. The transfer of any general partnership interest in the Mortgagor shall be deemed a sale of the Mortgaged Property for purposes of this paragraph unless arising from the death or incapacity of a general partner provided that the transfer resulting therefrom is to a personal representative or Trustee of the general partner or an entity controlled by such representative or Trustee. Mortgagor shall give Mortgagee immediate notice of the occurrence of any event or condition described in this paragraph.

58. Notwithstanding any provision herein to the contrary and in particular paragraph 4 herein, in the event of any such loss or damage as therein described to the Improvements, it is hereby understood, covenanted and agreed that the Mortgagee shall make the proceeds received under any such insurance policies as therein described available for the restoration of the Improvements so damaged, subject to the following conditions: (a) the Mortgagor is not then in default under any of the terms, covenants and conditions hereof; (b) all existing Leases affected in any way by such damage or destruction shall continue in full force and effect; (c) the Mortgagee shall first be given satisfactory proof that such Improvements have been fully restored or that by the expenditure of such money will be fully restored, free and clear of all liens, except as to the lien of this Mortgage; (d) if such proceeds shall be insufficient to restore or rebuild such Improvements, the Mortgagor shall deposit promptly with the Mortgagee funds which, together with the insurance proceeds, shall be sufficient to restore and rebuild such Improvements; (e) if the Mortgagor shall fail within a reasonable time, subject to delays beyond its control, to restore or rebuild such Improvements, then Mortgagee, at its option, but with no obligation to do so may restore or rebuild such Improvements, for or on behalf of the Mortgagor and for such purpose may do all necessary acts; (f) waiver of the right of subrogation shall be obtained from any insurer under such policies; (g) the excess of said insurance proceeds above the amount necessary to complete such restoration shall be applied as hereinbefore provided as a credit upon any portion as selected by Mortgagee, of the the Debt; and (h) that the aggregate minimum monthly rental payable thereafter under all Leases within the Mortgaged Property shall not be less than the sum of: 1/12th of the annual ground rental, if any, 1/12th of the annual taxes and assessments thereon, 1/12th of the annual premiums for insurance required hereunder and the monthly installments of principal and interest required to be repaid upon the Debt, or otherwise if less than such sum, then so much of the insurance proceeds shall first be applied upon the Debt, so that upon payment monthly of an amount equal to such aggregate monthly minimum rentals, when applied monthly to pro-rata ground rent, if any, taxes and assessments and insurance proceeds, then to interest and the balance to principal, will be sufficient to make level payments of principal and interest computed on any annual constant rate of 13.03% of sure relevant Debt, in which latter event the monthly installments under the Note shall be reduced accordingly. If the said conditions are not or cannot be satisfied, then the alternate disposition of such insurance proceeds as provided in paragraph 4, hereof shall again become applicable. Under no circumstances shall the Mortgagee become personally liable for the fulfillment of the terms, covenants and conditions contained in any of the Leases or operating agreements nor obligated to take any action to restore the Improvements.

3577737

# UNOFFICIAL COPY

ILL.-663

59. Notwithstanding any provision herein to the contrary and in particular paragraph 8 hereof, in the event of any damage or taking as therein described by eminent domain of less than the entire Mortgaged Property, it is hereby understood, covenanted and agreed that the Mortgagee shall make available the proceeds of any award received in connection with and in compensation for any such damage or taking for the purpose of restoring so much of the Improvements within the Mortgaged Property, affected thereby, subject to the following conditions: (a) the Mortgagor is not then in default under any of the terms, covenants and conditions hereof; (b) the Mortgagee shall first be given satisfactory proof that such Improvements have been fully restored, free and clear of all liens, except as to the lien of this Mortgage; (c) if such award shall be insufficient to restore or rebuild such Improvements, the Mortgagor shall deposit promptly with the Mortgagee funds which, together with the award proceeds, shall be sufficient to restore and rebuild such Improvements; (d) if the Mortgagor shall fail within a reasonable time, subject to delays beyond its control, to restore or rebuild such Improvements, the Mortgagee, at its option, may restore or rebuild such Improvements for or on behalf of the Mortgagor and for such purpose may do all necessary acts; (e) the excess of said award not necessary for completing such restoration shall be applied as hereinbefore provided as a credit upon any portion, as selected by the Mortgagee, of the Debt; and (f) the aggregate monthly rental payable thereafter under all Leases within the Mortgaged Property shall not be less than the sum of: 1/12th of the annual ground rent, if any, 1/12th of the annual taxes and assessments and 1/12th of the annual premiums for insurance required hereunder and the monthly installments of principal and interest required to be repaid upon the Debt, or otherwise if less than such sum, that so much of the award shall first be applied to such aggregate monthly minimum rentals, when applied monthly to pro-rata ground rent, if any, taxes, assessments and insurance premiums, then to interest and the balance to principal will completely amortize the Debt at maturity, in which latter event the monthly installments under the Note shall be reduced accordingly. If any of the said conditions are not or cannot be satisfied, then the alternate disposition of such award as provided in paragraph 8 hereof shall again become applicable. Under no circumstances shall the Mortgagee become personally liable for the fulfillment of the terms, covenants and conditions contained in any of the Leases or operating agreements nor obligated to take any action to restore such Improvements.

