

UNOFFICIAL COPY

00025444

11/5/00 32 001 Page 1 of 21
2000-01-11 10:40:56
Cook County Recorder 61.50

THIS DOCUMENT PREPARED
BY AND TO BE MAILED TO:

Ron Broida
Broida and Farrow
1250 E. Diehl Rd.
Suite 108
Naperville, IL 60563



00025444

(The above space for Recorder's use only)

JUNIOR MORTGAGE

(Including Assignment of Rents and Leases)

THIS JUNIOR MORTGAGE (as modified from time to time, the "Mortgage"), made this 15th day of October, 1999 by PATRICIA NAVILIO located at 2015 N. Sedgwick, Chicago, Illinois 60614 (hereinafter referred to as "Mortgagor"), to Marzena Sassak and Gregg Gorman, located at 4543 N. Ashland, Chicago, IL 60646 and Melissa Steele and Tom Tometz located at 3846 N. Janssen Ave. 2nd Floor, Chicago, IL 60613 (herein together with its successors and assigns, including each and every from time to time holder of the Note hereinafter referred to, called the "Mortgagees"),

WITNESSETH,

WHEREAS, the Mortgagor is also the debtor on that certain Promissory Note of even date herewith (hereinafter referred to as the "Promissory Note") by and between Mortgagees as the Lender and Mortgagor as Borrower; and

WHEREAS, the Mortgagor is indebted to the Mortgagees in the principal sum of Eighty Thousand Dollars (\$80,000.00) pursuant to the terms and under the conditions set out in that certain promissory note of even date herewith made payable to the order of and delivered to the Mortgagees, in and by which the Mortgagor promises to pay the said principal sum, a finance fee in the amount of Twenty Thousand Dollars (\$20,000.00) (hereinafter referred to as "Finance Fee") with a final payment of the balance due as provided in the Promissory Note and in no event later than the 29th day of July, 2000, to Marzena Sassak and Gregg Gorman and October 15, 2000 for Melissa Steele and Tom Tometz (hereinafter referred to as the "Note") and all said principal and Finance Fee to be made payable at such place as the holder of the Note may from time to time in writing appoint, and in the absence of such appointment, then at the office of Mortgagees; and

WHEREAS, the indebtedness evidenced by the Note, including the principal thereof, and any extensions and renewals thereof, in whole or in part, and any and all other sums which may be at any time due or owing or required to be paid as herein or in the Note or in any other loan agreement entered into in connection herewith are herein called the "Indebtedness Hereby Secured."

UNOFFICIAL COPY

OFFICE OF THE CLERK OF COURT
COURT HOUSE

CLERK OF COURT
COURT HOUSE
COURT HOUSE
COURT HOUSE

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office at the City of Cook, Illinois, this _____ day of _____, 20__.

CLERK OF COURT

(Signature of Clerk of Court)

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office at the City of Cook, Illinois, this _____ day of _____, 20__.

(Signature of Clerk of Court)

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office at the City of Cook, Illinois, this _____ day of _____, 20__.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office at the City of Cook, Illinois, this _____ day of _____, 20__.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office at the City of Cook, Illinois, this _____ day of _____, 20__.

UNOFFICIAL COPY

00025444

NOW THEREFORE, subject to any existing mortgage obligations of the Mortgagor as at any time amended, supplemented, modified, renewed, restated and/or replaced (hereinafter collectively referred to as the "Prior Mortgages"), the Mortgagor, in order to secure the payment of said principal sum of money, finance fee and interest pursuant to the Note in accordance with the terms, provisions and limitations of this Mortgage, and as further security for the performance of the covenants and agreements herein contained and contained in any other loan agreements by the Mortgagor to be performed (and also in consideration of the sum of Ten Dollars (\$10.00) in hand paid, the receipt and legal sufficiency whereof is hereby acknowledged) does by these presents MORTGAGE, WARRANT and CONVEY unto the Mortgagees, its successors and assigns, the real estate legally described in Exhibit A attached hereto and incorporated by reference herein and all of its estate, right, title and interest therein (hereinafter referred to as the "Premises") together with:

Mortgagor's interest as lessor in and to all leases of the said Premises, or any part thereof, heretofore or hereafter made and entered into by Mortgagor during the life of this Mortgage or any extension or renewal hereof.

Mortgagor's interest in all improvements, buildings and structures now or at any time hereafter owned by Mortgagor and erected or situated on the real property, and all tenements, easements, fixtures and appurtenances thereto belonging, and all rents, issues and profits thereof (which are pledged primarily and on a parity with said real estate and not secondarily), together with all rights, title and interest of the Mortgagor, if any, in and to all shades, awnings, venetian blinds, screens, screen doors, storm doors and windows, stoves and ranges, curtain fixtures, partitions, apparatus, equipment and articles now or hereafter therein or thereon used to supply heat, gas, air conditioning, water, light, power, sprinkler protection, waste removal, refrigeration and ventilation, and all fixtures, apparatus, equipment and articles, other than such as constitute trade fixtures, used in the operation of any business conducted on the Premises, all of which for the purposes of this Mortgage shall be deemed to be real estate and conveyed and mortgaged hereby, excepting any personal property and fixtures owned by tenants of the Premises;

Mortgagor's interest in all awards made to the present and all subsequent owners of the Premises by any governmental or other lawful authority for taking by eminent domain the whole or any part of the Premises or improvements thereon, the temporary use thereof or any easement thereon or thereunder, including any awards for any changes of grade of streets, which said awards are hereby assigned to Mortgagees, who are hereby authorized to collect and receive the proceeds of any such awards from said authorities and to give proper receipts and acquittances therefor.

Mortgagor's interest in all right, title and interest of the Mortgagor, if any, in and to common areas and access roads on adjacent properties heretofore or hereafter granted to Mortgagor and in and to the land lying in the bed of any street, road, alley or avenue, opened or proposed, in front of or adjoining the above described real estate to the center line thereof.

TO HAVE AND TO HOLD the same unto the Mortgagees and their successors and assigns forever, together with all estates, titles, claims and demands whatsoever of the Mortgagor in and to said Premises or any part thereof, and the Mortgagor does hereby covenant, warrant and agree that it is lawfully seized and possessed of said real estate in fee simple absolute and has good and lawful right and authority to sell, convey and mortgage same; that said real estate is free from all liens,

claims, charges and encumbrances whatsoever, except as set forth herein, and that Mortgagor will warrant and defend the title to said real property against the lawful claims and demands of all persons.

