

# UNOFFICIAL COPY

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## ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES (the "Assignment"), is made as of this 24 day of May, 1990, by STEEL CITY NATIONAL BANK OF CHICAGO, not individually but solely as Trustee under Trust Agreement dated October 10, 1988, and known as Trust No. 3059 (the "Trustee") and MUSIC CENTER ASSOCIATES LIMITED PARTNERSHIP, an Illinois limited partnership ("Beneficiary") (each of Trustee and Beneficiary are individually, and both Trustee and Beneficiary are collectively, referred to herein as "Assignor"), with and in favor of CONTINENTAL BANK, N.A., a national banking association ("Assignee").

### RECITALS

A. Assignor has executed and delivered to Assignee a Note of even date herewith (the "Note"), in the principal sum of SIX MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$6,500,000.00) pursuant to a Loan Agreement of even date herewith between Assignor and Assignee (the "Loan Agreement"). The Note is secured by a Mortgage (the "Mortgage") on certain property (the "Property") in Tinley Park, Illinois legally described on Exhibit A attached hereto and made a part hereof, and also by certain Additional Collateral as defined and described in the Loan Agreement (the Note, Mortgage, Loan Agreement and Additional Collateral are sometimes collectively referred to herein as the "Loan Documents").

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B. Assignee requires this Assignment (which is one of the Additional Collateral documents described in the Loan Agreement) as further security for the loan which Assignee is making pursuant to the Loan Agreement.

## AGREEMENTS

NOW, THEREFORE, in order to secure the payment of the principal and interest on the Note and to secure the performance and observance by Assignor of each and every term, covenant, agreement and condition contained herein, in the Note and in the other Loan Documents, and in consideration of the agreement by Assignee to extend the loan to or for the benefit of the Assignor under the terms of the Loan Agreement, Assignor does hereby sell, assign, transfer and set over unto Assignee, its successors and assigns, all of the right, title and interest of Assignor in, to and under any and all leases (or extensions or renewals thereof) between the Assignor (or its predecessor) as lessor, and the lessee named in any of said leases (hereinafter called "Lessee"), demising and leasing all or portions of the Property (said leases are hereinafter referred to individually and collectively as the "Leases"), together with all rents payable under the Leases and all benefits and advantages to be derived therefrom to hold and receive them unto Assignee, and together with all rights against guarantors, if any, of Lessee's obligations under the Leases.

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1. Assignor does hereby empower Assignee, its agents or attorneys, to collect, sue for, settle, compromise and give acquittances for all of the rents that may become due under the Leases and avail itself of and pursue all remedies for the enforcement of the Leases and Assignor's rights in and under the Leases as Assignor might have pursued but for this Assignment.

2. Trustee represents and Beneficiary represents and warrants that the Leases, if any, are in full force and effect, that it has not heretofore assigned or pledged the same or any interest therein, and no default exists on the part of the Lessee, or Assignor as lessor, in the performance on the part of either, of the terms, covenants, provisions or agreements in the Leases contained; that no rent has been paid by the Lessee for more than one installment in advance, and that the payment of none of the rents to accrue under the Leases have been or will be waived, released, reduced, discounted or otherwise discharged or compromised by Assignor; that no security deposit has been made by Lessee under the Leases, except as disclosed in writing by Assignor to Assignee.

3. Assignor agrees:

(a) that the Leases shall remain in full force and effect irrespective of any merger of the interest of the lessor and lessee thereunder;

(b) that if the Leases provide for the abatement of rent during repair of the demised premises by reason of fire or other casualty, Assignor shall furnish rental insurance to

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Assignee, the policies to be in amount and form and written by such insurance companies as shall be satisfactory to Assignee;

(c) not to terminate, modify or amend the Leases or any of the terms thereof, or grant any concessions in connection therewith, either orally or in writing, or to accept a surrender thereof without the written consent of Assignee (which consent shall not be unreasonably withheld) and that any attempted termination, modification or amendment of the Leases without such written consent shall be null and void;

(d) not to collect any of the rent, income and profits arising or accruing under the Leases more than one month in advance of the time when the same become due under the terms thereof;

(e) not to discount any future accruing rents;

(f) not to execute any other assignments of the Leases or any interest therein or any of the rents thereunder;

(g) to perform all of Assignor's covenants and agreements as lessor under the Leases and not to suffer or permit to occur any release of liability of the Lessee, or any right to the Lessee to withhold payment of rent; and to give prompt notices to Assignee of any notice of default on the part of Assignor with respect to the Leases received from the Lessee thereunder, and to furnish Assignee with complete copies of said notices;