60. The headings and captions of the various paragraphs of this Mortgage are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

61. The Mortgaged Property herein conveyed being located in the State of Illinois, this Mortgage shall be construed and enforced according to the laws of the State of Illinois.

62. The terms, covenants and conditions herein contained shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, successors, and assigns of the parties hereto.

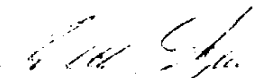
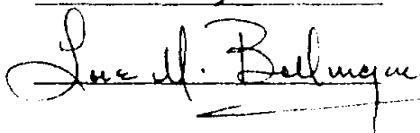
IN WITNESS WHEREOF, the Mortgagor has duly executed this Mortgage the day and year first above written.

Witness:

MILWAUKEE GOLF DEVELOPMENT COMPANY  
an Illinois Limited Partnership

By:

General Partner



3577737

# UNOFFICIAL COPY

ILL.-663

STATE OF ILLINOIS )  
COUNTY OF COOK ) SS:

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named JOHN F. CUNEO, JR., to me known to be the person who executed the within and foregoing instrument, who acknowledged that he was duly authorized to execute such instrument on behalf of MILWAUKEE GOLF DEVELOPMENT COMPANY, that he did execute said instrument on behalf of said partnership and that the same is his free and voluntary act and deed as a partner of said partnership and is the free and voluntary act and deed of said partnership for the uses and purposes therein set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at CHICAGO, ILLINOIS, this 16th day of DECEMBER, 1986.

*Joe M. Bellugai*  
Notary Public

THIS INSTRUMENT PREPARED BY:

*mail to*  
James M. Bowen, Esq.  
Teachers Insurance and Annuity  
Association of America  
730 Third Avenue  
New York, New York 10017

Street address:

Golf Mill Shopping Center -- bounded by  
Milwaukee Avenue, Golf Road, Greenwood Avenue,  
Church Street and Maryland Street in Niles,  
Illinois.

Permanent Index Numbers:

09-14-112-008)	As to PARCEL I
09-14-112-010)	described herein
09-14-112-007)	
09-14-108-013)	
09-14-108-014)	As to PARCEL II
09-14-202-006)	described herein
09-14-202-007)	
	As to PARCEL III
	described herein
09-14-108-012)	
09-14-112-009)	As to PARCEL IV
	described herein

3577737



# UNOFFICIAL COPY

ILL.-663

## CONSENT TO MORTGAGE LOAN

The undersigned, being all of the limited partners of MILWAUKEE GOLF DEVELOPMENT COMPANY, an Illinois limited partnership, do hereby consent to the actions of JOHN F. CUNEO, JR., the sole general partner of said partnership (the "General Partner"), in borrowing the sum of \$38,000,000 from TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA (which, together with its successors, assigns and transferees is hereinafter referred to as "Teachers") and in executing and delivering to Teachers all documents of every description which, in the judgment of the General Partner, are appropriate to give adequate security to Teachers. Without limiting the generality of the foregoing, the General Partner is specifically authorized to execute and deliver to Teachers the following:

1. A Mortgage Note in the amount of \$38,000,000.
2. The above and foregoing Mortgage.
3. An Assignment of Lessor's Interest in Leases with respect to all leases relating to any part of the real property covered by the above and foregoing Mortgage or any improvements thereon.

IN WITNESS WHEREOF, the undersigned have executed this instrument as of the 16th day of DECEMBER, 1986.

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, as Trustee under Trust Agreement dated 12/9/81 and known as Trust No. 31-00132.

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO

By: [Signature]  
Vice-President

By: [Signature]  
Vice-President

ATTEST:  
Roselind Lindau  
Trust Officer

ATTEST:  
Roselind Lindau  
Trust Officer

Russell G. De Yong  
RUSSELL G. DE YONG

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, as Trustee under Trust Agreement dated 3/4/63 and known as Trust No. 31-56596.

Lawrence A. Byrne  
LAWRENCE A. BYRNE

By: [Signature]  
Vice-President

As Trustees under Trust Agreement dated 4/15/52 and known as Trust No. 31-65115.