Provided, however, if and when: (a) the Mortgagor has duly and punctually paid the principal amount of the Note as provided thereunder, has paid any and all other amounts required under the Note, any other loan agreement and this Mortgage; and (b) Mortgagor has performed all of the terms, provisions, conditions and agreements herein contained in the part of the Mortgage to be performed or observed, then this Mortgage shall be released at the cost of Mortgagor, but otherwise shall remain in full force and effect.

Mortgagor further covenants, warrants and agrees with the Mortgagees as follows:

1. Security. This Mortgage shall be and remain as security for the payment by the Mortgagor of the Note according to the terms and effect thereof, any other note or notes which hereafter may be given in renewal or extension thereof and as security for performance by the Shareholders of all terms and conditions of the Guaranties.
2. Prepayment Privilege. At such time as the Mortgagor is not in default under the terms of the Note, or Mortgagor under the terms of this Mortgage, the Mortgagor shall have the privilege of making prepayments on the Note (in addition to the required payments thereunder) in accordance with the terms and conditions, if any, set forth in the Note, but not otherwise. Any such prepayment shall not apply nor affect the Finance Fee, which is due in full notwithstanding any prepayment.
3. Covenants. Mortgagor shall keep and perform all covenants, conditions and terms of this Mortgage and pay or cause to be paid to the Mortgagees of the above described indebtedness with interest thereon according to the terms and conditions of said Note, and shall keep and perform all covenants, conditions and terms in said Note contained, all of which covenants, conditions and terms are incorporated by reference herein.
4. Maintenance, Repair and Restoration of Improvements, Payment of Liens, Etc. Mortgagor shall: (a) subject to paragraph 8 of this Mortgage promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed; (b) keep the Premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for liens not expressly subordinated to the lien hereof; (c) pay when due any indebtedness which may be secured by a lien or charge on the Premises superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such prior lien to Mortgagees; (d) complete within a reasonable time any building or buildings now or at any time in process of erection upon the Premises; (e) comply with all requirements of law, municipal ordinances, rules, regulations or restrictions of record with respect to the Premises and the use thereof; (f) not initiate or acquiesce in any zoning reclassification without Mortgagees' written consent; and (g) allow Mortgagees to inspect the Premises at any reasonable time upon not less than 24 hours prior notice except in the event of an emergency, and access thereto shall be permitted for that purpose; and (h) cause the Premises at all times to be operated in compliance with all federal, state, local and municipal environmental, health and safety laws, statutes, ordinances, rules and regulations (herein called "Environmental Regulations") so that no cleanup, claim or other obligation or responsibility arises from a violation of any such laws, statutes, ordinances, rules and regulations.

5. Payment of Taxes. Mortgagor shall pay when first due and before any penalty attaches all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and other charges against the Premises (hereinafter collectively referred to as "Taxes") when first due, and shall, upon written request, furnish to Mortgagees duplicate receipts thereof. To prevent default hereunder Mortgagor shall pay in full under protest, in the manner provided by statute, any tax or assessment that Mortgagor may desire to contest.

6. Contests. Notwithstanding anything to the contrary herein contained, Mortgagor shall have the right to contest by appropriate legal proceedings diligently prosecuted any taxes imposed or assessed upon the Premises or which may be or become a lien thereon and any mechanics', material men's or other liens or claims for lien upon the Premises (hereinafter collectively referred to as "Contested Liens"), and no Contested Lien shall constitute an Event of Default hereunder, if, but only if:

- (a) Mortgagor shall forthwith give notice of any Contested Lien to Mortgagees at the time the same shall be asserted;
- (b) Mortgagor shall deposit with Mortgagees the full amount of such Contested Lien or which may be secured thereby (hereinafter referred to as the "Lien Amount"), together with such amount as Mortgagees may reasonably estimate as interest or penalties which might arise during the period of contest; provided that in lieu of such payment Mortgagor may furnish to Mortgagees a bond or title indemnity in such amount and form, and issued by a bond or title insuring company, as may be satisfactory to Mortgagees;
- (c) Mortgagor shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Premises, and shall permit Mortgagees to be represented in any such contest and shall pay all reasonable expenses incurred by Mortgagees in so doing, including reasonable fees and expenses of Mortgagees' counsel, all of which shall constitute so much additional Indebtedness Hereby Secured bearing interest at the Default Rate specified in the Note (hereinafter referred to as the "Default Rate") until paid;
- (d) Mortgagor shall pay such Contested Lien and all Lien Amounts together with interest and penalties thereon (i) if and to the extent that any Contested Lien shall be determined adverse to Mortgagor, or (ii) forthwith upon demand by Mortgagees if, in the opinion of Mortgagees, and notwithstanding any such contest, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed; provided that if Mortgagor shall fail so to do, Mortgagees may, but shall not be required to, pay all such Contested Liens and Lien Amounts and interest and penalties thereon and such other sums as may be necessary in the judgment of the Mortgagees to obtain the release and discharge of such liens; and any amount expended by Mortgagees in so doing shall be so much additional Indebtedness Hereby Secured bearing interest at the Default Rate until paid, and payable upon demand; and provided further that Mortgagees may in such case use and apply for the purpose monies deposited as provided in Subsection 6(b) above and may demand payment upon any bond or title indemnity furnished as aforesaid.

7. Insurance. Mortgagor shall keep all buildings and improvements now or hereafter situated on the Premises insured against loss or damage by fire and other hazards as may be reasonably required by Mortgagees, including, without limitation of the generality of the foregoing, war damage insurance whenever in the opinion of Mortgagees such protection is necessary and available, in forms, companies and amounts satisfactory to Mortgagees, and with Mortgagees clauses attached to all policies in favor of and on forms satisfactory to Mortgagees, and shall deliver all policies to Mortgagees. If Mortgagees elect and so notify Mortgagor, but not more frequently than once every three years, Mortgagor, at its expense, shall furnish Mortgagees with an appraisal of the full insurable value of the Premises, made by fire insurance appraisers satisfactory to Mortgagees and fire insurance companies generally. Mortgagor shall also carry liability insurance protecting Mortgagees against liability for injuries to persons and property occurring in, on or adjacent to the Premises, in forms, companies, and amounts satisfactory to Mortgagees with the policy or policies evidencing such insurance to contain a thirty (30) day notice of cancellation clause in favor of Mortgagees. Such liability policy or policies or certificates thereof shall be delivered to Mortgagees. Mortgagor shall, until the Indebtedness Secured Hereby is paid in full, furnish Mortgagees at least thirty (30) days prior to the date each coverage required herein would otherwise expire with evidence of the renewal or continuation of such coverage in the form of premium receipt or renewal policies or certificates. In the event the Premises or any part thereof are at any time leased and the lease or leases have been assigned to Mortgagees as additional security for the payment of indebtedness secured by this Mortgage, Mortgagor shall, upon the request of Mortgagees, provide rent insurance payable to Mortgagees in an amount equal to the annual rental payable under such assigned lease or leases plus the lessee's approximate annual liability for taxes, assessments, utility charges, operating expenses and insurance premiums as provided in the lease or leases.

Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagees are included thereon under a standard non-contributory Mortgagees clause acceptable to Mortgagees. Mortgagor shall immediately notify Mortgagees whenever any such separate insurance is taken out and shall promptly deliver to Mortgagees the original policy or policies of such insurance. In the event of a foreclosure of the lien of this Mortgage, or of a transfer of title to the Premises either in lieu of foreclosure or by purchase at the foreclosure sale, all interest in all insurance policies in force shall pass to Mortgagees, transferee or purchaser, as the case may be.

8. Adjustment of Losses and Application of Proceeds of Insurance. In the event of any damage to or destruction of the Premises, covered by any policy or policies of insurance required to be carried by Mortgagor, Mortgagees (or any of them) may in their discretion (and are hereby authorized to) either settle and adjust any claim under such insurance policies with the consent of Mortgagor, or allow Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss. In either case, the proceeds shall be paid to Mortgagees to the extent of the balance then due under the Note (including but not limited to, Principal, Finance Fee and Interest), if Mortgagees so elect, and Mortgagees are authorized to collect and to give receipt therefor. If (a) Mortgagor or any lessee is obligated to rebuild and restore the damaged or destroyed buildings or improvements under the terms of any lease or leases which are or may be prior to the lien of this Mortgage, and (b) such damage or destruction does not result in the cancellation or termination of any such lease, and (c) the insurers do not deny liability with respect to the loss, such proceeds, after deducting therefrom any expenses incurred in the collection thereof, shall be used to reimburse Mortgagor or the lessee (whichever is obligated under the terms of the lease to accomplish the rebuilding and restoration) for the cost of rebuilding and restoring the buildings and improvements

on the Premises. In all other cases such insurance proceeds may, at the option of the Mortgagees, (or any of them) either be applied in reduction of the indebtedness secured hereby, whether or not then due and payable, or be held by Mortgagees and used to reimburse Mortgagor for the cost of the rebuilding and restoration of buildings and improvements on the Premises.

In the event of rebuilding and repair, such repair and restoration of the buildings and improvements shall be commenced promptly after the occurrence of the loss and shall be so restored and rebuilt as to be of at least equal value and substantially the same character as prior to such damage and destruction, and in the event the estimated costs of rebuilding and restoration exceed twenty-five percent (25%) of the indebtedness then remaining unpaid as secured by this Mortgage, then the drawings and specifications pertaining to such rebuilding and restoration shall be subject to the prior written approval of Mortgagees.

In the event that Mortgagor or any lessee is entitled to reimbursement out of the insurance proceeds, such proceeds shall be made available from time to time upon the furnishing to Mortgagees of satisfactory evidence of the estimated cost of completion thereof and with such architect's certificates, waivers of lien, contractor's sworn statements and other evidence of cost and of payment as Mortgagees may reasonably require and approve. No payment made by Mortgagees prior to the final completion of the work shall, together with all payments theretofore made, exceed ninety percent (90%) of the value of the work performed to the time of payment, and at all times the undisbursed balance of said proceeds remaining in the hands of Mortgagees shall be at least sufficient to pay for the cost of completion of the work free and clear of liens.

Should a loss occur after foreclosure or sale proceedings have been instituted, the proceeds of any such insurance policy or policies, if not applied as aforesaid in rebuilding or restoration of the buildings or improvements, shall be used to pay the amount due in accordance with any decree of foreclosure, and the balance, if any, shall be paid to the owner of the equity of redemption if he shall then be entitled to the same, or otherwise as any court having jurisdiction may direct. Following any foreclosure sale, or other sale of the Premises by Mortgagees pursuant to the terms hereof, Mortgagees (or any of them) are authorized without the consent of Mortgagor to assign any and all insurance policies to the purchaser at the sale and to take such other steps as Mortgagees may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

9. Stamp Tax. If by the laws of the United States of America or of any state having jurisdiction of Mortgagor or of the Premises or of the transaction evidenced by the Note and this Mortgage, any tax or fee is due or becomes due in respect of the issuance of the Note hereby secured or the making, recording, and registration of this Mortgage, Mortgagor covenants and agrees to pay such tax or fee in the manner required by such law, and to hold harmless and indemnify Mortgagees, their successors and assigns, against any liability incurred by reason of the imposition of any such tax or fee.

10. Effect of Changes In Law Regarding Taxation. In the event of the enactment after the date hereof of any law of the state in which the Premises are located deducting from the value of land for the purposes of taxation any lien thereon, or imposing upon Mortgagees the payment of the whole or any part of the taxes or assessments or charges of liens herein required to be paid by Mortgagor, or changing in any of the laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagees' interest in the Premises, or the manner of collection of taxes, so as to

affect this Mortgage or the debt secured hereby or the holder thereof, then and in any such event Mortgagor, upon demand by Mortgagees, (Or any of them) shall pay such taxes or assessment or reimburse Mortgagees therefore; provided, however, that if in the opinion of legal counsel for Mortgagees it might be unlawful to require Mortgagor to make such payment, or the making of such payment might be construed as imposing a rate of interest beyond the maximum permitted by law, then and in such event Mortgagees may elect by notice in writing given to Mortgagor to declare all of the indebtedness secured hereby to become due and payable sixty (60) days from the giving of such notice.

11. Mortgagees' Reliance on Tax Bills, Etc. In making any payment hereby authorized relating to taxes or assessments or for the purchase, discharge, compromise or settlement of any prior lien, Mortgagees may make such payment according to any bill, statement or estimate secured from the appropriate public office without inquiry into the accuracy thereof or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof or without inquiry as to the validity or amount of any claim for lien which may be asserted.

