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LAKE COUNTY TRUST COMPANY, as trustee  
under a Trust Agreement dated June 15, 1985,  
and known as Trust No. 3501

and

SIX ANCHORS LIMITED PARTNERSHIP

TO

THE TRUSTEES OF MELLON PARTICIPATING MORTGAGE TRUST  
COMMERCIAL PROPERTIES SERIES 85/10

MORTGAGE  
(Southlake Mall)

Dated: as of October 31, 1985

Location: Merrillville, Indiana

PREPARED BY AND  
RECORD AND RETURN TO:

Sage Gray Todd & Sims  
Two World Trade Center  
100th Floor  
New York, New York 10048

Attention: John F. Sheehan

RUDOLPH CLAY  
RECORDER

OCT 31 10 29 AM '85

STATE OF ILLINOIS  
LAKE COUNTY  
FILED IN REC'D

ct.  
46.00

MORTGAGE  
(Fee)

THIS MORTGAGE made as of the 31st day of October, 1985, between LAKE COUNTY TRUST COMPANY, as trustee under Trust Agreement dated June 15, 1985, and known as Trust No. 3501 (hereinafter referred to as the Land Trustee) and SIX ANCHORS LIMITED PARTNERSHIP, a Maryland limited partnership having an office at Suite 650, 502 Washington Avenue, Towson, Maryland (hereinafter referred to as the Beneficiary, and hereinafter collectively with the Land Trustee referred to as Mortgagor) and THE TRUSTEES OF MELLON PARTICIPATING MORTGAGE TRUST COMMERCIAL PROPERTIES SERIES 85/10, a Massachusetts business trust having an office at Mellon Financial Center, 551 Madison Avenue, New York, New York (hereinafter referred to as Mortgagee),

W I T N E S S E T H:

To secure the payment of an indebtedness in the principal sum of SIXTY-EIGHT MILLION and 00/100 Dollars (\$68,000,000.00), lawful money of the United States of America, to be paid with interest (said indebtedness, interest and all other sums which may or shall become due hereunder being hereinafter collectively referred to as the Debt) according to a certain note dated the date hereof given by Mortgagor to Mortgagee (hereinafter referred to as the Note), Mortgagor has mortgaged, given, granted, bargained, sold, aliened, enfeoffed, conveyed, confirmed and assigned, and by these presents does mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm and assign unto Mortgagee all right, title and interest of Mortgagor now owned, or hereafter acquired, in and to the property described in Exhibit A attached hereto (hereinafter referred to as the Premises) and the buildings and improvements now or hereafter located thereon (hereinafter referred to as the Improvements);

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

(a) all easements, rights-of-way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Mortgaged Property and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Premises to the center line thereof;

possession of Mortgagor. Upon default in any such payment, Mortgagor will vacate and surrender possession of the Mortgaged Property to Mortgagee, or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise. Nothing contained in this paragraph shall be construed as imposing on Mortgagee any of the obligations of the lessor under the Leases.

8. Maintenance of the Mortgaged Property. Mortgagor shall cause the Mortgaged Property to be maintained in good condition and repair and will not commit or suffer to be committed any waste of the Mortgaged Property. Provided the CPS Lease shall be in full force and effect, any change or alteration of the Improvements and the Equipment in excess of \$500,000 shall not be permitted without the prior written consent of Mortgagee. Mortgagor shall, except as may be expressly permitted pursuant to the provisions of the CPS Lease, promptly comply with all existing and future governmental laws, orders, ordinances, rules and regulations affecting the Mortgaged Property, or the use thereof, and shall promptly repair, replace or rebuild any part of the Mortgaged Property which may be damaged or destroyed by any casualty (including any casualty for which insurance was not obtained or obtainable) or which may be affected by any Taking by any public or quasi-public authority through eminent domain or otherwise, and shall complete and pay for, within a reasonable time, any structure at any time in the process of construction or repair on the Premises. If such casualty shall be covered by the Policies, Mortgagor's obligation to repair, replace or rebuild such portion of the Mortgaged Property shall be contingent upon Mortgagee paying Mortgagor the proceeds of the Policies, or such portion thereof as shall be sufficient to complete such repair, replacement or rebuilding, whichever is less. Subject to the provisions of the CPS Lease, Mortgagor will not, without obtaining the prior consent of Mortgagee, initiate, join in or consent to any private restrictive covenant, zoning ordinance, or other public or private restrictions, limiting or defining the uses which may be made of the Mortgaged Property or any part thereof.

9. Estoppel Certificates. Mortgagor, within ten (10) days after request by Mortgagee and at Mortgagor's expense, will furnish Mortgagee with a statement, duly acknowledged and certified (i) setting forth the amount of the Debt and the offsets or defenses thereto, if any, and (ii) that the REA Agreement (as hereinafter defined) (a) is in full force and effect, (b) no notice of default which remains uncured has been given to the Mortgagor by any other party to the REA Agreement or by Mortgagor to any other such party, (c) no condition exists which would give rise to any material default or claim of a material default on the part of Mortgagor or, to the actual knowledge of Mortgagor, any other party under the REA Agreement, and (d) whether the REA Agreement has been modified or amended, and if modified or amended, a copy of such modification or amendment is attached to said certificate.

10. Transfer or Encumbrance of the Mortgaged Property. No part of the Mortgaged Property and no part or any interest in Beneficiary or in the Land Trust Agreement shall in any manner be further encumbered, sold, transferred or conveyed, or permitted to be further encumbered, sold, transferred or

conveyed without the consent of Mortgagee. The provisions of this paragraph shall apply to each and every such further encumbrance, sale, transfer or conveyance, regardless of whether or not Mortgagee has consented to, or waived by its action or inaction its rights hereunder with respect to any such previous further encumbrance, sale, transfer or conveyance. Notwithstanding anything to the contrary contained in this paragraph, the consent of Mortgagee shall not be required in connection with (i) any transfer or sale of or the grant of any security interest in a limited partnership interest in Beneficiary, (ii) any involuntary transfer of a general partnership interest in Beneficiary caused by the death or incapacity of a general partner, or (iii) a transfer of a general partnership interest in Beneficiary between DWT Venture, Incorporated and Dennis W. Townsend. Mortgagee acknowledges and agrees that the Mortgaged Property may be transferred or conveyed upon compliance with all of the provisions set forth in paragraph 49 hereof with respect to the Exchange Property (as hereinafter defined).

11. Notice. Any notice, request, demand, statement or consent made hereunder shall be in writing and shall be sent by registered or certified mail, return receipt requested, and shall be deemed given when postmarked and addressed as follows:

If to Mortgagor:

Six Anchors Limited Partnership  
Suite 650  
502 Washington Avenue  
Towson, Maryland 21204

Attention: Dennis W. Townsend

If to Mortgagee:

The Trustees of Mellon Participating Mortgage  
Trust Commercial Properties Series 85/10  
Mellon Financial Center  
551 Madison Avenue  
New York, New York 10022

Attention: Arlen R. Dahlquist

Each party may designate a change of address by notice to the other party, given at least fifteen (15) days before such change of address is to become effective.

12. Sale of Mortgaged Property. If this Mortgage is foreclosed, the Mortgaged Property, or any interest therein, may, at the discretion of Mortgagee, be sold in one or more parcels or in several interests or portions and in any order or manner.