ATTEST:  
Roselind Lindau  
Trust Officer

3577737

# UNOFFICIAL COPY

## EXHIBIT A

### PARCEL 1:

THAT PART OF THE NORTH EAST 1/4 OF THE NORTH WEST 1/4 OF SECTION 14, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH WEST CORNER OF SAID NORTH EAST 1/4 OF THE NORTH WEST 1/4, WHICH IS THE INTERSECTION OF THE CENTER LINE OF GOLF ROAD AND THE CENTER LINE OF GREENWOOD AVENUE; THENCE SOUTHERLY ALONG THE WEST LINE OF SAID NORTH EAST 1/4 OF THE NORTH WEST 1/4 FOR A DISTANCE OF 1150.00 FEET TO A POINT; THENCE ON AN ASSUMED BEARING OF NORTH 71 DEGREES 00 MINUTES 00 SECONDS EAST FOR A DISTANCE OF 52.88 FEET TO A POINT ON THE EAST LINE OF GREENWOOD AVENUE AS DEDICATED NOVEMBER 21, 1932 BY DOCUMENT 11167090, SAID POINT BEING THE POINT OF BEGINNING; THENCE CONTINUING NORTH 71 DEGREES 00 MINUTES 00 SECONDS EAST FOR A DISTANCE OF 320.51 FEET TO A POINT; THENCE SOUTH 19 DEGREES 00 MINUTES 00 SECONDS EAST FOR A DISTANCE OF 39.80 FEET TO A POINT; THENCE NORTH 71 DEGREES 00 MINUTES 00 SECONDS EAST FOR A DISTANCE OF 57.56 FEET TO THE NORTHWESTERLY CORNER OF A BRICK BUILDING OCCUPIED BY A SEARS ROEBUCK RETAIL STORE; THENCE NORTH 71 DEGREES 01 MINUTES 33 SECONDS EAST ALONG THE NORTHERLY FACE OF SAID BUILDING FOR A DISTANCE OF 154.76 FEET TO A POINT; THENCE NORTH 11 DEGREES 48 MINUTES 57 SECONDS WEST ALONG SAID NORTHERLY FACE OF BUILDING FOR A DISTANCE OF 6.00 FEET TO A POINT; THENCE NORTH 78 DEGREES 27 MINUTES 31 SECONDS EAST ALONG SAID NORTHERLY FACE OF BUILDING FOR A DISTANCE OF 25.34 FEET TO A POINT; THENCE NORTH 12 DEGREES 35 MINUTES 44 SECONDS WEST ALONG SAID NORTHERLY FACE OF BUILDING FOR A DISTANCE OF 0.99 FEET TO A POINT; THENCE NORTH 76 DEGREES 04 MINUTES 43 SECONDS EAST ALONG SAID NORTHERLY FACE OF BUILDING FOR A DISTANCE OF 25.53 FEET TO A POINT; THENCE NORTH 19 DEGREES 00 MINUTES 00 SECONDS WEST ALONG SAID NORTHERLY FACE OF BUILDING FOR A DISTANCE OF 5.37 FEET TO A POINT; THENCE NORTH 70 DEGREES 35 MINUTES 38 SECONDS EAST ALONG SAID NORTHERLY FACE OF BUILDING FOR A DISTANCE OF 2.82 FEET TO A POINT; THENCE SOUTH 19 DEGREES 13 MINUTES 42 SECONDS EAST ALONG SAID NORTHERLY FACE OF BUILDING FOR A DISTANCE OF 2.53 FEET TO A POINT; THENCE NORTH 74 DEGREES 19 MINUTES 47 SECONDS EAST ALONG SAID NORTHERLY FACE OF BUILDING FOR A DISTANCE OF 23.76 FEET TO A POINT; THENCE NORTH 18 DEGREES 51 MINUTES 04 SECONDS WEST ALONG SAID NORTHERLY FACE OF BUILDING FOR A DISTANCE OF 3.90 FEET TO A POINT; THENCE NORTH 71 DEGREES 03 MINUTES 23 SECONDS EAST ALONG SAID NORTHERLY FACE OF BUILDING FOR A DISTANCE OF 30.44 FEET TO A POINT; THENCE SOUTH 18 DEGREES 48 MINUTES 28 SECONDS EAST ALONG SAID NORTHERLY FACE OF BUILDING FOR A DISTANCE OF 3.95 FEET TO A POINT; THENCE NORTH 67 DEGREES 24 MINUTES 28 SECONDS EAST ALONG SAID NORTHERLY FACE OF BUILDING FOR A DISTANCE OF 23.78 FEET TO A POINT; THENCE NORTH 19 DEGREES 27 MINUTES 37 SECONDS WEST ALONG SAID NORTHERLY FACE OF BUILDING FOR A DISTANCE OF 2.49 FEET TO A POINT; THENCE NORTH 70 DEGREES 32 MINUTES 23 SECONDS EAST ALONG SAID NORTHERLY FACE OF BUILDING FOR A DISTANCE OF 2.85 FEET TO A POINT; THENCE SOUTH 18 DEGREES 55 MINUTES 41 SECONDS EAST ALONG SAID NORTHERLY FACE OF BUILDING FOR A DISTANCE OF 3.43 FEET TO A POINT; THENCE NORTH 66 DEGREES 02 MINUTES 52 SECONDS EAST ALONG SAID NORTHERLY FACE OF BUILDING FOR A DISTANCE OF 25.58 FEET TO A POINT; THENCE SOUTH 20 DEGREES 04 MINUTES 23 SECONDS EAST ALONG SAID NORTHERLY FACE OF BUILDING FOR A DISTANCE OF 1.05 FEET TO A POINT; THENCE NORTH 63 DEGREES 28 MINUTES 27 SECONDS EAST ALONG SAID NORTHERLY FACE OF BUILDING FOR A DISTANCE OF 25.50 FEET TO A POINT; THENCE SOUTH 25 DEGREES 26 MINUTES 36 SECONDS EAST ALONG SAID NORTHERLY FACE OF BUILDING FOR A DISTANCE OF 6.06 FEET TO A POINT; THENCE NORTH 71 DEGREES 01 MINUTES 14 SECONDS EAST ALONG SAID NORTHERLY FACE OF BUILDING FOR A DISTANCE OF 50.73 FEET TO THE NORTHEASTERLY CORNER OF SAID BRICK BUILDING; THENCE NORTH 71 DEGREES 00 MINUTES 00 SECONDS EAST FOR A DISTANCE OF 36.00 FEET TO A POINT; THENCE NORTH 19 DEGREES 00 MINUTES 00 SECONDS WEST FOR A DISTANCE OF 40.06 FEET TO A POINT; THENCE