12. Mortgagee's Performance of Defaulted Acts. In case of any Event of Default (hereinafter defined), after applicable notice and grace periods, Mortgagees may, but need not, make any payment or perform any act herein required of Mortgagor, in any form and manner deemed expedient and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises, or contest any tax or assessment. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including all reasonable attorneys' fees and any other money advanced by Mortgagees to protect the Premises and the lien hereof, shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon at the Default Rate from the date of expenditure or advance until paid. No inaction on the part of Mortgagees shall be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

13. Acceleration of Indebtedness in Case of Default. If one or more of the following events (herein sometimes called "Events of Default") shall have occurred, Mortgagees (or any of them) may, at their option, declare the Note immediately due and payable without notice or demand of any kind: (a) default is made in the due and punctual payment of the Note or any installment thereof, as and when the same is due and payable, or if default is made in the making of any payment of any other monies required to be made hereunder or under the Note, and any applicable period of grace specified in the Note shall have elapsed; or (b) there shall occur any default or event of default, or any event or condition that might become such with notice or the passage of time or both, or any similar event, or any event that requires the prepayment of borrowed money or the acceleration of the maturity thereof, under the terms of the Prior Mortgage or any evidence of indebtedness or other agreement issued or assumed or entered into by Mortgagor, or under the terms of any indenture, agreement or instrument under which any such evidence of indebtedness or other agreement is issued, assumed, secured or guaranteed, and such event shall continue beyond any applicable period of grace; or (c) Mortgagor shall file a petition in voluntary bankruptcy or under Chapter XI of the Federal Bankruptcy Code or any similar law, state or federal, whether now or hereafter existing, or any answer admitting insolvency or inability to pay its debts, or fails to obtain a vacation or stay of involuntary proceedings within thirty (30) days as hereinafter provided; or (d) Mortgagor shall

transfer or assign all or a major portion of its assets, or shall be adjudicated a bankrupt, or a trustee or receiver shall be appointed for Mortgagor or for all or a major portion of its property in any involuntary proceeding, or any court shall have taken jurisdiction of the property of Mortgagor or of the major part thereof in an involuntary proceeding for the reorganization, dissolution, liquidation or winding up of Mortgagor and such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within thirty (30) days; or (e) Mortgagor shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or Liquidator of all of its property or the major part thereof; or (f) default shall be made in the due observance or performance of any other of the covenants or agreements or conditions herein contained, required to be kept or performed or observed by Mortgagor, and the same shall continue for thirty (30) days after written notice specifying such default is given by Mortgagees to Mortgagor; or (g) any representation or warranty made herein by Mortgagor shall prove to be untrue or inaccurate in any material respect and Mortgagor shall fail to make good or correct such untruth or inaccuracy within thirty (30) days following receipt of written notice from Mortgagees (or any of them); or (h) the occurrence of any other event which constitutes a default by Mortgagor under this Mortgage, or a default by Mortgagor under the terms and conditions of the Note or the loan agreements of even date herewith between Mortgagees and Mortgagor or under any other agreement or instrument of indebtedness between Mortgagor and Mortgagees.

14. Foreclosure; Expense of Litigation. Subject to the Prior Mortgage and the rights of the Mortgagees thereunder, when the indebtedness or any part thereof secured hereby becomes due, whether by acceleration or otherwise, Mortgagees (or any of them) shall have the right to foreclose the lien hereof for such indebtedness or any part thereof. In any civil action to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the order of judgment for foreclosure and sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagees for reasonable attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of said order or judgment) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Mortgagees may deem reasonably necessary either to prosecute such civil action or to evidence to bidders at any sale which may be had pursuant to such order or judgment the true condition of the title to, or the value of, the Premises. All expenditures and expenses of the nature in this paragraph mentioned and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorneys employed by Mortgagees in any litigation or proceeding affecting this Mortgage, the Note or the Premises, including probate, appellate and bankruptcy proceedings, or in preparations for the commencement or defense of any action or proceeding or threatened action or proceeding, shall be due and payable by Mortgagor along with the sum secured hereby, with interest thereon at the rate set forth in the Note applicable to a period when a default exists thereunder, and shall be secured by this Mortgage.

At all times, the Mortgagor shall appear in and defend any suit, action or proceeding that affects the value of the Premises, the second priority of this Mortgage or the rights and powers of Mortgagees hereunder or under any document given at any time to secure the indebtedness.

15. Application of Proceeds of Foreclosure Sale. Subject to the terms of the Prior Mortgage and the rights of the Mortgagees thereunder, the proceeds of any foreclosure sale of the

Premises shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding paragraph hereof; second, all other items which may under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; third, all principal remaining unpaid on the Note; and fourth, any overplus to any party entitled thereto as their rights may appear on the records of the Mortgagees.

16. Appointment of Receiver or Mortgagees In Possession. Subject to the terms of the Prior Mortgage and the rights of the Mortgagees thereunder, upon, or at any time after, the commencement of an action to foreclose this Mortgage, the court in which such action was commenced may, upon request of the Mortgagees (or any of them), appoint a receiver of the Premises either before or after foreclosure sale, without notice and without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not; and the Mortgagees or any holders of the Note may be appointed as such receiver or as Mortgagees in possession. Such receiver or the Mortgagees in possession shall have power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure action and, in case of a sale and a deficiency, during the full statutory period of redemption (if any), whether there be redemption or not, as well as during any further times (if any) when Mortgagor, except for the intervention of such receiver or Mortgagees in possession, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver or Mortgagees in possession to apply the net income in its hands in payment in whole or in part of: (a) the indebtedness secured hereby or by any order or judgment foreclosing the lien of this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or the lien of such order or judgment, provided such application is made prior to foreclosure sale; and (b) the deficiency in case of a sale and deficiency.

17. Mortgagees' Right to Inspect. Mortgagees shall have the right to inspect the Premises at all reasonable times upon not less than 24 hours prior notice except in the event of an emergency and access thereto shall be permitted for that purpose.

18. Condemnation. Subject to the terms of the Prior Mortgage and the rights of the Mortgagees thereunder, mortgagor hereby assigns, transfers and sets over to Mortgagees the entire proceeds of any award or claim for damage for any of the mortgaged property taken or damages under the power of eminent domain or by condemnation. Mortgagees may elect to apply the proceeds of the award upon or in reduction of the indebtedness secured hereby, whether or not then due and payable, or to require Mortgagor to restore or rebuild, in which event the proceeds shall be held by Mortgagees and used to reimburse Mortgagor for the cost of restoring and rebuilding all buildings and improvements on the Premises in accordance with plans and specifications to be submitted to and approved by Mortgagees. If the Mortgagor or any lessee is obligated to restore and replace the damaged or destroyed buildings or improvements under the terms of any lease or leases which are or may be prior to the lien of this Mortgage, and if such taking does not result in cancellation or termination of such lease, the award shall be used to reimburse Mortgagor or the lessee (whichever is obligated under the terms of the lease to accomplish the rebuilding and restoration) for the cost of rebuilding and restoring of the buildings and improvements of said Premises, provided the Mortgagor is not then in default under this Mortgage. In the event Mortgagees hold the proceeds to reimburse Mortgagor or any lessee for the costs of rebuilding and restoring the Premises, then the proceeds of

the award shall be paid out in the same manner as provided in Paragraph 7 hereof for the payment of insurance proceeds in reimbursement of the cost of rebuilding and restoration. If the amount of such award is insufficient to cover the costs of rebuilding and restoration, Mortgagor shall pay such cost in excess of the award before being entitled to reimbursement out of the award. Any surplus that may remain out of said award after payment of such cost of rebuilding and restoration shall, at the option of Mortgagees, be applied on account of the indebtedness secured hereby.