13. Changes in Laws Regarding Taxation. In the event of the passage after the date of this Mortgage of any law of the State in which the Premises are located deducting from the value of real property for the purpose of taxation any lien or encumbrance thereon or changing in any way the laws for the taxation of mortgages or debts secured by mortgages for state or local purposes or the manner of the collection of any such taxes, and imposing a tax, either directly or indirectly, on this Mortgage, the Note or the Debt, Mortgagor shall, if permitted by law, pay any tax imposed as a result of any such law within the statutory period or within fifteen (15) days after demand by Mortgagee, whichever is less, provided, however, that if, in the opinion of the attorneys for Mortgagee, Mortgagor is not permitted by law to pay such taxes, Mortgagee shall have the right, at its option, to declare the Debt due and payable on a date specified in a prior notice to Mortgagor of not less than thirty (30) days.

14. No Credits on Account of the Debt. Mortgagor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes assessed against the Mortgaged Property or any part thereof and no deduction shall otherwise be made or claimed from the taxable value of the Mortgaged Property, or any part thereof, by reason of this Mortgage or the Debt.

15. Offsets, Counterclaims and Defenses. Any assignee of this Mortgage and the Note shall take the same free and clear of all offsets, counterclaims or defenses of any nature whatsoever which Mortgagor may have against any assignor of this Mortgage and the Note and no such offset, counterclaim or defense shall be interposed or asserted by Mortgagor in any action or proceeding brought by any such assignee upon this Mortgage or the Note and any such right to interpose or assert any such offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Mortgagor.

16. Other Security for the Debt. Mortgagor shall observe and perform all of the terms, covenants and provisions contained in the Note and in all other mortgages and other instruments or documents evidencing, securing or guaranteeing payment of the Debt, in whole or in part, or otherwise executed and delivered in connection with the Note, this Mortgage or the loan evidenced and secured thereby.

17. Documentary Stamps. If at any time the United States of America, any state thereof or any governmental subdivision of any such state, shall require revenue or other stamps to be affixed to the Note or this Mortgage, Mortgagor will pay for the same, with interest and penalties thereon, if any.

18. Right of Entry. Mortgagee and its agents shall have the right, subject to the provisions of the CPS Lease, to enter and inspect the Mortgaged Property at all reasonable times.

19. Books and Records. Beneficiary will keep and maintain or will cause to be kept and maintained on a fiscal year basis in accordance with

generally accepted accounting practices consistently applied proper and accurate books, records and accounts reflecting all of the financial affairs of Beneficiary and all items of income and expense in connection with the operation of the Mortgaged Property or in connection with any services, equipment or furnishings provided in connection with the operation of the Mortgaged Property, whether such income or expense be realized by Beneficiary or by any other person whatsoever excepting lessees unrelated to and unaffiliated with Mortgagor who have leased from Mortgagor portions of the Mortgaged Property for the purpose of occupying the same. Mortgagee shall have the right from time to time at all times during normal business hours to examine such books, records and accounts at the office of Beneficiary or other person maintaining such books, records and accounts and to make copies or extracts thereof as Mortgagee shall desire. Beneficiary will furnish Mortgagee annually, within sixty (60) days next following the end of each fiscal year of Beneficiary, with (i) a complete executed copy of a financial statement prepared by a certified public accountant acceptable to Mortgagee covering the operation of the Mortgaged Property for such fiscal year and containing a fully itemized statement of profit and loss and of surplus and a balance sheet, and (ii) a complete executed copy of a financial statement of Beneficiary for such fiscal year prepared by a certified public accountant acceptable to Mortgagee and containing a fully itemized statement of profit and loss and of surplus and a balance sheet. Within sixty (60) days after the end of each fiscal year of Beneficiary, Beneficiary shall furnish to Mortgagee a certificate signed by a duly authorized representative of Beneficiary certifying on the date thereof either that there does or does not exist an event which constitutes, or which upon notice or lapse of time or both would constitute, a default under the Note or this Mortgage and if such event exists, the nature thereof and the period of time it has existed. Beneficiary shall furnish to Mortgagee, within ten (10) days after request, such further detailed information covering the operation of the Mortgaged Property and the financial affairs of Beneficiary, any affiliate of Beneficiary, as may be requested by Mortgagee.

20. Performance of Other Agreements. Mortgagor shall observe and perform each and every term to be observed or performed by Mortgagor pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Mortgaged Property.

21. Defaults. The Debt shall become due at the option of Mortgagee upon the occurrence of any one of the following events:

(a) if any portion of the Debt is not paid within ten (10) days after the same is due;

(b) except as specifically provided herein or except as may be permitted pursuant to the provisions of the CPS Lease, if Mortgagor shall fail to pay or cause to be paid within thirty (30) days of notice and demand by Mortgagee, any instalment of any assessment against the Mortgaged Property for local improvements heretofore or hereafter laid, which assessment is or may become payable in annual or periodic instalments and is or may become a lien on the Mortgaged Property,

notwithstanding the fact that such instalment may not be due and payable at the time of such notice and demand;

(c) if any Federal tax lien is filed against Mortgagor or the Mortgaged Property and the same is not discharged of record within thirty (30) days;

(d) except as may be specifically provided in paragraph 10 and/or 49 hereof, if without the consent of Mortgagee any part of the Mortgaged Property or any interest therein or any interest in Beneficiary or any interest in the Land Trust Agreement is in any manner further encumbered, sold, transferred or conveyed, or except as may be specifically provided in paragraph 8 hereof, if any Improvement or the Equipment (except for normal replacement of the Equipment) is removed, demolished or materially altered, or if the Mortgaged Property is not kept in good condition and repair;

(e) if the Policies are not kept in full force and effect, or if the Policies are not assigned and delivered to Mortgagee upon request;

(f) if without the consent of Mortgagee any Leases, including the CPS Lease are made, cancelled or modified or if any portion of the Rents is paid for a period of more than one (1) month in advance or if any of the Rents are further assigned;

(g) if any representation or warranty of Mortgagor in any certificate, report, financial statement or other instrument furnished in connection with the making of the Note or this Mortgage shall prove false or misleading in any material respect;

(h) if Mortgagor shall make an assignment for the benefit of creditors;

(i) if a court of competent jurisdiction enters a decree or order for relief with respect to Mortgagor under Title 11 of the United States Code as now constituted or hereafter amended or under any other applicable Federal or state bankruptcy law or other similar law, or if such court enters a decree or order appointing a receiver, liquidator, assignee, trustee, sequestrator (or similar official) of Mortgagor, or of any substantial part of their respective properties, or if such court decrees or orders the winding up or liquidation of the affairs of Mortgagor;

(j) if Mortgagor files a petition or answer or consent seeking relief under Title 11 of the United States Code as now constituted or hereafter amended, or under any other applicable Federal or state bankruptcy law or other similar law, or if Mortgagor consents to the institution of proceedings thereunder or to the filing of any such petition or to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of Mortgagor, or of any substantial part of their

respective properties, or if Mortgagor fails generally to pay their respective debts as such debts become due, or if Mortgagor takes any action in furtherance of any action described in this subparagraph;

(k) if Mortgagor or other person shall be in default beyond the expiration of any applicable grace or cure period under the Note or under any other mortgage, instrument or document evidencing, securing or guaranteeing payment of the Debt, in whole or in part, or otherwise executed and delivered in connection with the Note, this Mortgage or the loan evidenced and secured thereby;

(l) if Mortgagor shall continue to be in default under any of the other terms, covenants or conditions of this Mortgage for ten (10) days after notice from Mortgagee in the case of any default which can be cured by the payment of a sum of money or for thirty (30) days after notice from Mortgagee in the case of any other default, provided that if such default cannot reasonably be cured within such thirty (30) day period and Mortgagor shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as it shall require Mortgagor in the exercise of due diligence to cure such default;

(m) if Mortgagor shall be in default beyond the expiration of any applicable grace or cure period under any mortgage or deed of trust covering any part of the Mortgaged Property whether superior or inferior or in lien to this Mortgage;

(n) if the Mortgaged Property shall become subject (i) to any tax lien, other than a lien for local real estate taxes and assessments not due and payable, or (ii) to any mechanic's, materialman's or other lien and such lien shall remain undischarged or unbonded for thirty (30) days;

(o) if there shall be a default beyond the expiration of any applicable grace or cure period by the individual mortgagors under any of the Additional Mortgages (as hereinafter defined);

(p) if Mortgagor shall be in default beyond the expiration of any applicable grace or cure period under the CPS Lease;

(q) if the Land Trust Agreement shall be cancelled, modified or amended without the consent of Mortgagee; or

(r) if Beneficiary shall be in default beyond the expiration of any applicable grace or cure period under the REA Agreement.