(h) if so requested by Assignee, to enforce the Leases and all remedies available to Assignor against the Lessee, in case of default under the Leases by the Lessee;

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(i) that none of the rights or remedies of Assignee under the Mortgage shall be delayed or in any way prejudiced by this Assignment;

(j) that notwithstanding any variation of the terms of the Mortgage or any extension of time for payment thereunder or any release of part or parts of the land conveyed thereunder, the Leases and benefits hereby assigned shall continue as additional security in accordance with the terms hereof;

(k) not to alter, modify or change the terms of any guarantees of the Leases or cancel or terminate such guarantees without the prior written consent of Assignee;

(l) not to consent to any assignments of the Leases, or any subletting thereunder, whether or not in accordance with their terms, without the prior written consent of Assignee which consent shall not be unreasonably withheld; and

(m) not to request, consent to, agree to or accept a subordination of the Leases to any mortgage or other encumbrance now or hereafter affecting the Property.

An action taken by Assignor in violation of the foregoing agreements shall be void ab initio.

4. This Assignment is given as additional security for the payment of the Note held by Assignee, and all other sums secured by the Mortgage. The security of this Assignment is and shall be primary and on a parity with the Property conveyed by the Mortgage and not secondary. All amounts collected hereunder, after deducting the expenses of operation of the Property and

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after deducting the expenses of collection, shall be applied on account of the indebtedness secured by the Mortgage, or in such other manner as may be provided for in the Mortgage, or in any general assignment of rents given as additional security for said indebtedness. Nothing herein contained shall be construed as constituting Assignee a trustee or mortgagee in possession.

5. Upon issuance of a deed or deeds pursuant to foreclosure of the Mortgage, all right, title and interest of Assignor in and to the Leases shall, by virtue of this instrument, thereupon vest in and become the absolute property of the grantee or grantees in such deed or deeds without any further act or assignment by Assignor. Assignor hereby irrevocably appoints Assignee and its successors and assigns, as its agent and attorney in fact, to execute all instruments of assignment or further assurance in favor of such grantee or grantees in such deed or deeds, as may be necessary or desirable for such purpose.

6. In the exercise of the powers herein granted Assignee, no liability shall be asserted or enforced against Assignee, all such liability being hereby expressly waived and released by Assignor. Assignee shall not be obligated to perform or discharge any obligation, duty or liability under the Leases, or under or by reason of this Assignment, and Assignor shall and does hereby agree to indemnify, defend, protect and hold forever free and harmless the Assignee of, from and against any and all liability, loss, cost, expense or damage which it may or might incur under the Leases or under or by reason of this Assignment

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and of, from and against any and all claims, suits, judgments and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases, except such liability, loss, cost, expense, damage, claim, suit, judgment and demand arising out of the gross negligence or willful misconduct of Assignee. Should Assignee incur any such liability, loss, cost, expense or damage under the Leases or under or by reason of this Assignment, or in the defense of any such claims, suits, judgments or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees and expenses, shall be secured hereby, and Assignor shall reimburse Assignee therefor immediately upon demand.

7. Although it is the intention of the parties that this instrument shall be a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Assignee shall not exercise any of the rights or powers herein conferred upon it until an Event of Default shall occur under the terms and provisions of this Assignment or of the Note, Mortgage, Loan Agreement or any item of the Additional Collateral. Upon the occurrence of an Event of Default, Assignee shall be entitled, upon notice to the Lessee, to all rents and other amounts then due under the Leases and thereafter accruing, and this Assignment shall constitute a direction and full authority to the Lessee to pay all such

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amounts to Assignee without proof of the default relied upon. The Lessee is hereby irrevocably authorized to rely upon and comply with (and shall be fully protected in so doing) any notice or demand by Assignee for the payment to Assignee of any rental or other sums which may be or thereafter become due under the Leases, or for the performance of any of Lessee's undertakings under the Leases and shall have no right or duty to inquire as to whether any default under the Mortgage or the Additional Collateral has actually occurred or is then existing.

8. Each of the following shall constitute an Event of Default under this Assignment:

(a) If an Event of Default as defined in the Loan Agreement shall occur thereunder, or if an Event of Default shall be declared or occur under and as defined in any of the terms and provisions of any of the Note, Mortgage or any item of the Additional Collateral or any document or instrument (other than this Assignment) securing the indebtedness secured hereby.