19. Release Upon Payment and Discharge of Mortgagor's Obligations. Upon punctual payment in full of the Indebtedness Secured Hereby and the performance by Mortgagor of all of the obligations imposed on Mortgagor herein, then this Mortgage shall be released at the cost of Mortgagor, but otherwise shall remain in full force and effect. In addition, Mortgagees shall upon request of mortgagor release this mortgage in part as to each of the first five (5) condominium units, in the Property which are sold by mortgagor on or before March 18, 2000. Mortgagees shall further, upon payment by Mortgagor of the specific amounts due under the Note with respect to the sale of each of the first five (5) condominium units sold, release this mortgage as to each such unit sold.

20. Notices. Any notice which either party hereto may desire or be required to give to the other shall be deemed to be an adequate and sufficient notice if given in writing, and service is made by personal delivery or by the mailing of such notice by registered or certified mail, return receipt requested, postage prepaid, addressed to Mortgagor at its address given on the first page hereof with a copy to: GREGG FLITCRAFT c/o OLSON, GRABILL & HOFFMAN, 707 Skokie Blvd, Suite 420, Northbrook, Illinois 60062, or to Mortgagees at their address given on the first page hereof with a copy to: GORMAN & GORMAN, 542 S. Dearborn, Suite 1060, Chicago, Illinois 60605 and to BROIDA and FARROW 1250 E. Diehl Rd., Suite 108, Naperville, IL 60563 or to such other place as either party hereto may by notice in writing to the other party designate as a place for service of notice. Any such notice, demand, request or other communication shall be deemed given when personally delivered or three (3) days after mailing, if mailed.

21. Legal Rate of Interest. Notwithstanding anything herein or in the Note contained to the contrary, no provision contained herein and no provision contained in the Note shall be valid to the extent that it would require Mortgagor to pay any amount of interest or any fees, costs or expenses in excess of the legal maximum.

22. Assignment of Rents and Leases. Without limiting the generality of any other provisions hereof, as additional security Mortgagor hereby assigns to Mortgagees, subject to the terms of the Prior Mortgage and the rights of the Mortgagees thereunder, the rents, issues and profits of the Premises, and upon the occurrence of any Event of Default, Mortgagees (or any of them) may receive and collect said rents, issues and profits so long as such Event of Default shall exist and during the pendency of any foreclosure proceedings. As of the date of this Mortgage, as additional security, Mortgagor also assigns to Mortgagees any and all written and oral leases, whether now in existence or which may hereafter come into existence during the term of this Mortgage, or any extension hereof, and the rents thereunder, covering the Premises or any portion thereof. The collection of rents by Mortgagees pursuant to this Section shall in no way waive the right of Mortgagees to foreclose this Mortgage in the event of any Event of Default. Notwithstanding the foregoing, until a notice in writing is sent to Mortgagor stating that an Event of default or any event or condition that with notice or passage of time or both might become an Event of Default has occurred under the terms and conditions of this Mortgage (hereinafter referred to as the "Notice"), Mortgagor may receive, collect and enjoy the lease payments, rents, income and profits accruing from

UNOFFICIAL COPY

The undersigned, Clerk of Cook County, Illinois, do hereby certify that the foregoing is a true and correct copy of the original as the same appears in the records of the County Clerk's Office.

Witness my hand and the seal of said County at Chicago, Illinois, this _____ day of _____, 20____.

Clerk of Cook County, Illinois

Notary Public

Notary Public

the Premises (hereinafter referred to as the "Rents"). Mortgagees may, after service of a Notice, receive and collect the Rents as they become due. Mortgagees (or any of them) may thereafter continue to receive and collect all such Rents as long as such Event of Default shall exist and during the pendency of any foreclosure proceedings.

From and after the service of a Notice, Mortgagees are hereby vested with full power to use all measures, legal and equitable, it may deem necessary or proper to enforce this assignment and to collect the Rents, including without limitation the right of Mortgagees or their designee to enter upon the Premises, or any part thereof, with or without proceeds of law, take possession of all or any part of the Premises and all personal property, fixtures, documents, books, records, papers, and accounts of Mortgagor relating thereto, and exclude Mortgagor and its agents and servants wholly therefrom.

The assignment contained in this Section is given as collateral security and the execution and delivery hereof shall not in any way impair or diminish the obligations of Mortgagor, nor shall this assignment impose any obligation on Mortgagees to perform any provision of any contract pertaining to the Premises or any responsibility for the non-performance thereof by Mortgagor or any other person. The assignment under this Section is given as a third pledge, secondary only to the Prior Mortgage, and assignment of the rights described herein and such assignment shall not be deemed secondary to the security interest and mortgage of Mortgagees in the Premises. Mortgagees shall have the right to exercise any rights under this Section before, together with, or after exercising any other rights under this Mortgage. Notwithstanding anything herein to the contrary, the terms of this Section are subject to the terms of the Prior Mortgage and the rights of the Mortgagees thereunder.

23. Environmental Matters. Without limiting any provision of any environmental indemnity agreement or other document executed in connection herewith:

- (a) Mortgagor covenants, represents and warrants that, to the best of its knowledge:
 - (i) no substances, including without limitation, asbestos or any substance containing more than 1/10 of one percent (.1%) asbestos, the group of compounds known as polychlorinated biphenyls, flammable explosives, radioactive materials, chemicals known to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions or related materials and any items included in the definition of hazardous or toxic waste, materials or substances ("Hazardous Material(s)") (any mixture of a Hazardous Material, regardless of concentration, with other materials shall be considered a Hazardous Material) under any Hazardous Material Law (as defined below) have been or shall be installed, used, generated, manufactured, treated, handled, refined, produced, processed, stored or disposed of, or otherwise present in, on or under the Premises. This provision does not prohibit: (1) the use of un-recycled fuel oil as a boiler fuel; (2) the normal use of consumer products; or (3) the normal use of materials such as cleaning products, copier toner and similar materials routinely used in offices. "Hazardous Material Law(s)" means any law, regulation, order or decree relating to environmental

conditions and industrial hygiene, including without limitation, the Resource Conservative and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §6901 *et seq.*, the comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. §1801 *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. §1251 *et seq.*, the Clean Air Act, 42 U.S.C. §7401 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. §§26-1-2629, the Safe Drinking Water Act, 42 U.S.C. §§300f *et seq.*, and all similar federal, state and local environmental statutes and ordinances and the regulations, orders and decrees now or hereafter promulgated thereunder.