22. Right to Cure Defaults. If default beyond the expiration of any applicable grace or cure period in the performance of any of the covenants of Mortgagor herein occurs, Mortgagee may, subject to the provisions of the CPS Lease, remedy the same and for such purpose shall have the right to



enter upon the Mortgaged Property or any portion thereof without thereby becoming liable to Mortgagor or any person in possession thereof holding under Mortgagor. If Mortgagee shall remedy such a default or appear in, defend, or bring any action or proceeding to protect its interest in the Mortgaged Property or to foreclose this Mortgage or collect the Debt, the costs and expenses thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this paragraph, shall be paid by Mortgagor to Mortgagee upon demand. All such costs and expenses incurred by Mortgagee in remedying such default or in appearing in, defending, or bringing any such action or proceeding shall be paid by Mortgagor to Mortgagee upon demand, with interest at a rate per annum equal to the lesser on a daily basis of (i) 20%, or (ii) the maximum interest rate which Mortgagor may by law pay, for the period after notice from Mortgagee that such costs or expenses were incurred to the date of payment to Mortgagee. All such costs and expenses incurred by Mortgagee pursuant to the terms of this Mortgage, with interest, shall be secured by this Mortgage.

23. Late Payment Charge. If any portion of the Debt is not paid within ten (10) days after the date on which it is due, Mortgagor shall pay to Mortgagee upon demand an amount equal to 3% of such unpaid portion of the Debt as a late payment charge, and such amount shall be secured by this Mortgage.

24. Appointment of Receiver. Mortgagee, in any action to foreclose this Mortgage or upon the actual or threatened waste to any part of the Mortgaged Property or upon the occurrence of any default hereunder, shall be at liberty, without notice, to apply for the appointment of a receiver of the Rents, and shall be entitled to the appointment of such receiver as a matter of right, without regard to the value of the Mortgaged Property as security for the Debt, or the solvency or insolvency of any person then liable for the payment of the Debt.

25. Non-Waiver. The failure of Mortgagee to insist upon strict performance of any term of this Mortgage shall not be deemed to be a waiver of any term of this Mortgage. Mortgagor shall not be relieved of Mortgagor's obligation to pay the Debt at the time and in the manner provided for its payment in the Note and this Mortgage by reason of (i) failure of Mortgagee to comply with any request of Mortgagor to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the Note or any other mortgage, instrument or document evidencing, securing or guaranteeing payment of the Debt or any portion thereof, (ii) the release, regardless of consideration, of the whole or any part of the Mortgaged Property or any other security for the Debt, or (iii) any agreement or stipulation between Mortgagee and any subsequent owner or owners of the Mortgaged Property or other person extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Mortgage or any other mortgage, instrument or document evidencing, securing or guaranteeing payment of the Debt or any portion thereof, without first having obtained the consent of Mortgagor, and in the latter event, Mortgagor shall continue to be obligated to pay the Debt at the time and in the manner provided in the Note and this Mortgage, as so extended, modified and

supplemented, unless expressly released and discharged by Mortgagee. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien, encumbrance, right, title or interest in or to the Mortgaged Property, Mortgagee may release any person at any time liable for the payment of the Debt or any portion thereof or any part of the security held for the Debt and may extend the time of payment or otherwise modify the terms of the Note or this Mortgage, including, without limitation, a modification of the interest rate payable on the principal balance of the Note, without in any manner impairing or affecting this Mortgage or the lien thereof or the priority of this Mortgage, as so extended and modified, as security for the Debt over any such subordinate lien, encumbrance, right, title or interest. Mortgagee may resort for the payment of the Debt to any other security held by Mortgagee in such order and manner as Mortgagee, in its discretion, may elect. Mortgagee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose this Mortgage. Mortgagee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every additional right and remedy now or hereafter afforded by law. The rights of Mortgagee under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

26. Prepayment After Event of Default. If following the occurrence of any default beyond the expiration of any applicable grace or cure period under this Mortgage and an exercise by Mortgagee of its option to declare the Debt immediately due, Mortgagor shall tender payment of an amount sufficient to satisfy the entire Debt at any time prior to a sale of the Mortgaged Property, such tender by Mortgagor shall be deemed to be a voluntary prepayment of the principal balance of the Note, and Mortgagor shall, in addition to the entire Debt, also pay to Mortgagee the Early Payment Fee (as defined and specified in the Note).

27. Liability. If Mortgagor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several.

28. Construction. The terms of this Mortgage shall be construed in accordance with the laws of the State in which the Premises are located.

29. Security Agreement. This Mortgage constitutes both a real property mortgage and a "security agreement", within the meaning of the Uniform Commercial Code, and the Mortgaged Property includes both real and personal property and all other rights and interest, whether tangible or intangible in nature of Mortgagor in the Mortgaged Property. Mortgagor by executing and delivering this Mortgage has granted to Mortgagee, as security for the Debt, a security interest in the Equipment. If Mortgagor shall default beyond the expiration of any applicable grace or cure period under the Note or this Mortgage, Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without

demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Equipment or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Equipment. Upon request or demand of Mortgagee, Mortgagor shall at its expense assemble the Equipment and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Mortgagor shall pay to Mortgagee on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by Mortgagee in protecting its interest in the Equipment and in enforcing its rights hereunder with respect to the Equipment. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Equipment sent to Mortgagor in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute reasonable notice to Mortgagor. The proceeds of any disposition of the Equipment, or any part thereof, may be applied by Mortgagee to the payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper.

30. Further Acts, etc. Mortgagor will, at the cost of Mortgagor, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as Mortgagee shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring and confirming unto Mortgagee the property and rights hereby mortgaged or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage and, on demand, will execute and deliver and hereby authorizes Mortgagee to execute in the name of Mortgagor to the extent Mortgagee may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien hereof upon the Mortgaged Property.

31. Headings, etc. The headings and captions of 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.

32. Filing of Mortgage, etc. 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 Mortgagee in the Mortgaged Property. Mortgagor will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any mortgage 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 supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance. Mortgagor shall hold harmless and indemnify 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.

33. Usury Laws. This Mortgage and the Note are subject to the express condition that at no time shall Mortgagor be obligated or required to pay interest on the principal balance due under the Note at a rate which could subject the holder of the Note to either civil or criminal liability as a result of being in excess of the maximum interest rate which Mortgagor is permitted by law to contract or agree to pay. If by the terms of this Mortgage or the Note Mortgagor is at any time required or obligated to pay interest on the principal balance due under the Note at a rate in excess of such maximum rate, the rate of interest under the Note shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of the Note.

34. Sole Discretion of Mortgagee. Wherever pursuant to this Mortgage, Mortgagee exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Mortgagee, the decision of Mortgagee to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole discretion of Mortgagee and shall be final and conclusive.

