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2001-04-02 14:58:48

Cook County Recorder 147.00



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This instrument prepared by and after recording should be returned to:

FagelHaber LLC
55 East Monroe
40th Floor
Chicago, Illinois 60603
Attention: Joel S. Dalinka, Esq.

PIN NUMBER: 13-26-414-031-0000

Common Address: 2600 North Sawyer Avenue
Chicago, Illinois 60647

MORTGAGE AND SECURITY AGREEMENT

This Mortgage and Security Agreement (this "Mortgage") is executed and delivered as of this 13th day of March, 2001, by Oak Leaf Properties, L.L.C., an Illinois limited liability company with its principal office located at 1332 N. Halsted, Suite 201, Chicago, Illinois 60622 ("Borrower"), to the Declaration of Living Trust of Henry Silverman, Henry Silverman, Trustee (the "Lender").

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for
[Signature]

WITNESSETH:

WHEREAS, Borrower has requested that the Lender provide a term loan in the original principal amount of \$800,000 (the "Financial Accommodations") to Borrower, in part to refinance all of the indebtedness secured by the real property commonly known as 2600 North Sawyer Avenue, Chicago, Illinois 60647, and legally described on Exhibit "A" attached hereto; and

WHEREAS, the Lender is willing to provide the Financial Accommodations to Borrower provided, among other things, Borrower executes and delivers this Mortgage to the Lender.

NOW, THEREFORE, in consideration of the foregoing, the mutual promises and understandings of the parties hereto set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Borrower hereby covenants unto and agrees with the Lender as set forth in this Mortgage.

1. DEFINITIONS AND TERMS

1.1 The following words, terms or phrases shall have the meanings set forth below:

"Assignment of Rents and Lessor's Interest in Leases": shall mean that certain Assignment of Rents and Lessor's Interest in Leases of even date herewith executed and delivered by Borrower to the Lender, as amended, renewed or replaced from time to time.

"Bender Guaranty": shall mean that certain Personal Guaranty of even date herewith executed and delivered by John Bender to the Lender, as amended, renewed or replaced from time to time.

"Charges": shall mean all national, federal, state, county, city, municipal or other governmental (including, without limitation, any instrumentality, division, agency, body or department thereof) taxes,

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BOX 333-CTD

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levies, assessments, charges, water charges, sewer service charges, liens, claims or encumbrances upon or relating to the Mortgaged Property, the Liabilities or the Covenants.

"Covenants": shall mean all now existing or hereafter arising covenants, duties, obligations and agreements of Borrower to and with the Lender, whether pursuant to this Mortgage, the Other Agreements or otherwise.

"Default Rate": shall have the meaning ascribed to such term in the Mortgage Note.

"Documents": shall mean any mortgage, deed of trust or similar instrument, assignment of leases, assignment of rents, promissory note, security agreement, guaranty, financing statement, assignment of insurance, loss payable clause, mortgage title insurance policy, letter of opinion, waiver letter, estoppel letter, consent letter, non-offset letter, insurance certificate, appraisal, survey and any other similar agreements, instruments or documents.

"Encumbrances": shall mean all liens, security interests, liabilities, claims, debts, exceptions, easements, restrictions, Charges and any other types of encumbrances.

"Environmental Indemnity Agreement": shall mean that certain Environmental Indemnity Agreement of even date herewith executed and delivered by Borrower, Mark Fishman and John Bender to the Lender, as amended, renewed or replaced from time to time.

"Equipment": shall mean all now existing or owned and hereafter arising or acquired apparatus, machinery, equipment, furniture, fixtures and other articles of personal property of any and every kind and nature whatsoever, required for use in, on, or in connection with the Premises or the management, maintenance, operation or business thereof and all replacements thereof, substitutions therefor and accessions thereto, including, without limitation, any such item now or at any time or times hereafter situated on the Premises and used to supply or otherwise deliver heat, gas, air conditioning, water, light, electricity, power, plumbing, refrigeration, sprinkling, ventilation, mobility, communication, incineration, and all other related or other such services.

"Event of Default": shall mean the definition ascribed to this term in Paragraph 6.1 below.

"Fishman Guaranty": shall mean that certain Personal Guaranty of even date herewith executed and delivered by Mark Fishman to the Lender, as amended, renewed or replaced from time to time.

"Leases": shall mean all present and future leases, agreements, tenancies, licenses and franchises of or relating to the Premises, the Mortgaged Property or the Equipment, or in any way, manner or respect required, existing, used or useable in connection with the Premises, the Mortgaged Property or the Equipment, or the management, maintenance, operation or business thereof, and all deposits of money as advance rent or for security under any or all of the Leases and all guaranties of any lessee's performances thereunder.

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"Lender's Lien": shall have the meaning ascribed to such term in Section 2.4 below.

"Liabilities": shall mean any and all debts, claims, obligations, demands, monies, liabilities or indebtedness of any and every kind or nature heretofore, now or hereafter owing, arising, due or payable from Borrower to the Lender, however evidenced, created, incurred, acquired or owing, whether primary, secondary, direct, indirect, absolute, contingent, fixed, determinable, undeterminable, insured and uninsured,

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whether pursuant to the terms and provisions of this Mortgage, the Mortgage Note, the Other Agreements or otherwise, including, without limitation, any financing now or hereafter provided by the Lender to Borrower for the construction or improvement of the Premises and all advances made to protect and preserve the value of the Mortgaged Property and the priority of the Lender's mortgage and lien thereon.

"Mortgage Loan": shall have the meaning ascribed to such term in Section 2.1 below.