- (ii) No activity has been or shall be undertaken on the Premises, which would cause: (A) the Premises to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise bring the Premises within the ambit of, RCRA or any other Hazardous Material Law; (B) a release or threatened release of Hazardous Material from the Premises within the meaning of, or otherwise bring the Premises within the ambit of, CERCLA or SARA or any Hazardous Material Law; or (C) the discharge of Hazardous Material into any watercourse, body of surface or subsurface water or wetland, or the discharge into the atmosphere of any Hazardous Material which would require a permit under any Hazardous Material Law.
- (iii) No activity has been or shall be undertaken with respect to the Premises that would cause a violation of or support a claim under any Hazardous Material Law.
- (iv) No underground storage tanks or underground Hazardous Material deposits are or were located on the Property and subsequently removed or filled.
- (v) No investigation, administrative order, litigation or settlement with respect to any Hazardous Materials is threatened or in existence with respect to the Premises.
- (vi) No notice has been served on Mortgagor from any entity, governmental body or individual claiming any violation of any Hazardous Material Law or requiring compliance with any Hazardous Material Law, or demanding payment or contribution for environmental damage or injury to natural resources.
- (b) THIS SECTION 23 SHALL APPLY TO ANY CLAIM, DEMAND OR CHARGE CONTEMPLATED BY THIS MORTGAGE MADE OR ASSERTED AT ANY TIME AND, WITHOUT LIMITATION, SHALL CONTINUE IN FULL FORCE AND EFFECT NOTWITHSTANDING THAT ALL OBLIGATIONS OF THE MORTGAGOR OR ANY OTHER PERSON OR ENTITY UNDER OR IN CONNECTION WITH THIS MORTGAGE OR ANY OTHER RELATED DOCUMENT OR MATTER HAVE BEEN PAID, RELEASED OR FULFILLED IN FULL. Any claim, demand or charge asserted at any time relating to the period

for time set forth in this paragraph shall be subject to the terms and conditions of this mortgage. Notwithstanding the above, this Mortgage shall not be construed to impose any liability on Mortgagor for divisible loss or damage resulting solely from Hazardous Material placed, released or disposed on the Premises after foreclosure or sale of the Premises pursuant to the Mortgage or acceptance by Mortgagees of a deed in lieu of foreclosure.

- (c) Mortgagor shall immediately advise Mortgagees in writing of:
- (i) any governmental or regulatory actions instituted or threatened under any Hazardous Material Law affecting the Premises or the matters identified hereunder including, without limitation, any notice of inspection, abatement or noncompliance;
 - (ii) all claims made or threatened by any third party against Mortgagor or the Premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Material;
 - (iii) Mortgagor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Premises that could cause the Premises to be classified in a manner which may support a claim under any Hazardous Material Law; and
 - (iv) Mortgagor's discovery of any occurrence or condition on the Premises or any real property adjoining or in the vicinity of the Premises which could subject Mortgagor or the Premises to any restrictions on ownership, occupancy, transferability or use of the Premises under any Hazardous Material Law. Mortgagor shall immediately deliver to Mortgagees any documentation or records as Mortgagees may request in connection with all such notices, inquiries and communications and shall advise Mortgagees promptly in writing of any subsequent developments.
 - (v) Mortgagees shall give written notice to Mortgagor of any action against Mortgagees that might give rise to a claim by Mortgagees against Mortgagor under this Mortgage. If any action is brought against Mortgagees, Mortgagor, at Mortgagees' sole option and Mortgagor's expense, may be required to defend against such action with counsel satisfactory to Mortgagees and, with Mortgagees' (or any of them) sole consent and approval, to settle and compromise any such action. However, Mortgagees may elect to be represented by separate counsel, at Mortgagees' expense, and if Mortgagees so elects any settlement or compromise shall be effected only with the consent of Mortgagees. Mortgagees may elect to join and participate in any settlements, remedial actions, legal proceedings or other actions included in connection with any claims under this Mortgage.

24. Additional Documents. Mortgagor will, at any time upon request by Mortgagees, (or any of them) execute and deliver all further assurances of title and all pertinent additional papers,

information, records and instruments as may be reasonably required by Mortgagees for carrying out the intentions of the parties hereto.

25. Rights Cumulative. Each right, power and remedy herein conferred upon the Mortgagees is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagees, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of the Mortgagees in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

26. Amendments in Writing. This Mortgage cannot be changed except by an agreement in writing, signed by the party against whom enforcement of the change is sought.

27. Business Loan. Mortgagor represents and agrees that the loan evidenced by the Note and secured hereby is a business loan within the purview of Section 815 ILCS 205/4 (or any substitute, amended, or replacement statutes) and is transacted solely for the purpose of carrying on or acquiring the business of the Mortgagor as contemplated by said Section.

28. Restrictions on Transfer. Subject to the provisions hereof, it shall be an immediate Event of Default hereunder if, without the prior written consent of the Mortgagees, any of the following shall occur, and in any event Mortgagees may condition its consent upon such increase in rate of interest payable upon the Indebtedness Hereby Secured, change in monthly payments thereon, change in maturity thereof and/or the payment of a fee, all as Mortgagees may in their sole discretion require:

- (a) If the Mortgagor shall create, effect, contract for, commit to or consent to or shall suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of the Premises or any part thereof, or interest therein, excepting only sales or other dispositions of Collateral as defined herein no longer useful in connection with the operation of the Premises (hereinafter referred to as "Obsolete Collateral"); provided that prior to the sale or other disposition thereof, such Obsolete Collateral shall have been replaced by Collateral, subject to the first and prior lien hereof, of at least equal value and utility;
- (b) If any beneficiary of the Mortgagor shall create, effect, contract for, commit to or consent to, or shall suffer or permit, any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of such beneficiary's beneficial interest in the Mortgagor;
- (c) If any corporation becomes a beneficiary of the a trustee mortgagor, then if any shareholder of such corporation shall create, effect, contract for, commit to or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of any such shareholder's shares in such corporation; provided that if such corporation is a corporation whose stock

is publicly traded on a national securities exchange or on the "Over The Counter" market, then this Section shall be inapplicable;