35. Recovery of Sums Required To Be Paid. Mortgagee shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced.

36. Marshalling. Mortgagor waives and releases any right to have the Mortgaged Property marshalled.

37. Authority. Mortgagor (and the undersigned representative of Mortgagor, if any) has full power, authority and legal right to execute this Mortgage and to mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm and assign the Mortgaged Property pursuant to the terms hereof and to keep and observe all of the terms of this Mortgage on Mortgagor's part to be performed.

38. Actions and Proceedings. Subject to the provisions of the CPS Lease, 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 Mortgagor, which

(b) all machinery, apparatus, equipment, fittings, fixtures and other property of every kind and nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Mortgaged Property, or appurtenances thereto, and usable in connection with the present or future operation and occupancy of the Mortgaged Property and all building equipment, materials and supplies of any nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Mortgaged Property (hereinafter collectively referred to as the Equipment), and the right, title and interest of Mortgagor in and to any of the Equipment which may be subject to any security agreements (as defined in the Uniform Commercial Code of the State in which the Premises are located), superior in lien to the lien of this Mortgage;

(c) subject to the provisions of the CPS Lease (as hereinafter defined), all awards or payments, including interest thereon, and the right to receive the same, which may be made with respect to the Mortgaged Property, whether from the exercise of the right of eminent domain (including any transfer made in lieu of the exercise of said right), or for any other injury to or decrease in the value of the Mortgaged Property;

(d) all leases and other agreements affecting the use or occupancy of the Mortgaged Property now or hereafter entered into (hereinafter referred to as the Leases), including, but not limited to, that certain lease dated the date hereof by and between Land Trustee and Beneficiary, jointly, as landlord and CPS Realty Partnership, as tenant, demising the portion of the Mortgaged Property more particularly described therein (hereinafter referred to as the CPS Lease) and the right to receive and apply the rents, issues and profits of the Mortgaged Property (hereinafter referred to as the Rents) to the payment of the Debt;

(e) subject to the provisions of the CPS Lease, all proceeds of and any 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;

(f) subject to the provisions of the CPS Lease, the right, in the name and on behalf of 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 Mortgagee in the Mortgaged Property;

(g) the right, title and interest of Beneficiary in and to that certain Declaration of Trust and Trust Agreement dated June 15, 1985, and known as Trust No. 3501 (hereinafter referred to as the Land Trust Agreement).

Mortgagee, in its reasonable discretion, feels should be brought to protect its interest in the Mortgaged Property.

39. Inapplicable Provisions. If any term, covenant or condition of this Mortgage shall be held to be invalid, illegal or unenforceable in any respect, this Mortgage shall be construed without such provision.

40. Duplicate Originals. 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.

41. Certain Definitions. 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 "Mortgagor" shall collectively mean the Land Trustee and the Beneficiary and any subsequent owner or owners of the Mortgaged Property or any part thereof or interest therein, the word "Mortgagee" shall mean 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 "Guarantor" shall mean each person guaranteeing payment of the Debt or any portion thereof or performance by Mortgagor of any of the terms of this Mortgage and their respective heirs, executors, administrators, legal representatives, successors and assigns, the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, or other entity, the words "Mortgaged Property" shall include any portion 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.

42. Waiver of Notice. Mortgagor shall not be entitled to any notices of any nature whatsoever from Mortgagee except with respect to matters for which this Mortgage specifically and expressly provides for the giving of notice by Mortgagee to Mortgagor, and Mortgagor hereby expressly waives the right to receive any notice from Mortgagee with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by Mortgagee to Mortgagor.

43. No Oral Change. This Mortgage may only be modified or amended by an agreement in writing signed by Mortgagor and Mortgagee, and may only be released, discharged or satisfied of record by an agreement in writing signed by Mortgagee.

44. Land Trust Agreement. Land Trustee has joined in the execution of this Mortgage not personally, but in its capacity as the trustee under the Land Trust Agreement. Land Trustee covenants and agrees that the Land Trust Agreement shall not be cancelled, modified or amended without the prior written consent of Mortgagee. Land Trustee and Beneficiary within ten (10) days after request by Mortgagee and at its expense will separately furnish

Mortgagee with a statement, duly acknowledged and certified stating the Land Trust Agreement has not been modified or amended.

45. Exculpation of Land Trustee. Notwithstanding anything to the contrary contained in the Note or this Mortgage, this Mortgage has been executed by Land Trustee, not personally, but in its capacity as trustee under the Land Trust Agreement, in the exercise of the power and authority conferred upon and vested in it as such trustee, and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on Land Trustee personally to perform any covenant either express or implied herein contained, all such liability, if any, being expressly waived by every person now or hereafter claiming any right or security hereunder, and that the owner or owners of any indebtedness accruing hereunder shall look solely to the Mortgaged Property for the payment thereof, by the enforcement of Mortgagee's rights and remedies herein contained, in the manner herein and in the Note provided, by enforcement of equitable remedies available to Mortgagee, and by action against any other security given to secure payment of the Note.

46. Exculpation of Beneficiary. Notwithstanding anything to the contrary contained in the Note or this Mortgage, the liability and obligation of Beneficiary or any partner of Beneficiary to perform and observe and make good the obligations contained in the Note and this Mortgage shall not be enforced by any action or proceeding wherein damages or any money judgment shall be sought against Beneficiary or any partner of Beneficiary, except a foreclosure action against the Mortgaged Property, but any judgment in any such foreclosure action shall be enforceable against Beneficiary or any partner of Beneficiary only to the extent of Beneficiary's, or any partner of Beneficiary's, interest in the assets of the trust established by the Land Trust Agreement and in the Mortgaged Property and in the income therefrom and Mortgagee, by accepting the Note and this Mortgage, irrevocably waives any and all right to sue for, seek or demand any deficiency judgment against Beneficiary or any partner of Beneficiary in any such foreclosure action, under or by reason of or under or in connection with the Note or this Mortgage.

47. REA Agreement. The Mortgaged Property is subject to the provisions of that certain Easement, Restriction and Operating Agreement dated June 27, 1972 and recorded November 8, 1972 as Document 174993 between Gary Joint Venture, J.C. Penney Company, Inc. and Sears Roebuck and Company, amended by Supplement to Easement, Restriction and Operating Agreement dated June 27, 1972, between Sears Roebuck and Company, J.C. Penney Company, Inc. and Gary Joint Venture (unrecorded), amended by First Amendment to Easement, Restriction and Operating Agreement dated April 16, 1973 and recorded June 26, 1973 as Document 208331, further amended by Second Amendment to Easement, Restriction and Operating Agreement dated December 10, 1974 and recorded February 25, 1975 as Document 289791, further amended by Third Amendment to Easement, Restriction and Operating Agreement recorded August 16, 1977 as Document 423321 and Agreement dated May 1, 1975 between Carson Pirie Scott and Company and J.C. Penney Company, Inc. (hereinbefore

and hereinafter referred to as the REA Agreement), which REA Agreement governs the use and operation of the shopping center of which the Mortgaged Property forms a part. Subject to the provisions of the CPS Lease, Mortgagor shall not cancel, modify or amend the provisions of the REA Agreement or consent to the cancellation, modification or amendment of the REA Agreement, or assign, transfer, or convey its interest thereunder without the prior written consent of Mortgagee.

48. Additional Mortgages. The Mortgage, together with the mortgages listed in Exhibit B attached hereto and made a part hereof (hereinafter referred to as the Additional Mortgages) constitute additional security for the obligations of Beneficiary under the Note. Mortgagor and Mortgagee acknowledge and agree that the Mortgage and the Additional Mortgages secure the indebtedness evidenced by the Note.