(b) If default shall be made in the due and punctual performance of any other term, covenant, provision, agreement, condition or obligation herein contained which is not included in the Note, Mortgage, Loan Agreement or any item of the Additional Collateral or any document or instrument (other than this Assignment) securing the indebtedness secured hereby, and (1) if such default is a monetary default, such default shall continue for



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five days after service of written notice thereof, and (2) if such default is a non-monetary default, such default shall continue for 30 days after service of written notice thereof.

9. This Assignment is intended to be supplementary to and not in substitution for or in derogation of any assignment of rents to secure said indebtedness contained in the Mortgage or in any other document.

10. This Assignment shall include any extensions and renewals of the Leases, and any reference herein to the Leases shall be construed as including any such extensions and renewals.

11. This Assignment shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto. The words "Assignor," "Assignee," and "Lessee," wherever used herein, shall include the persons named herein and designated as such and their respective successors and assigns, and all words and phrases shall be taken to include the singular or plural and masculine, feminine or neuter gender, as may fit the case. The Trustee and Beneficiary shall be jointly and severally liable hereunder, and the release or discharge of either one of them from liability hereunder, in whole or in part, shall not affect the liability of the other under this Assignment.

12. All of the rights, powers, privileges and immunities herein granted and assigned to Assignee shall also inure to its successors and assigns, including all holders, from time to time, of said note or notes.

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13. All notices, waivers, demands, requests or other communications required or permitted hereunder shall, unless otherwise expressly provided, be in writing and be deemed to have been properly given, served and received (i) if delivered by messenger, when delivered, (ii) if mailed, on the third business day after deposit in the United States Mail, certified or registered, postage prepaid, return receipt requested, (iii) if telexed, telegraphed or telecopied, six hours after being dispatched by telex, telegram or telecopy, if such sixth hour falls on a business day within the hours of 9:00 a.m. through 4:00 p.m. of the time in effect at the place of receipt, or at 9:00 a.m. on the next business day thereafter if such sixth hour is later than 4:00 p.m., or (iv) if delivered by reputable overnight express courier, freight prepaid, the next business day after delivery to such courier; in every case addressed to the party to be notified as follows:

In the case of Assignor, to:

Music Center Associates Limited  
Partnership  
c/o Discovery South Group, Ltd.  
207 West Goethe  
Chicago, Illinois 60610  
Fax: (312) 266-9568

with a copy to:

John F. Dickens, Esq.  
Rudnick & Wolfe  
203 North LaSalle Street  
Chicago, Illinois 60601-1293  
Fax: (312) 984-2299

In the case of Assignee, to:

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Continental Bank, N.A.  
231 South LaSalle Street  
4th Floor  
Chicago, Illinois 60697  
Attn: Mr. Victor Stasica  
Fax: (312) 828-1974

with a copy to:

Thomas Van Beckum, Jr., Esq.  
Law Department  
Continental Bank, N.A.  
105 West Adams  
9th Floor  
Chicago, Illinois 60603  
Fax: (312) 828-7104

or to such other address(es) or addressee(s) as any party entitled to receive notice hereunder shall designate to the others in the manner provided herein for the service of notices. Rejection or refusal to accept or inability to deliver because of changed address or because no notice of changed address was given, shall be deemed receipt.

14. Initially capitalized terms used herein and not otherwise defined have the meanings given them in the Loan Agreement.

15. This Assignment is executed by Steel City National Bank of Chicago, in its capacity as Trustee aforesaid, not personally, but solely as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee. All covenants, agreements and conditions to be performed by Steel City National Bank of Chicago as Trustee hereunder are undertaken by it solely as Trustee as aforesaid and not

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individually, and no personal liability shall be asserted or enforceable against Steel City National Bank of Chicago, personally, by reason of any of such covenants, agreements, representations or warranties contained herein; but nothing herein contained shall be deemed a release or impairment of the indebtedness evidenced hereby or incurred pursuant hereto, nor prejudice the rights of Assignee from exercising any of its rights or remedies hereunder or under the Loan Agreement or any or all of the Loan Documents, or from securing a deficiency or personal judgment against any subsequent owner of the Property who assumes the indebtedness evidenced hereby or incurred pursuant hereto; and nothing herein contained shall release, waive, modify or discharge the liability and responsibility of Beneficiary or of any Guarantors or any other persons or entities in respect hereof.

IN WITNESS WHEREOF, this Assignment has been executed and delivered as of the date first above written.