- (d) If any beneficiary of a trustee Mortgagor is a partnership or joint venture, then if any general partner or joint venture in such partnership or joint venture shall create, effect or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of any part of the partnership interest or joint venture interest, as the case may be, of such partner or joint venturer; or
- (e) If there shall be any change in control (by way of transfers of stock ownership, partnership interests or otherwise) in any general partner which directly or indirectly controls or is a general partner of a partnership or joint venture beneficiary as described in Subsection (d) above;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided that provisions of this Section shall be operative with respect to, and shall be binding upon, any persons who, in accordance with the terms hereof or otherwise, shall acquire any part of or interest in or encumbrance upon the Premises, or such beneficial interest in, share of stock of or partnership or joint venture interest in the Mortgagor or any beneficiary of a trustee mortgagor; and provided further that no consent by Mortgagees to, or any waiver of, any event or condition which would otherwise constitute an Event of Default under this Section, shall constitute a consent to or waiver of any other or subsequent such event or condition or a waiver of any right, remedy or power of Mortgagees consequent thereon.

29. Permitted Transfers. The provisions set out above with respect to non-permitted transfers shall not apply to any of the following:

- (a) Liens securing the Indebtedness Hereby Secured;
- (b) The lien of current real estate taxes and assessments not in default; and
- (c) The lien created under the Prior Mortgage.
- (d) Any transfer by Mortgagor to a corporation or trust in which Mortgagor holds sole ownership interest.

30. Uniform Commercial Code. This Mortgage constitutes a Security Agreement under the Uniform Commercial Code of the State of Illinois (hereinafter referred to as the "Code") with respect to any part of the Premises which may or might now or hereafter be or be deemed to be personal property, fixtures or property other than real estate (hereinafter collectively referred to as the "Collateral") provided such Collateral is owned by Mortgagor; all of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this Section shall not limit the generality or applicability of any other provision of this Mortgage, but shall be in addition thereto:

- (a) The Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof and the lien created by the Prior Mortgage;
- (b) The Collateral is to be used by the Mortgagor solely for business purposes, being installed upon the Premises for Mortgagor's own use or as the equipment and furnishings furnished by Mortgagor, as landlord, to tenants of the Premises.
- (c) The Collateral will be kept at the Premises and will not be removed therefrom without the consent of the Mortgagees (being the Secured Party as that term is used in the Code) by Mortgagor or any other person; and the Collateral may be affixed to the Premises but will not be affixed to any other real estate;
- (d) The only persons having any interest in the Premises are the Mortgagor, Mortgagees, the Mortgagees under the Prior Mortgage, and persons occupying the Premises as tenants only;
- (e) No Financing Statement covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto or pursuant to the Prior Mortgage; and Mortgagor will at its own cost and expense, upon demand, furnish to the Mortgagees such further information and will execute and deliver to the Mortgagees such financing statement and other documents in form satisfactory to the Mortgagees, and will do all such acts and things as the Mortgagees may at any time or from time to time reasonably request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness Hereby Secured, subject to no adverse liens or encumbrances, except pursuant to the Prior Mortgage; and the Mortgagor will pay the cost of filing the same or filing or recording such financing statements or other documents, and this instrument, in all public offices whenever filing or recording is deemed by the Mortgagees to be necessary or desirable;
- (f) Upon the occurrence of any Event of Default hereunder and at any time thereafter (such Event of Default not having previously been cured), the Mortgagees at their option may declare the Indebtedness Hereby Secured immediately due and payable, all as more fully set forth in Section 13 hereof, and thereupon Mortgagees shall have the remedies of a secured party under the Code, including without limitation the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as the Mortgagor can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code);
- (g) The Mortgagees shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral, subject to the Mortgagor's right of redemption, if any, in satisfaction of the Mortgagor's obligations

as provided in the Code; provided that (i) the Mortgagees without removal may render the Collateral unusable and dispose of the Collateral on the Premises, and (ii) the Mortgagees may require the Mortgagor to assemble the Collateral and make it available to the Mortgagees for their possession at a place to be designated by Mortgagees which is reasonably convenient to both parties;

- (h) The Mortgagees will give Mortgagor at least five (5) days' notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is made and the requirements of reasonable notice shall be met if such notice is mailed, by certified mail or equivalent, postage prepaid, to the address of the Mortgagor determined as provided herein, at least five (5) days before the time of the sale or disposition;
- (i) The Mortgagees (or any of them) may buy at any public sale, and if the Collateral is a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, Mortgagees (or any of them) may buy at any private sale, and any such sale may be held as part of and in conjunction with any foreclosure sale of the Premises, the Collateral and Premises to be sold as one lot if Mortgagees (or any of them) so elect.
- (j) The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling or the like, and the reasonable attorneys' fees and legal expenses incurred by Mortgagees, shall be applied in satisfaction of the Indebtedness Hereby Secured; and the Mortgagees will account to the Mortgagor for any surplus realized on such disposition;
- (k) The remedies of the Mortgagees hereunder are cumulative and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of any of the other remedies of the Mortgagees, including having the Collateral deemed part of the Premises upon any foreclosure thereof, so long as any part of the Indebtedness Hereby Secured remains unsatisfied;
- (l) The terms and provisions contained in this Section shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.
- (m) All of the rights of Mortgagees set forth in this Section shall be subject to the terms of the Prior Mortgage and the rights of the Mortgagees thereunder,
31. Effect of Extensions of Time, Amendments on Junior Liens and Others. Mortgagor covenants and agrees that:
- (a) If the payment of the Indebtedness Hereby Secured, or any part thereof, be extended or varied, or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability, if any, and the lien and all provisions hereof shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by the Mortgagees, notwithstanding any such extension, variation or release;

- (b) Any person, firm or corporation taking a junior mortgage or other lien upon the Premises or any interest therein, shall take such lien, subject to the rights of the Mortgagees to amend, modify and supplement this Mortgage, and the Note and to vary the rate of interest and the method of computing the same, and to impose additional fees and other charges, and to extend the maturity of the Indebtedness Hereby Secured, in each and every case without giving notice to, or obtaining the consent of, the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien;
- (c) Nothing in this Section contained shall be construed as waiving any provision hereof which provides, among other things, that it shall constitute an Event of Default if the Premises be sold, conveyed or encumbered.