49. Exchange Property. Mortgagee acknowledges that pursuant to Section 19.4 of the CPS Lease, CPS Realty Partnership, as tenant thereunder, may seek to exchange for the premises demised under the CPS Lease one or more different department stores operated by CPS Realty Partnership as a "Carson Pirie Scott" department store (hereinafter and hereinafter referred to as the Exchange Property). Upon compliance with all of the terms and conditions in the CPS Lease applicable to such exchange, and Mortgagee shall have given its consent where required under Section 19.4, Mortgagee agrees to simultaneously release this Mortgage and the lien thereof from the Mortgaged Property and spread this Mortgage and the lien thereof to cover the fee estate in the Exchange Property, provided, however, that prior to such release and spreader that Mortgagee shall be provided with (i) an ALTA (Form B-1970) loan policy in the face amount of the Note insuring the lien of the Mortgage on the Exchange Property and containing only those exceptions approved by Mortgagee and with endorsements requested by Mortgagee, together with such surveys and descriptions as Mortgagee may request, and (ii) an opinion letter from counsel for the owner of the Exchange Property and the maker of the Note as to the due execution of the documents executed in connection with such exchange and related matters, which opinion letter shall in form and substance be satisfactory to Mortgagee and its counsel. All costs and expenses incurred by Mortgagee in connection with such exchange, including, but not limited to, attorney's fees, recording fees and title charges shall be paid by Mortgagor.

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

Attest:

*Charlotte L. Keelman*  
CHARLOTTE L. KEELMAN  
Assistant Trust Officer

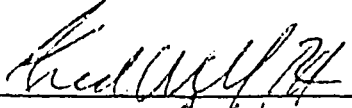
LAKE COUNTY TRUST COMPANY, as  
trustee under a Trust Agreement  
dated June 15, 1985, and known as  
Trust No. 3501 -

By: *Donna L. Campbell*  
Name: DONNA L. CAMPBELL  
Title: Trustee Vice President & Trust Officer

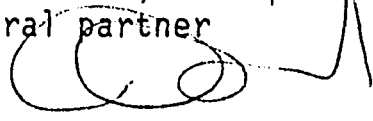


SIX ANCHORS LIMITED PARTNERSHIP, a  
Maryland limited partnership

Attest:

  
\_\_\_\_\_  
490.A639 *Assist. Secy*

By: DWT Venture, Incorporated, a  
general partner

By:   
\_\_\_\_\_  
Name: Donovan M. Hamm, Jr.  
Title: *U*President

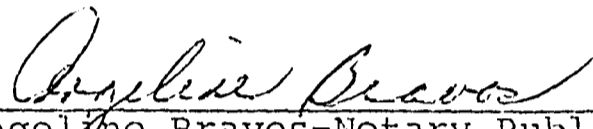
STATE OF INDIANA)  
  )SS:  
COUNTY OF LAKE )

Before me, the undersigned, a Notary Public in and for said County and State personally appeared the within named Donna L. Campbell Vice President and Trust Officer and Charlotte L. Keilman, Assistant Trust Officer of the Lake County Trust Company, who acknowledge the execution of the foregoing instrument as the free and voluntary act of said Corporation and as their free and voluntary act, acting for such Corporation, as Trustee.

Witness my hand and seal this 30th day of October, 1985

My Commission Expires:

May 16, 1989

  
\_\_\_\_\_  
Angeline Bravos-Notary Public

Resident: Lake County, Indiana

STATE OF ILLINOIS     )  
                                  ) ss.:  
COUNTY OF COOK        )

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY, that the above named DONOVAN M. HAMM, JR. and FRED WOLF III of DWT VENTURE, INCORPORATED, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such VICE PRES. and ASST. SEC., respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Company for the uses and purposes therein set forth; ~~and the said ASST. SEC. then and there acknowledged that said ASST. SEC., as custodian of the corporate seal of said Company, caused the corporate seal of said Company to be affixed to said instrument as said ASST. SEC.'s own free and voluntary act and as the free and voluntary act of said Company for the uses and purposes therein set forth.~~

Given under my hand and Notarial Seal this 30TH day of October, 1985.

*Deborah A. Dwyer*  
Notary Public

COMMISSION EXPIRES  
10/13/86

EXHIBIT A  
(Description of Premises)

**Parcel 1:**

Part of the Southwest Quarter of Section 23, Township 35 North, Range 8 West of the Second Principal Meridian in Ross Township, Lake County, Indiana, bounded and described as follows: Commencing at the Southwest corner of said Section 23; thence North 2 degrees 42 minutes 00 seconds West, 361.86 feet along the West line of Section 23; thence North 68 degrees 21 minutes 41 seconds East, 1130.31 feet to the point of beginning; thence continuing North 68 degrees 21 minutes 41 seconds East, 947.01 feet; thence North 17 degrees 52 minutes 00 seconds West, 479.41 feet; thence South 72 degrees 08 minutes 00 seconds West, 73.73 feet; thence North 17 degrees 52 minutes 00 seconds West, 120.00 feet; thence South 72 degrees 08 minutes 00 seconds West, 270.00 feet; thence South 17 degrees 52 minutes 00 seconds East, 116.00 feet; thence South 72 degrees 08 minutes 00 seconds West, 87.86 feet; thence South 20 degrees 19 minutes 09 seconds West, 100.51 feet; thence South 72 degrees 08 minutes 00 seconds West, 451.23 feet; thence South 17 degrees 52 minutes 00 seconds East, 466.71 feet to the point of beginning.

**Parcel 2:**

The reciprocal and non-exclusive rights, privileges and easements for ingress, egress, parking of vehicles, passage and accommodation of pedestrians, for construction, erection, maintenance, repair and replacement of footings, foundations, supports and walls, signs, lights, entrances, doors, marquees, canopies, overhangs or other improvements of like nature, and to install, tie into, use, maintain, repair and replace underground utility facilities such as water, gas, electric and telephone lines, and storm and sanitary sewer lines, and for the purpose of the development and construction or reconstruction of improvements created and granted as appurtenances to the aforescribed Parcel 1, all created, defined and limited by that certain Easement, Restriction and Operating Agreement dated June 27, 1972, and recorded on November 8, 1972 as Document No. 174993, made by and among Gary Joint Venture, a general partnership, J. C. Penney Company, Inc., a Delaware Corporation, and Sears, Roebuck and Co., a New York corporation, in, over, upon and under the Shopping Center as that term is defined in said Agreement and shown on the Site Plan attached to said Agreement as Exhibit "A", and known as Merrillville Mall, and as amended by First Amendment to Easement, Restriction and Operating Agreement dated April 16, 1973 and recorded June 26, 1973 as Document No. 208331, and further amended by Second Amendment to Easement, Restriction and Operating Agreement dated December 10, 1974 and recorded February 25, 1975 as Document No. 289791, and further amended by Third Amendment to Easement, Restriction and Operating Agreement recorded August 16, 1977 as Document No. 423321.