Rd

3577737

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

NORTH 71 DEGREES 00 MINUTES 00 SECONDS EAST FOR A DISTANCE OF 338.03 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF MILWAUKEE AVENUE, SAID POINT BEING 55.00 FEET SOUTHWESTERLY, MEASURED AT RIGHT ANGLES, FROM THE CENTER LINE OF MILWAUKEE AVENUE; THENCE NORTH 56 DEGREES 24 MINUTES 03 SECONDS WEST ALONG A LINE 55.00 FEET SOUTHWESTERLY OF AND PARALLEL TO SAID CENTER LINE OF MILWAUKEE AVENUE FOR A DISTANCE OF 879.03 FEET TO A POINT OF CURVATURE; THENCE NORTHWESTERLY ALONG THE ARC OF A CURVE CONCAVE TO THE SOUTH WEST, HAVING A RADIUS OF 100.00 FEET AND A CHORD BEARING NORTH 64 DEGREES 21 MINUTES 28 SECONDS WEST FOR A DISTANCE OF 97.25 FEET TO A POINT OF TANGENCY; THENCE SOUTH 87 DEGREES 47 MINUTES 00 SECONDS WEST ALONG A LINE 55.00 FEET SOUTH OF AND PARALLEL TO THE CENTER LINE OF GOLF ROAD, FOR A DISTANCE OF 421.02 FEET TO A POINT OF CURVATURE; THENCE SOUTHWESTERLY ALONG THE ARC OF A CURVE CONCAVE TO THE SOUTH EAST, HAVING A RADIUS OF 50.00 FEET AND A CHORD BEARING SOUTH 43 DEGREES 53 MINUTES 30 SECONDS WEST FOR A DISTANCE OF 76.61 FEET TO A POINT OF TANGENCY; THENCE SOUTH 0 DEGREES 00 MINUTES 00 SECONDS WEST ALONG THE EAST LINE OF GREENWOOD AVENUE FOR A DISTANCE OF 1051.57 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