**ASSIGNOR**

**TRUSTEE:**

**STEEL CITY NATIONAL BANK OF CHICAGO,  
as Trustee aforesaid**

Trustee's Rider Attached Hereto and Made A Part Hereof

By: \_\_\_\_\_  
Its \_\_\_\_\_

Attest: \_\_\_\_\_  
Its \_\_\_\_\_

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BENEFICIARY:

MUSIC CENTER ASSOCIATES  
LIMITED PARTNERSHIP,  
an Illinois limited partnership

By: DISCOVERY SOUTH GROUP, LTD.,  
an Illinois corporation  
Its General Partner

By: \_\_\_\_\_  
Its \_\_\_\_\_

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1 STATE OF ILLINOIS                    )  
2    )     SS.  
3 COUNTY OF COOK                     )

4                    I, the undersigned, a Notary Public in and for said  
5 County, in the State aforesaid, DO HEREBY CERTIFY, that  
6 \_\_\_\_\_ and \_\_\_\_\_, President of Steel  
7 City National Bank of Chicago and Secretary of said Bank, respec-  
8 tively who are personally known to me to be the same persons  
9 whose names are subscribed to the foregoing instrument as  
10 President and Secretary, respectively, appeared before me this  
11 day in person and acknowledged that they signed and delivered the  
12 said instrument as their own free and voluntary act and as the  
13 free and voluntary act of said Bank, as Trustee as aforesaid, for  
14 the uses and purposes therein set forth; and the said \_\_\_\_\_  
15 then and there acknowledged that as custodian of the corporate  
16 seal of said bank (s)he did affix the corporate seal of said  
17 Bank to said instrument as his(her) own free and voluntary act  
18 and as the free and voluntary act of said Bank, as Trustee and  
19 aforesaid, for the uses and purposes therein set forth.

20                    GIVEN under my hand and Notarial Seal this \_\_\_\_ day of  
21 \_\_\_\_\_, 19\_\_.

22 \_\_\_\_\_  
23 Notary Public

24  
25 My Commission Expires:  
26

27  
28 \_\_\_\_\_  
29

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1 STATE OF ILLINOIS )  
2 ) SS.  
3 COUNTY OF COOK )

4 I, the undersigned, a Notary Public in and for said  
5 County, in the State aforesaid, DO HEREBY CERTIFY, that  
6 RENÉE K. SZUKALA and JANE H. [unclear], President and  
7 Secretary respectively of Discovery South Group, Ltd., an  
8 Illinois corporation, the general partner of Music Center  
9 Associates Limited Partnership, an Illinois limited partnership,  
10 who are personally known to me to be the same persons whose names  
11 are subscribed to the foregoing instrument as President and  
12 Secretary, respectively, appeared before me this day in person  
13 and acknowledged that they signed and delivered the said instru-  
14 ment as their own free and voluntary act and as the free and vol-  
15 untary act of said company and as the free and voluntary act of  
16 said partnership, for the uses and purposes therein set forth;  
17 and the said Secretary then and there acknowledged that as custo-  
18 dian of the corporate seal of said bank, (s)he did affix the cor-  
19 porate seal of said company to said instrument as his(her) own  
20 free and voluntary act and as the free and voluntary act of said  
21 company and as the free and voluntary act of said partnership,  
22 for the uses and purposes therein set forth.

23 GIVEN under my hand and Notarial Seal this 27<sup>th</sup> day of  
24 May, 1990.

25 Renee K. Szukala  
26 Notary Public

27 My Commission Expires:  
28  
29  
30  
31  
32



33 This instrument was prepared and when recorded return to:

34 Scott H. Power  
35 Bell, Boyd & Lloyd  
36 Three First National Plaza  
37 Suite 3200  
38 Chicago, Illinois 60602

(Commons - 17th & [unclear])  
ADDRESS: AND  
ECONOMIK BLDG.  
TREBLE PARK, IL.

PLA. 31-06-405-001; 31-06-406-001;  
31-07-201-001; 31-07-101-001;  
31-07-102-001 AND 31-07-200-001

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## Exhibit A

### LEGAL DESCRIPTION

#### PARCEL 1:

THE SOUTHWEST 1/4 AND THE SOUTHEAST 1/4 OF THE SOUTHEAST FRACTIONAL 1/4 OF SECTION 6, TOWNSHIP 35 NORTH, RANGE 13, LYING SOUTH OF THE INDIAN BOUNDARY LINE EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 7, TOWNSHIP 35 NORTH, RANGE 13, LYING SOUTH OF THE INDIAN BOUNDARY LINE, EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPT THAT PART THEREOF BEING BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF THE NORTHEAST 1/4 OF SAID NORTHEAST 1/4; THENCE NORTH 89°-58'-42" WEST, ALONG THE SOUTH LINE OF THE NORTHEAST 1/4 OF SAID NORTHEAST 1/4, 1327.91 FEET TO THE WEST LINE OF THE NORTHEAST 1/4 OF SAID NORTHEAST 1/4; THENCE NORTH 0°-00'-45" EAST, ALONG THE LAST DESCRIBED LINE, 772.36 FEET; THENCE NORTH 89°-56'-22" EAST 750.37 FEET; THENCE SOUTH 58°-10'-54" EAST 679.96 FEET TO THE EAST LINE OF SAID NORTHEAST 1/4; THENCE SOUTH 0°-03'-20" WEST, ALONG THE LAST DESCRIBED LINE, 415.16 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