**Parcel 3:**

Part of the Southwest Quarter of Section 23, Township 35 North, Range 8 West of the Second Principal Meridian, in Ross Township, Lake County, Indiana, bounded and described as follows: Commencing at the Southwest corner of said Section 23; thence North 87 degrees 34 minutes 24 seconds East, 40.00 feet to the Easterly right-of-way line of Mississippi Street; thence along the Easterly right-of-way line of Mississippi Street, North 2 degrees 42 minutes 00 seconds West, 604.44 feet to the point of beginning of this description; thence continuing North 2 degrees 42 minutes 00 seconds West, 30.00 feet along the Easterly right-of-way line of Mississippi Street; thence North 65 degrees 30 minutes 00 seconds East, 140.91 feet; thence South 24 degrees 30 minutes 00 seconds East, 75.00 feet; thence North 65 degrees 30 minutes 00 seconds East, 68.54 feet; thence along the arc of a 200.00 foot radius curve, concave to the Northeast whose chord bears South 64 degrees 15 minutes 24 seconds East, 101.78 feet; thence along the arc of a 350.00 foot radius curve, concave to the Southwest, whose chord bears South 59 degrees 52 minutes 44 seconds East, 229.29 feet to the Southerly right-of-way line of the Michigan-Wisconsin Pipeline Company Easement; thence along said Southerly easement line, North 68 degrees 21 minutes 41 seconds East, 575.42 feet; thence North 17 degrees 52 minutes 00 seconds West, 75.16 feet to the Northerly line of the Michigan-Wisconsin Pipeline Company Easement; thence North 68 degrees 21 minutes 41 seconds East, along said Northerly easement line, 40.09 feet; thence South 17 degrees 52 minutes 00 seconds East, 105.23 feet; thence South 68 degrees 21 minutes 41 seconds West, 666.84 feet; thence along the arc of a 290.00 foot radius curve, concave to the Southwest, whose chord bears North 58 degrees 48 minutes 16 seconds West, 200.23 feet; thence along the arc of a 260.00 foot radius curve, concave to the Northeast, whose chord bears North 69 degrees 55 minutes 59 seconds West, 81.94 feet; thence along the arc of a 126.46 foot radius curve, concave to the Southwest, whose chord bears North 73 degrees 38 minutes 24 seconds West, 55.91 feet; thence North 86 degrees 24 minutes 29 seconds West, 170.24 feet to the point of beginning of this description.

EXHIBIT B

(Description of Additional Mortgages)

1. That certain Mortgage dated as of the date hereof in the principal sum of \$68,000,000 given by Land Trustee, as trustee and Beneficiary to Mortgagee covering the fee estate in certain premises in North Riverside, Illinois and interest to be duly recorded.
2. That certain Mortgage dated as of the date hereof in the principal sum of \$68,000,000 given by the Land Trustee, as trustee and Beneficiary to Mortgagee covering the fee estate in certain premises in Orland Park, Illinois and intended to be duly recorded.
3. That certain Mortgage dated as of the date hereof in the principal sum of \$68,000,000 given by Land Trustee, as trustee, and Beneficiary to Mortgagee covering the fee estates in premises located in Matteson, Illinois and intended to be duly recorded.
4. That certain Mortgage dated as of the date hereof in the principal sum of \$68,000,000 given by Land Trustee, as trustee and Beneficiary to Mortgagee covering the fee estate in premises located in Bloomingdale, Illinois and intended to be duly recorded.
5. That certain Mortgage dated as of the date hereof in the principal sum of \$68,000,000 given by Land Trustee, as trustee and Beneficiary to Mortgagee covering the fee estate in premises located in Lombard, Illinois and intended to be duly recorded.

TO HAVE AND TO HOLD the above granted and described Mortgaged Property unto and to the proper use and benefit of Mortgagee, and the successors and assigns of Mortgagee, forever.

PROVIDED, ALWAYS, and these presents are upon this express condition, if Mortgagor shall well and truly pay to Mortgagee the Debt at the time and in the manner provided in the Note and this Mortgage and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, then these presents and the estate hereby granted shall cease, determine and be void.

AND Beneficiary covenants with and represents and warrants to Mortgagee as follows:

1. Payment of Debt. Mortgagor will pay the Debt at the time and in the manner provided for its payment in the Note and in this Mortgage.

2. Warranty of Title. Beneficiary warrants the title to the Premises, the Improvements and the Equipment.

3. Insurance. Mortgagor (i) will keep or cause to be kept the Improvements and the Equipment insured against loss or damage by fire, standard extended coverage perils and such other hazards as Mortgagee shall from time to time reasonably require in amounts approved by Mortgagee, which amounts shall in no event be less than the full replacement value of the Improvements and the Equipment (excluding excavations, foundations and architect's and engineer's fees) and shall be sufficient to meet all applicable co-insurance requirements, and (ii) will maintain or cause to be maintained rental and business interruption insurance and such other forms of insurance coverage with respect to the Mortgaged Property as Mortgagee shall from time to time require in amounts approved by Mortgagee; provided, however, that Mortgagor shall not be obligated to maintain or cause to be maintained rental and business interruption insurance as long as the CPS Lease is in full force and effect. All policies of insurance (hereinafter referred to as the Policies) shall be issued by an insurer lawfully doing business in the state in which the Mortgaged Property is located and acceptable to Mortgagee and shall contain the standard New York mortgagee non-contribution clause endorsement or an equivalent endorsement satisfactory to Mortgagee naming Mortgagee as the person to which all payments made by such insurance company shall be paid, subject to the provisions of the CPS Lease with respect to casualties resulting in insurance proceeds of \$250,000 or less. Mortgagor shall pay or cause to be paid the premiums for the Policies as the same become due and payable. At the request of Mortgagee, Mortgagor will assign and deliver the Policies or copies thereof, together with certificates thereunder evidencing such coverage, to Mortgagee. Not later than thirty (30) days prior to the expiration date of each of the Policies, Mortgagor will deliver to Mortgagee copies of renewal policy or policies marked "premium paid" or accompanied by other evidence of payment of premium satisfactory to Mortgagee, together with a certificate thereof. If at any time Mortgagee is not in receipt of written evidence that all

insurance required hereunder is in force and effect, Mortgagee shall have the right without notice to Mortgagor to take such action as Mortgagee deems necessary to protect its interest in the Mortgaged Property, including, without limitation, the obtaining of such insurance coverage as Mortgagee in its sole discretion deems appropriate, and all expenses incurred by Mortgagee in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Mortgagor to Mortgagee upon demand. If the Mortgaged Property shall be damaged or destroyed, in whole or in part, by fire, or other casualty Mortgagor shall give prompt notice thereof to Mortgagee. Mortgagee shall make the net amount of all insurance proceeds received by Mortgagee pursuant to the provisions of the Mortgage as a result of such damage or destruction after deduction of its reasonable costs and expenses, if any, in collecting the same (hereinafter referred to as the Net Proceeds) available for the repair and restoration of the Improvements, provided that (i) no default beyond the expiration of any applicable grace or cure period shall exist under the Note or this Mortgage, (ii) no default beyond the expiration of any applicable grace or cure period shall exist under the CPS Lease, (iii) Mortgagor, or the holder of the interest of tenant under the CPS Lease, shall proceed with the repair and restoration of the Improvements as nearly as possible to the condition the Improvements were in immediately prior to such fire or other casualty promptly after the insurance claims are settled, (iv) no Leases (including, without limitation, the CPS Lease) shall be terminated as a result of such fire or other casualty, (v) Mortgagee shall be satisfied that upon the completion of such repair and restoration the Basic Rent payable under the CPS Lease will be restored to a level at least equal to the level the same were at prior to the date of such fire or other casualty, and (vi) Mortgagor shall not have received notice given in accordance with the applicable provisions of the CPS Lease by the holder of the interest of tenant under the CPS Lease that said tenant has elected not to repair and restore the Mortgaged Property pursuant to Section 19.2(a)(ii) of the CPS Lease. Mortgagee acknowledges that, pursuant to Section 19.2(a)(iii) of the CPS Lease, the tenant under the CPS Lease shall be entitled to the Net Proceeds if the provisions of said lease concerning the exchange of the premises demised thereunder have been satisfied. Upon satisfaction of the provisions of the preceding sentence of this paragraph, the Net Proceeds will be disbursed by Mortgagee to Mortgagor to pay for the costs of repair and restoration of the Improvements. The Net Proceeds shall be held by Mortgagee in escrow until expended in connection with the repair and restoration of the Improvements, it being agreed that any Net Proceeds may not be commingled with the general funds of Mortgagee and shall be held in a separate interest bearing account with all interest on such amounts being added to and constituting part of the Net Proceeds, and shall constitute additional security for the payment of the Debt; provided, however, that Mortgagee shall not be required to maximize the total interest earned on or in any way guarantee a particular rate of interest on such amounts. The Net Proceeds shall be paid by Mortgagee to, or as directed by, Mortgagor from time to time during the course of the repair and restoration, upon receipt of evidence satisfactory to Mortgagee that (i) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested payment) in connection with the repair and restoration have been paid for in full, (ii) there