## PARCEL 2:

THAT PART OF THE NORTH 1/2 OF SECTION 14, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT LOCATED 50.00 FEET EAST AND 40.00 FEET NORTH OF THE SOUTH WEST CORNER OF THE SOUTH EAST 1/4 OF THE NORTH WEST 1/4 OF SECTION 14; THENCE ON AN ASSUMED BEARING OF NORTH 87 DEGREES 44 MINUTES 00 SECONDS EAST ALONG THE NORTH LINE OF CHURCH STREET, SAID LINE BEING 40.00 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE NORTH 1/2 OF SECTION 14, FOR A DISTANCE OF 335.54 FEET TO A POINT OF BEGINNING; THENCE CONTINUING NORTH 87 DEGREES 44 MINUTES 00 SECONDS EAST ALONG THE NORTH LINE OF CHURCH STREET FOR A DISTANCE OF 1388.64 FEET TO A POINT ON A CURVE, SAID CURVE BEING THE NORTHWESTERLY LINE OF MARYLAND STREET AS DEDICATED SEPTEMBER 30, 1959 BY DOCUMENT 1888823; THENCE NORTHEASTERLY ALONG THE ARC OF A CURVE ON THE NORTHWESTERLY LINE OF MARYLAND STREET, SAID CURVE BEING CONCAVE TO THE SOUTH EAST AND HAVING A RADIUS OF 136.00 FEET AND A CHORD BEARING NORTH 29 DEGREES 21 MINUTES 37 SECONDS EAST FOR A DISTANCE OF 151.51 FEET TO A POINT OF TANGENCY; THENCE CONTINUING NORTHEASTERLY ALONG THE NORTHERLY LINE OF MARYLAND STREET ON A BEARING OF NORTH 61 DEGREES 14 MINUTES 05 SECONDS EAST FOR A DISTANCE OF 213.57 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF MILWAUKEE AVENUE AS DESCRIBED IN A QUIT CLAIM DEED DATED JUNE 29, 1961 AND RECORDED AS DOCUMENT 18316718; THENCE NORTH 28 DEGREES 45 MINUTES 55 SECONDS WEST ALONG THE SOUTHWESTERLY LINE OF MILWAUKEE AVENUE FOR A DISTANCE OF 314.00 FEET TO A POINT, SAID POINT BEING 49.62 FEET SOUTHWESTERLY, MEASURED AT RIGHT ANGLES, FROM THE CENTER LINE OF MILWAUKEE AVENUE; THENCE SOUTH 61 DEGREES 14 MINUTES 05 SECONDS WEST ALONG THE SOUTHWESTERLY LINE OF MILWAUKEE AVENUE FOR A DISTANCE OF 5.00 FEET TO A POINT; THENCE NORTH 28 DEGREES 46 MINUTES 10 SECONDS WEST ALONG THE SOUTHWESTERLY LINE OF MILWAUKEE AVENUE FOR A DISTANCE OF 280.04 FEET TO A POINT, SAID POINT BEING 54.68 FEET SOUTHWESTERLY, MEASURED AT RIGHT ANGLES, FROM THE CENTER LINE OF MILWAUKEE AVENUE; THENCE NORTH 28 DEGREES 49 MINUTES 24 SECONDS WEST ALONG THE SOUTHWESTERLY LINE OF MILWAUKEE AVENUE FOR A DISTANCE OF 101.65 FEET TO A POINT, SAID POINT BEING 54.73 FEET SOUTHWESTERLY, MEASURED AT RIGHT ANGLES, FROM THE CENTER LINE OF MILWAUKEE AVENUE; THENCE NORTH 28 DEGREES 40 MINUTES 38 SECONDS WEST ALONG THE SOUTHWESTERLY LINE OF MILWAUKEE AVENUE FOR A DISTANCE OF 345.62 FEET TO A POINT OF CURVATURE, SAID POINT BEING 55.00 FEET SOUTHWESTERLY, MEASURED AT RIGHT ANGLES, FROM THE CENTER LINE OF MILWAUKEE AVENUE; THENCE NORTHWESTERLY ALONG THE ARC OF A CURVE, SAID CURVE BEING ON THE SOUTHWESTERLY LINE OF MILWAUKEE AVENUE, CONCAVE TO THE SOUTH WEST, HAVING A RADIUS OF 3400.37 FEET AND A CHORD BEARING NORTH 30 DEGREES 32 MINUTES 45 SECONDS WEST, FOR A DISTANCE OF 319.52 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF LAND CONVEYED BY MILWAUKEE-GOLF DEVELOPMENT CORPORATION TO SEARS ROEBUCK AND COMPANY BY WARRANTY DEED DATED APRIL 12, 1957 AND RECORDED APRIL 26, 1957 AS DOCUMENT 16887721, IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR COOK COUNTY, ILLINOIS.