32. Insurance Upon Foreclosure. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in restoring the improvements, as aforesaid, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct; and, in the case of foreclosure of this Mortgage, the court, in its decree, may provide that the mortgagees's clause attached to each of the casualty insurance policies may be canceled and that the purchaser at foreclosure sale may cause a new loss clause to be attached to each of said casualty insurance policies making the loss thereunder payable to said purchaser and any such foreclosure decree may further provide that in case of a redemption under said decree as provided by statute, such redelector may cause the preceding loss clause attached to each casualty insurance policy to be canceled and a new loss clause to be attached thereto, making the loss thereunder payable to such redelector.

33. Mortgagor Not a Joint Venturer or Partner. Mortgagor and Mortgagees acknowledge and agree that in no event shall Mortgagees be deemed to be a partner or joint venturer with Mortgagor or any beneficiary of Mortgagor, and without limiting the foregoing, Mortgagees shall not be deemed to be such a partner or joint venturer on account of its becoming a Mortgagees in possession or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document evidencing or securing any of the Indebtedness Hereby Secured, or otherwise.

34. Title in Mortgagor's Successors. In the event that the ownership of the Premises or any part thereof becomes vested in a person or persons other than the current Mortgagor,

- (a) the Mortgagees (or any of them) may, without notice to the Mortgagor, deal with such successor or successors in interest of the Mortgagor with reference to this Mortgage and the Indebtedness Hereby Secured in the same manner as with the Mortgagor; and
- (b) the Mortgagor will give immediate written notice to the Mortgagees of any conveyance, transfer or change of ownership of the Premises; but nothing in this Section 40 contained shall vary or negate the provisions of Section 32 hereof.

35. Rights Cumulative. Each right, power and remedy herein conferred upon the Mortgagees is cumulative and in addition to every other right, power or remedy, express or implied,

given now or hereafter existing, at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagees, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of the Mortgagees in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

36. Costs and Attorneys' Fees. Mortgagor agrees that all costs, charges and expenses, including all reasonable attorneys' fees incurred by the Mortgagees arising out of or in connection with any action, proceeding or hearing, legal or quasi legal, or the preparation therefor, in any way affecting or pertaining to this Mortgage, the Indebtedness Hereby Secured or the Premises, shall be promptly paid by the Mortgagor. If funds for same are advanced by the Mortgagees, all such sums so advanced shall be added to the Indebtedness Secured Hereby and shall bear interest at the Default Rate payable under the Note from the date of said advance, and shall be due and payable on demand.

37. Successors and Assigns. This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon the Mortgagor and its successors and assigns (including, without limitation, each and every from time to time record owner of the Premises or any other person having an interest therein) and shall inure to the benefit of the Mortgagees and their successors and assigns and (a) wherever herein the Mortgagees are referred to, such reference shall be deemed to include the holder from time to time of the Note, whether so expressed or not; and (b) each such from time to time holder of the Note shall have and enjoy all of the rights, privileges, powers, options benefits and security afforded hereby and hereunder, and may enforce every and all of the terms and provisions hereof, as fully and to the same extent and with the same effect as if such from time to time holder was herein by name specifically granted such rights, privileges, powers, options, benefits and security and was herein by name designated the Mortgagees.

38. Provisions Severable. The unenforceability or invalidity of any provision or provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid.

39. Time. Time is of the essence hereof and of the Note, the Hypothecation Agreement, the Assignment and all other instruments or loan documents delivered in connection with the Indebtedness Hereby Secured, and no waiver of any obligation or option hereunder or thereunder hereby shall at any time thereafter be held to be a waiver of such other terms hereof or of the instruments delivered in connection with the Indebtedness Hereby Secured.

40. Governing Laws. This Mortgage shall be governed by, and construed in accordance with the laws of the State of Illinois.

41. Mortgagor Will Not Discriminate. Mortgagor covenants and agrees at all times to be in full compliance with provisions of law prohibiting discrimination on the basis of race, color, creed or national origin including, but not limited to, the requirements of Title VIII of the 1968 Civil Rights Act, or any substitute, amended or replacement Acts.

42. Interest at the Default Rate. Without limiting the generality of any provision herein or in the Note contained, from and after the occurrence of any Event of Default hereunder, all of the Indebtedness Hereby Secured shall bear interest at the Default Rate.

43. Estoppel Certificate. Mortgagor, within fifteen (15) days after mailing of a written request by the Mortgagees, agrees to furnish from time to time a signed statement setting forth the amount of the Indebtedness Hereby Secured and whether or not any default, offset or defense then is alleged to exist against the Indebtedness Hereby Secured and, if so, specifying the nature thereof.

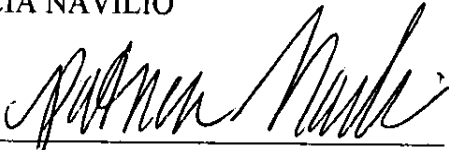
44. Future Advances. At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures as part of the Indebtedness Hereby Secured the payment of all loan commissions, service charges, liquidated damages, attorneys' fees, expenses and advances due to or incurred by Mortgagees in connection with the Indebtedness Hereby Secured, all in accordance with the Note, this Mortgage, and the loan agreements, provided, however, that in no event shall the total amount of the Indebtedness Hereby Secured, including loan proceeds disbursed plus any additional charges, exceed two hundred percent (200%) of the face amount of the Note. Mortgagor acknowledges that Mortgagees have bound themselves to make advances pursuant to the loan agreements and that all such future advances shall be a lien from the time this Mortgage is recorded, as provided in the Act.

45. Captions and Pronouns. The captions and headings of the various sections of this Mortgage are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof, and whenever the context requires or permits, the singular number shall include the plural, the plural shall include the singular and the masculine, feminine and neuter genders shall be freely interchangeable.

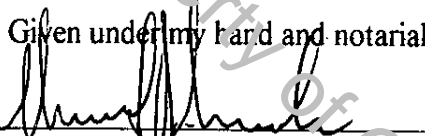
[THIS SECTION OF PAGE
INTENTIONALLY LEFT
BLANK]

IN WITNESS WHEREOF, Mortgagor has executed these presents as of the day and year first above written.

MORTGAGOR
PATRICIA NAVILIO

By: 
PATRICIA NAVILIO

I, the undersigned, a notary public in and for said county in the state aforesaid, do hereby certify that PATRICIA NAVILIO, personally known to me to be the same person whose name is subscribed to the foregoing instrument, signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

Given under my hand and notarial seal this 15 day of October 1999.

Notary Public

This document prepared by Patricia Navilio.

Mail to: Gregg Flitcraft
707 Skokie Blvd #420
Northbrook, IL 60062



Property of Cook County Clerk's Office