exists no notices of intention, mechanics or other liens and encumbrances on the Mortgaged Property arising out of the repair and restoration, and (iii) the Architect (as hereinafter defined) has submitted its certificate certifying, in each case, the amount incurred by Mortgagor or the holder of the interest of tenant under the CPS Lease for repair and restoration and not previously reimbursed, and stating the balance of the Net Proceeds, after the making of such payment, will be sufficient to complete the repair and restoration. The repair and restoration shall be done and completed by Mortgagor, or the holder of the interest of tenant under the CPS Lease, in an expeditious and diligent fashion and in compliance with all applicable laws, rules and regulations, and all plans and specifications required in connection with the repair and restoration shall be subject to review and approval in all respects by an independent architect selected by the holder of the interest of tenant under the CPS Lease and subject to the prior approval of Mortgagor, which approval will not unreasonably be withheld or delayed (hereinafter referred to as the Architect). All costs and expenses incurred by Mortgagee in connection with making the Net Proceeds available for the repair and restoration, including, without limitation, counsel fees and the Architect's fees incurred by Mortgagee, shall be paid by Mortgagor or the holder of the interest of tenant under the CPS Lease. In no event shall Mortgagee be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred for work in place as part of the repair and restoration, including customary soft costs incurred by third parties unaffiliated with Mortgagor or the holder of the interest of tenant under the CPS Lease, as certified by the Architect. Mortgagee shall not be obligated to make disbursements of the Net Proceeds more than once every thirty (30) days. The excess, if any, of the Net Proceeds after the repair and restoration of the Improvements as nearly as possible to their former condition and the payment in full of all costs incurred in connection therewith shall be applied by Mortgagee in reduction of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper or, at the discretion of Mortgagee, the same may, subject to the provisions of Section 19.2(a)(iii) of the CPS Lease, be paid, in whole or in part, to Mortgagor for such purposes as Mortgagee shall designate. All costs of the repair and restoration in excess of the Net Proceeds shall be paid for by Mortgagor. All insurance proceeds received by Mortgagee and not required to be disbursed for the repair and restoration pursuant to the provisions of this paragraph hereinabove set forth may, subject to the provisions of Section 19.2(a)(iii) of the CPS Lease, be retained and applied by Mortgagee toward the payment of the Debt whether or not then due and payable in such priority and proportions as Mortgagee in its discretion shall deem proper or, at the discretion of Mortgagee, the same may be paid, either in whole or in part, to Mortgagor for such purposes as Mortgagee shall designate. If Mortgagee shall receive and retain such insurance proceeds, the lien of this Mortgage shall be reduced only by the amount thereof received and retained by Mortgagee and actually applied by Mortgagee in reduction of the Debt.

4. Payment of Taxes, etc. (a) Mortgagor shall pay or cause to be paid all taxes, assessments, water rates, sewer rents and other charges, including vault charges and license fees for the use of vaults, chutes and

similar areas adjoining the Premises, now or hereafter levied or assessed against the Mortgaged Property (hereinafter referred to as the Taxes) prior to the date upon which any fine, penalty, interest or cost may be added thereto or imposed by law for the nonpayment thereof. Mortgagor shall deliver to Mortgagee, upon request, receipted bills, cancelled checks and other evidence satisfactory to Mortgagee evidencing the payment of the Taxes prior to the date upon which any fine, penalty, interest or cost may be added thereto or imposed by law for the nonpayment thereof.

(b) After prior notice to Mortgagee, in the case of any material item, Mortgagor or the holder of the interest of tenant under the CPS Lease (if permitted pursuant to the provisions of the CPS Lease), at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Taxes, provided that (i) no default beyond the expiration of any applicable grace or cure period exists under the Note or the Mortgage, (ii) no default beyond the expiration of any applicable grace or cure period exists under the CPS Lease, (iii) such proceeding shall suspend the collection of the Taxes from Mortgagor and from the Mortgaged Property, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Mortgagor or the Mortgaged Property is subject and shall not constitute a default beyond the expiration of any applicable grace or cure period thereunder, (v) neither the Mortgaged Property nor any part thereof or interest therein will in the opinion of Mortgagee be in danger of being sold, forfeited, terminated, cancelled or lost, (vi) Mortgagor, or the holder of the interest of tenant under the CPS Lease, shall, if required pursuant to the provisions of the CPS Lease, have set aside adequate reserves for the payment of the Taxes, together with all interest and penalties thereon, and (vii) Mortgagor, or the holder of the interest of tenant under the CPS Lease, shall have furnished such security as may be required in the proceeding, or as may be requested by Mortgagee to insure the payment of any such Taxes, together with all interest and penalties thereon.

5. Escrow Fund. Mortgagor will, upon the happening of a default under the Mortgage, pay to Mortgagee, on the first day of each calendar month one-twelfth of an amount (hereinafter referred to as the Escrow Fund) which would be sufficient to pay the Taxes payable, or estimated by Mortgagee to be payable, during the ensuing twelve (12) months. Mortgagee will apply the Escrow Fund to the payment of Taxes which are required to be paid by Mortgagor pursuant to the provisions of this Mortgage. If the amount of the Escrow Fund shall exceed the amount of the Taxes payable by Mortgagor pursuant to the provisions of this Mortgage, Mortgagee shall, in its discretion, (a) return any excess to Mortgagor, or (b) credit such excess against future payments to be made to the Escrow Fund. In allocating such excess, Mortgagee may deal with the person shown on the records of Mortgagee to be the owner of the Mortgaged Property. If the Escrow Fund is not sufficient to pay the Taxes, as the same become payable, Mortgagor shall pay to Mortgagee, upon request, an amount which Mortgagee shall estimate as sufficient to make up the deficiency. Until expended or applied as above provided, any amounts in the Escrow Fund may be commingled with the general funds of

Mortgagee and shall constitute additional security for the Debt and shall not bear interest. The provisions of this paragraph 5 shall not be operable so long as the CPS Lease remains in full force and effect.