PT 1388257  
A R

3577737

# UNOFFICIAL COPY

THENCE SOUTH 71 DEGREES 00 MINUTES 00 SECONDS WEST ALONG SAID SOUTHEASTERLY LINE OF LAND CONVEYED BY DEED DATED APRIL 12, 1957, FOR A DISTANCE OF 456.31 FEET TO A POINT; THENCE NORTH 19 DEGREES 00 MINUTES 00 SECONDS WEST FOR A DISTANCE OF 97.06 FEET TO A POINT; THENCE SOUTH 71 DEGREES 00 MINUTES 00 SECONDS WEST FOR A DISTANCE OF 36.00 FEET TO THE SOUTHEASTERLY CORNER OF SAID BRICK BUILDING OCCUPIED BY A SEARS ROEBUCK RETAIL STORE; THENCE SOUTH 71 DEGREES 04 MINUTES 44 SECONDS WEST ALONG THE SOUTHERLY FACE OF SAID BUILDING FOR A DISTANCE OF 50.86 FEET TO A POINT; THENCE SOUTH 12 DEGREES 37 MINUTES 40 SECONDS EAST ALONG SAID SOUTHERLY FACE OF SAID BUILDING FOR A DISTANCE OF 5.95 FEET TO A POINT; THENCE SOUTH 78 DEGREES 20 MINUTES 39 SECONDS WEST ALONG SAID SOUTHERLY FACE OF SAID BUILDING FOR A DISTANCE OF 25.46 FEET TO A POINT; THENCE SOUTH 13 DEGREES 19 MINUTES 16 SECONDS EAST ALONG SAID SOUTHERLY FACE OF BUILDING FOR A DISTANCE OF 1.10 FEET TO A POINT; THENCE SOUTH 76 DEGREES 09 MINUTES 58 SECONDS WEST ALONG SAID SOUTHERLY FACE OF BUILDING FOR A DISTANCE OF 25.54 FEET TO A POINT; THENCE SOUTH 18 DEGREES 40 MINUTES 02 SECONDS EAST ALONG SAID SOUTHERLY FACE OF BUILDING FOR A DISTANCE OF 3.44 FEET TO A POINT; THENCE SOUTH 71 DEGREES 36 MINUTES 50 SECONDS WEST ALONG SAID SOUTHERLY FACE OF BUILDING FOR A DISTANCE OF 2.80 FEET TO A POINT; THENCE NORTH 17 DEGREES 11 MINUTES 36 SECONDS WEST ALONG SAID SOUTHERLY FACE OF BUILDING FOR A DISTANCE OF 2.54 FEET TO A POINT; THENCE SOUTH 74 DEGREES 42 MINUTES 36 SECONDS WEST ALONG SAID SOUTHERLY FACE OF BUILDING FOR A DISTANCE OF 23.82 FEET TO A POINT; THENCE SOUTH 19 DEGREES 08 MINUTES 37 SECONDS EAST ALONG SAID SOUTHERLY FACE OF BUILDING FOR A DISTANCE OF 4.00 FEET TO A POINT; THENCE SOUTH 71 DEGREES 20 MINUTES 19 SECONDS WEST ALONG SAID SOUTHERLY FACE OF BUILDING FOR A DISTANCE OF 30.46 FEET TO A POINT; THENCE NORTH 18 DEGREES 24 MINUTES 45 SECONDS WEST ALONG SAID SOUTHERLY FACE OF BUILDING FOR A DISTANCE OF 3.90 FEET TO A POINT; THENCE SOUTH 68 DEGREES 07 MINUTES 07 SECONDS WEST ALONG SAID SOUTHERLY FACE OF BUILDING FOR A DISTANCE OF 23.76 FEET TO A POINT; THENCE SOUTH 19 DEGREES 13 MINUTES 19 SECONDS EAST ALONG SAID SOUTHERLY FACE OF BUILDING FOR A DISTANCE OF 2.48 FEET TO A POINT; THENCE SOUTH 70 DEGREES 02 MINUTES 43 SECONDS WEST ALONG SAID SOUTHERLY FACE OF BUILDING FOR A DISTANCE OF 2.75 FEET TO A POINT; THENCE NORTH 19 DEGREES 57 MINUTES 17 SECONDS WEST ALONG SAID SOUTHERLY FACE OF BUILDING FOR A DISTANCE OF 3.00 FEET TO A POINT; THENCE SOUTH 65 DEGREES 53 MINUTES 12 SECONDS WEST ALONG SAID SOUTHERLY FACE OF BUILDING FOR A DISTANCE OF 25.58 FEET TO A POINT; THENCE NORTH 22 DEGREES 18 MINUTES 45 SECONDS WEST ALONG SAID SOUTHERLY FACE OF BUILDING FOR A DISTANCE OF 1.10 FEET TO A POINT; THENCE SOUTH 63 DEGREES 32 MINUTES 35 SECONDS WEST ALONG SAID SOUTHERLY FACE OF BUILDING FOR A DISTANCE OF 25.34 FEET TO A POINT; THENCE NORTH 27 DEGREES 11 MINUTES 53 SECONDS WEST ALONG SAID SOUTHERLY FACE OF BUILDING FOR A DISTANCE OF 5.96 FEET TO A POINT; THENCE SOUTH 70 DEGREES 58 MINUTES 00 SECONDS WEST ALONG SAID SOUTHERLY FACE OF BUILDING FOR A DISTANCE OF 78.18 FEET TO THE SOUTHWESTERLY CORNER OF SAID BRICK BUILDING; THENCE CONTINUING SOUTH 70 DEGREES 58 MINUTES 00 SECONDS WEST ALONG THE SOUTHERLY FACE OF A BRICK WALL FOR A DISTANCE OF 57.86 FEET TO THE SOUTHWESTERLY CORNER OF SAID BRICK WALL; THENCE SOUTH 71 DEGREES 00 MINUTES 00 SECONDS WEST FOR A DISTANCE OF 69.29 FEET TO A POINT; THENCE SOUTH 19 DEGREES 00 MINUTES 00 SECONDS EAST FOR A DISTANCE OF 97.06 FEET TO A POINT; THENCE SOUTH 71 DEGREES 00 MINUTES 00 SECONDS WEST FOR A DISTANCE OF 453.76 FEET TO A POINT ON THE EAST LINE OF GREENWOOD AVENUE; THENCE SOUTH 0 DEGREES 00 MINUTES 00 SECONDS WEST ALONG THE EAST LINE OF GREENWOOD AVENUE FOR A DISTANCE OF 636.59 FEET TO A POINT; THENCE NORTH 71 DEGREES 00 MINUTES 00 SECONDS EAST FOR A DISTANCE OF 276.39 FEET TO A POINT; THENCE SOUTH 0 DEGREES 00 MINUTES 00 SECONDS WEST FOR A DISTANCE OF 236.53 FEET TO A POINT; THENCE NORTH 87 DEGREES 44 MINUTES 00 SECONDS EAST FOR A DISTANCE OF 73.98 FEET TO A POINT; THENCE SOUTH 0 DEGREES 00 MINUTES 00 SECONDS WEST FOR A DISTANCE OF 236.43 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