#### PARCEL 3:

THAT PART OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SECTION 7, TOWNSHIP 35 NORTH, RANGE 13, TOGETHER WITH THAT PART OF THE NORTH 1/2 OF THE NORTHWEST FRACTIONAL 1/4 OF SECTION 7, TOWNSHIP 35 NORTH, RANGE 13, LYING SOUTH OF THE INDIAN BOUNDARY LINE, EAST OF THE THIRD PRINCIPAL MERIDIAN, BEING BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF THE NORTHEAST 1/4 OF SAID SECTION 7; THENCE SOUTH 89°-58'-16" EAST ALONG THE NORTH LINE OF THE NORTHEAST 1/4 OF SAID SECTION 7, 1328.90 FEET TO THE EAST LINE OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 7; THENCE SOUTH 0°-00'-45" WEST ALONG THE LAST DESCRIBED LINE 364.17 FEET; THENCE NORTH 89°-58'-16" WEST 2391.37 FEET; THENCE WESTERLY ALONG A CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 750.00 FEET AND A CHORD THAT BEARS NORTH 81°-10'-10" WEST A CHORD DISTANCE OF 229.53 FEET, AN ARC LENGTH OF 230.43 FEET; THENCE NORTHWESTERLY ALONG A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 930.74 FEET AND A CHORD THAT BEARS NORTH 61°-52'-45" WEST A CHORD DISTANCE OF 338.85 FEET, AN ARC LENGTH OF 340.75 FEET TO THE SOUTHEASTERLY LINE OF GEORGE BRENNAN HIGHWAY AS PER DOCUMENT NO. 11231373; THENCE NORTH 44°-46'-37" EAST ALONG THE LAST DESCRIBED LINE 134.12 FEET; THENCE SOUTH 45°-13'-27" EAST, 63.67 FEET; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 472.00 FEET AND A CHORD THAT BEARS SOUTH 58°-47'-43" EAST A CHORD DISTANCE OF 221.53 FEET, AN ARC LENGTH OF 223.61 FEET; THENCE EASTERLY ALONG A CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 650.00 FEET AND A CHORD THAT BEARS SOUTH 81°-10'-10" EAST A CHORD DISTANCE OF 198.92 FEET, AN ARC LENGTH OF 199.71 FEET; THENCE SOUTH 89°-58'-16" EAST, 1062.64 FEET TO THE WEST LINE OF THE NORTHEAST 1/4 OF SAID SECTION 7; THENCE NORTH 0°-01'-48" WEST ALONG THE LAST DESCRIBED LINE 264.17 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.



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This Assignment of Assets and Liabilities is executed by STEEL CITY NATIONAL BANK, not personally, but as Trustee under Trust No. 3059, and it is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the Trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against the STEEL CITY NATIONAL BANK or for any of the beneficiaries under said Trust Agreement, on account of this instrument or on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

DATE: 5/24/90

STEEL CITY NATIONAL BANK  
as Trustee, and not personally

BY: Maureen R. Regel

ATTEST: Maureen J. Quinn  
Trust Officer

CORPORATE SEAL

STATE OF ILLINOIS  
COUNTY OF COOK

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that the above named Maureen J. Quinn Vice President - ~~Cashier~~ and Trust Officer of said STEEL CITY NATIONAL BANK, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they signed and delivered the said instrument as such officers of said Bank and caused the seal of said Bank to be thereunto affixed as their free and voluntary act and as the free and voluntary act and deed of said Bank, as thereunto Trustee aforesaid, for the uses and purposes therein set forth, GIVEN under my hand and Notarial Seal, this 24th day of May 1990



Azalia Gomez  
Notary Public

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CAROL JOSELYN  
REGISTRAR OF TITLES

1800 MAY 24 PM 4: 51



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NEAR NORTH NATIONAL TITLE  
222 N. LA SALLE BLDG.  
CHICAGO, ILL. 60610