6. Condemnation. Notwithstanding any Taking (as hereinafter defined) by any public or quasi-public authority through eminent domain or otherwise, Mortgagor shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and this Mortgage and the Debt shall not be reduced until any award or payment therefor shall have been actually received and applied by Mortgagee to the discharge of the Debt. The term "Taking" as used in this Mortgage shall mean a transfer during the term hereof of all or any part of the Mortgaged Property or any interest therein or right accruing thereto, as the result of or in lieu of or in anticipation of the exercise of the right of appropriation, confiscation, condemnation or eminent domain, or a change of grade during the term hereof affecting the Mortgaged Property or any part thereof. Subject to the provisions of this paragraph hereinafter set forth, Mortgagee may apply the entire amount of any such award or payment to the discharge of the Debt whether or not then due and payable in such priority and proportions as Mortgagee in its discretion shall deem proper. If the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by Mortgagee of such award or payment, Mortgagee shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive such award or payment, or a portion thereof sufficient to pay the Debt, whichever is less. Mortgagor shall file and prosecute its claim or claims for any such award or payment in good faith and with due diligence and cause the same to be collected and paid over to Mortgagee, and hereby irrevocably authorizes and empowers Mortgagee, subject to the provisions of subparagraph (b) hereof, in the name of Mortgagor or otherwise to collect and receipt for any such award or payment and to file and prosecute such claim or claims, and although it is hereby expressly agreed that the same shall not be necessary in any event, Mortgagor shall, upon demand of Mortgagee, make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning any such award or payment to Mortgagee, free and clear of any encumbrances of any kind or nature whatsoever.

(a) If the Mortgaged Property is subject to a Taking other than a Taking described in paragraph (b) or (c) of this paragraph, Mortgagee shall make the portion of the aggregate award or payment received by Mortgagee pursuant to the provisions of the Mortgage as a result of such Taking which is specifically awarded for the repair and restoration of the portion of the Improvements not subject to such Taking or, in the absence of any such specific award, is in the sole opinion of Mortgagee and the Architect (as hereinafter defined) necessary to pay for the costs which will be incurred in connection with the repair and restoration of the portion of the Improvements not subject to such Taking after deduction of its reasonable costs and expenses, if any, in collecting the same (hereinafter referred to as the Net Restoration Award) available for the repair and restoration of the Improvements, provided that (i) no default beyond the expiration of any applicable grace or cure period shall exist under the Note or this Mortgage, (ii) no default shall exist under the CPS Lease, (iii) Mortgagor, or the holder of

the interest of tenant under the CPS Lease, shall proceed with the repair and restoration of the Improvements as nearly as possible to the condition the Improvements were in immediately prior to such taking promptly after the award is settled, (iv) no Leases (including, without limitation, the CPS Lease) shall be terminated as a result of such Taking, and (v) Mortgagee shall be satisfied that upon completion of the repair and restoration the Basic Rent payable under the CPS Lease, will be restored to a level sufficient to cover all carrying costs and operating expenses of the Mortgaged Property, including, without limitation, debt service on the Note. Upon satisfaction of the provisions of the preceding sentence of this paragraph, the Net Restoration Award will be disbursed by Mortgagee to Mortgagor to pay for the costs of repair and restoration of the Improvements. The Net Restoration Award shall be held by Mortgagee in escrow until expended in connection with the repair and restoration of the Improvements, it being agreed that any Net Restoration Award may not be commingled with the general funds of Mortgagee and shall be held in a separate interest bearing account with all interest on such amounts being added and constituting a part of the Net Proceeds, and shall constitute additional security for the payment of the Debt; provided, however, that Mortgagee shall not be required to maximize the total interest earned on or in any way guarantee a particular rate of interest on such amounts. The Net Restoration Award shall be paid by Mortgagee to, or as directed by, Mortgagor from time to time during the course of the repair and restoration, upon receipt of evidence satisfactory to Mortgagee that (i) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested payment) in connection with the repair and restoration have been paid for in full, (ii) there exists no notices of intention, mechanics or other liens and encumbrances on the Mortgaged Property arising out of the repair and restoration, and (iii) the Architect (as hereinafter defined) has submitted its certificate certifying, in each case, the amount incurred by Mortgagor or the holder of the interest of tenant under the CPS Lease for repairs and restoration and not previously reimbursed, and stating the balance of the Net Proceeds, after the making of such payment, will be sufficient to complete the repair and restoration. The repair and restoration shall be done and completed by Mortgagor in an expeditious and diligent fashion and in compliance with all applicable laws, rules and regulations, and all plans and specifications required in connection with the repair and restoration shall be subject to review and approval in all respects by an independent architect selected by the holder of the interest of tenant under the CPS Lease and subject to the prior approval of Mortgagor, which approval will not be unreasonably withheld or delayed (hereinafter referred to as the Architect). All costs and expenses incurred by Mortgagee in connection with making the Net Restoration Award available for the repair and restoration, including, without limitation, appraisal fees, counsel fees and the Architect's fees incurred by Mortgagee, shall be paid by Mortgagor or the holder of the interest of tenant under the CPS Lease. In no event shall Mortgagee be obligated to make disbursements of the Net Restoration Award in excess of an amount equal to the costs actually incurred for work in place as part of the repair and restoration, as certified by the Architect. Mortgagee shall not be obligated to make disbursements of the Net Restoration Award more than once every thirty (30) days. The excess, if any, of the Net

Restoration Award after the repair and restoration of the Improvements as nearly as possible to their former condition and the payment in full of all costs incurred in connection therewith shall be applied by Mortgagee in reduction of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper. All costs of the repair and restoration in excess of the Net Restoration Award shall be paid for by Mortgagor.

(b) Provided the CPS Lease is in full force and effect, if the Mortgaged Property is subject to a Taking for temporary use, provided that (i) no default beyond the expiration of any applicable grace or cure period exists under the Note on this Mortgage, (ii) no default beyond the expiration of any applicable grace or cure period exists under the CPS Lease, or (iii) no leases (including, without limitation, the CPS Lease) shall be terminated as a result of such Taking, then Mortgagor shall be entitled to retain any award or payment resulting from such temporary Taking.

(c) If the Mortgaged Property is subject to a Total Taking (as hereinafter defined) any award or payment resulting from such Taking shall be retained and applied by Mortgagee toward the payments of the Debt whether or not then due and payable in such priority and proportions as Mortgagee in its discretion deems proper. The term "Total Taking" as used herein shall mean a Taking of all or substantially all of the Mortgaged Property.

7. Leases and Rents. Subject to the terms of this paragraph, Mortgagee waives the right to enter the Mortgaged Property for the purpose of collecting the Rents, and grants Mortgagor the right to collect the Rents. Mortgagor shall hold the Rents, or an amount sufficient to discharge all current sums due on the Debt, in trust for use in payment of the Debt. The right of Mortgagor to collect the Rents may be revoked by Mortgagee upon any default by Mortgagor under the terms of the Note or this Mortgage by giving notice of such revocation to Mortgagor. Following such notice Mortgagee may retain and apply the Rents toward payment of the Debt in such priority and proportions as Mortgagee, in its discretion, shall deem proper, or to the operation, maintenance and repair of the Mortgaged Property. Mortgagor shall not, without the consent of Mortgagee, make, or suffer to be made, any Leases or cancel or modify any Leases includes, without limitation, the CPS Lease, or accept prepayments of instalments of the Rents for a period of more than one (1) month in advance or further assign the whole or any part of the Rents. Mortgagor shall (a) fulfill or perform each and every provision of the Leases and the CPS Lease on the part of Mortgagor to be fulfilled or performed, (b) promptly send copies of all notices of default which Mortgagor shall send or receive under the Leases and the CPS Lease to Mortgagee, and (c) enforce, short of termination of the Leases and the CPS Lease (except as may be expressly permitted pursuant to the terms thereof), the performance or observance of the provisions thereof by the tenants thereunder. In addition to the rights which Mortgagee may have herein, in the event of any default under this Mortgage, Mortgagee, at its option, may require Mortgagor to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Property as may be in