Property of [illegible]

3577737



# UNOFFICIAL COPY

## PARCEL 3:

THAT PART OF THE SOUTH WEST 1/4 OF THE NORTH EAST 1/4 OF SECTION 14, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE SOUTH LINE OF SAID QUARTER SECTION WITH THE CENTER LINE OF MILWAUKEE AVENUE; THENCE WEST ALONG THE SOUTH LINE OF SAID QUARTER SECTION FOR A DISTANCE OF 233.00 FEET TO THE POINT OF BEGINNING; THENCE NORTHWESTERLY ALONG A LINE FORMING AN ANGLE OF 68 DEGREES 49 MINUTES 10 SECONDS, MEASURED FROM WEST TO NORTH WEST FROM THE SOUTH LINE OF THE NORTH EAST 1/4 OF SAID SECTION 14, FOR A DISTANCE OF 76.15 FEET; THENCE NORTHEASTERLY ALONG A LINE FORMING AN ANGLE OF 123 DEGREES 54 MINUTES 20 SECONDS, MEASURED FROM THE SOUTH EAST TO THE NORTH EAST FROM THE LAST DESCRIBED LINE, FOR A DISTANCE OF 57.38 FEET TO AN INTERSECTION WITH A LINE PARALLEL TO THE SOUTH LINE OF THE AFORESAID NORTH EAST 1/4 OF SECTION 14, WHICH IS 132 FEET NORTHWESTERLY THEREFROM, AS MEASURED ALONG THE CENTER LINE OF MILWAUKEE AVENUE, THENCE EAST ALONG SAID PARALLEL LINE, THIS LINE ALSO BEING THE NORTH LINE OF LAND CONVEYED TO THE EVANGELICAL LUTHERAN ST. MATHAUS GEMEINDE OF THE TOWN OF MAINE, BY QUIT CLAIM DEED DATED MARCH 17, 1947 AND RECORDED AS DOCUMENT 14022778, FOR A DISTANCE OF 116.59 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF MILWAUKEE AVENUE AS DESCRIBED ON A QUIT CLAIM DEED DATED JUNE 29, 1961 AND RECORDED AS DOCUMENT 16316718; THENCE NORTHWESTERLY ALONG SAID SOUTHWESTERLY LINE OF MILWAUKEE AVENUE FOR A DISTANCE OF 89.66 FEET TO A POINT ON THE SOUTHERLY LINE OF MARYLAND STREET AS DEDICATED SEPTEMBER 30, 1959 BY DOCUMENT 1886825; THENCE SOUTHWESTERLY ALONG SAID SOUTHERLY LINE OF MARYLAND STREET FOR A DISTANCE OF 215.57 FEET TO A POINT OF CURVATURE; THENCE CONTINUING SOUTHWESTERLY ALONG THE ARC OF A CURVE, CONCAVE TO THE SOUTH EAST, HAVING A RADIUS OF 70.00 FEET FOR A DISTANCE OF 77.60 FEET TO A POINT ON THE NORTH LINE OF CHURCH STREET AS VACATED BY DOCUMENT 18363273; THENCE SOUTHERLY TO THE SOUTH LINE OF THE NORTH EAST 1/4 OF SAID SECTION 14 A DISTANCE OF 40.03 FEET; THENCE EASTERLY ALONG THE SOUTH LINE OF THE NORTH EAST 1/4 OF SECTION 14 FOR A DISTANCE OF 149.55 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS .

## PARCEL 4:

THE NON-EXCLUSIVE RIGHTS, EASEMENTS AND PRIVILEGE OF USE, INGRESS AND RIGHT-OF-WAY FOR PEDESTRIAN AND AUTOMOTIVE PURPOSES, AND FOR PARKING AND PUBLIC AND PRIVATE UTILITY PURPOSES CREATED AND GRANTED AS APPURTENANCES TO PARCELS 1 AND 2 DESCRIBED ABOVE IN AND BY THE AMENDED AND RESTATED AGREEMENT DATED AS OF FEBRUARY 21, 1985 BY AND BETWEEN MILWAUKEE GOLF DEVELOPMENT COMPANY AND STARKS, ROEBUCK AND CO. WHICH WAS RECORDED ON THE 18TH DAY OF MARCH, 1985 AS DOCUMENT NO. 27477633 AND FILED MARCH 18, 1985 AS DOCUMENT NO. LR 3424765

1288257

PROPERLY FILED IN Cook County Clerk's Office

3577737

UNOFFICIAL COPY

2887  
MILWAUKEE

7073 68

31-65115

22-

GIVEN under my hand and NOTARIAL SEAL this 16th day of DECEMBER, 1986.  
Notary Public  
*James M. Williams*

I, the undersigned, a notary public in and for said county in the state aforesaid, do hereby certify that LAWRENCE A. BYRNE, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as Trustee under Trust Agreement dated April 15, 1952 and known as Trust No. 31-65115, which Trust is a limited partner of MILWAUKEE GOLF DEVELOPMENT COMPANY, an Illinois limited partnership, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act as Trustee aforesaid for the uses and purposes set forth in said instrument.

GIVEN under my hand and NOTARIAL SEAL this 16th day of DECEMBER, 1986.  
Notary Public  
*James M. Williams*

I, the undersigned, a notary public in and for said county in the state aforesaid, do hereby certify that RUSSELL G. DE YONG, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as Trustee under Trust Agreement dated April 15, 1952 and known as Trust No. 31-65115, which Trust is a limited partner of MILWAUKEE GOLF DEVELOPMENT COMPANY, an Illinois limited partnership, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act as Trustee aforesaid for the uses and purposes set forth in said instrument.

GIVEN under my hand and NOTARIAL SEAL this 18th day of DECEMBER, 1986.  
Notary Public  
*J. A. Williams*

I, the undersigned, a notary public in and for said county in the state aforesaid, do hereby certify that *Continental Illinois National Bank and Trust of Continental Illinois National Bank and Trust* who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as Vice-President and Trust Officer, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Bank in its capacities as Trustee under Trust Agreement dated December 9, 1981 and known as Trust No. 31-00132, as Trustee under Trust Agreement dated March 4, 19863 and known as Trust No. 31-56596 and as Trustee under Trust Agreement dated April 15, 1952 and known as Trust No. 31-65115, each of which Trusts is a limited partner of MILWAUKEE GOLF DEVELOPMENT COMPANY, an Illinois limited partnership, for the uses and purposes set forth in said instrument; and the said Trust Officer, as custodian of the corporate seal of said Bank, did affix the corporate seal of said Bank to said instrument as the free and voluntary act of said Trust Officer and as the free and voluntary act of said Bank as Trustee as aforesaid, for the uses and purposes set forth in said instrument.

STATE OF ILLINOIS }  
COUNTY OF COOK }  
SS.

3577737