"Mortgage Note": shall mean that certain Secured Term Note of even date herewith in the original principal amount of Eight Hundred Thousand and no/100 Dollars (\$800,000.00) executed and delivered by Borrower to the Lender, as amended, renewed or replaced from time to time.

"Mortgaged Property": shall mean (1) the Premises; (2) the Rents; (3) the Leases; (4) the Equipment; (5) all present and future judgments, awards of damages and settlements made as a result or in lieu of any taking of the Premises, the Equipment or the Leases, or any part thereof, whether under the power of eminent domain or otherwise, or for any damage, whether caused by such taking or otherwise thereto; (6) all present and future insurance policies in force or effect insuring the Premises, the Rents, the Leases or the Equipment; and (7) all proceeds of each and every of the foregoing.

"Other Agreements": shall mean all agreements, instruments and documents heretofore, now or from time to time hereafter executed by, or on behalf of, Borrower and delivered to the Lender, including, without limitation, the Mortgage Note, the Assignment of Rents and Lessor's Interest in Leases, the Environmental Indemnity Agreement, the Bender Guaranty, the Fishman Guaranty and any renewals, modifications, amendments or substitutions to any of the foregoing.

"Person": shall mean any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, institution, entity, party or government, whether national, federal, state, county, city, municipal or otherwise, including, without limitation, any instrumentality, division, agency, body or department thereof.

"Premises": shall mean all of the real property, and all of Borrower's estate, right, title and interest therein, situated, lying and being in the City of Chicago, County of Cook, State of Illinois, legally described on Exhibit "A" and commonly known as 2600 North Sawyer Avenue, Chicago, Illinois 60647, together with all buildings, improvements, tenements, easements, hereditaments and appurtenances now or at any time or times hereafter upon, belonging or otherwise appertaining to or situated on said real estate and all heretofore or hereafter acquired roads, alleys, streets and other public ways abutting said real estate.

"Rents": shall mean all present and future rents, issues, deposits, income, profits and proceeds of, from or relating to the Premises, the Leases or the Equipment.

2. LOANS, CONVEYANCE AND INTEREST RATES

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2.1 On the terms and subject to the conditions set forth in this Mortgage, and provided that an Event of Default, or any event which with notice, lapse of time or both would constitute an Event of Default, does not then exist, the Lender agrees to provide financing to Borrower in the principal amount of Eight Hundred Thousand and no/100 Dollars (\$800,000.00) to be used by Borrower, in part to refinance all indebtedness of Borrower to Bridgeview Bank secured by the Premises (the "Mortgage Loan"). The Mortgage Loan shall be evidenced by and repaid in accordance with the Mortgage Note.

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2.2 TO SECURE THE FULL AND TIMELY PAYMENT AND PERFORMANCE BY BORROWER OF THE LIABILITIES AND THE COVENANTS, INCLUDING, WITHOUT LIMITATION, THE LIABILITIES EVIDENCED BY THE MORTGAGE NOTE, BORROWER HEREBY DOES WARRANT, GRANT, GIVE, BARGAIN, CONFIRM, ASSIGN, PLEDGE, SET OVER, TRANSFER, SELL, CONVEY, REMISE, RELEASE AND OTHERWISE MORTGAGE TO THE LENDER, ITS SUCCESSORS AND ASSIGNS, THE MORTGAGED PROPERTY, WHETHER REAL, PERSONAL OR MIXED. Notwithstanding anything contained herein to the contrary, the Liabilities hereunder shall in no event exceed Ten Million and no/100 Dollars (\$10,000,000.00).

2.3 This Mortgage shall operate as and constitute a Security Agreement with respect to that portion of the Mortgaged Property constituting property or interests in property, whether real or personal, tangible or intangible, which are subject to the Uniform Commercial Code with respect to the priority and perfection of security interests or any similar law, statute, code or other governing body of law. Therefore, to secure the full and timely payment and performance by Borrower of the Liabilities and the Covenants, including, without limitation, the Liabilities evidenced by the Mortgage Note, Borrower hereby grants to the Lender a security interest and lien in and to the Mortgaged Property.

2.4 Upon request by the Lender, at Borrower's sole cost and expense, Borrower will promptly make, execute and deliver or will cause to be made, executed and delivered to or for the benefit of the Lender, in form and substance acceptable to the Lender, all Documents necessary or appropriate to evidence, document or conclude the transactions described in or contemplated by this Mortgage and the Other Agreements, or required to perfect or continue perfected the first position priority mortgage lien and security interest granted herein or in the Other Agreements by Borrower to the Lender upon the Mortgaged Property (collectively the "Lender's Lien").

2.5 Borrower hereby promises to pay interest on the unpaid principal amount of the Mortgage Loan at the per annum rate of interest set forth in the Mortgage Note. Notwithstanding the foregoing, upon the occurrence of an Event of Default, the unpaid principal amount of the Mortgage Loan shall bear interest after such Event of Default at the Default Rate.

2.6 Interest on the Liabilities shall be computed for the actual number of days elapsed on the basis of a three hundred sixty (365) day year.

3. REPRESENTATIONS, WARRANTIES AND COVENANTS

3.1 Borrower represents, warrants and covenant unto the Lender as follows. **10260518**

(A) Borrower will fully and timely pay, when due or declared due, the Liabilities, and will fully and timely perform, discharge, observe and comply with, or cause to be fully and timely performed, discharged, observed and complied with, each and every of the Covenants.

(B) Borrower has and shall maintain the standing, right, power and lawful authority to own the Mortgaged Property, to enter into, execute and deliver this Mortgage and the Other Agreements, and to encumber the Mortgaged Property to the Lender.

(C) Borrower now and at all times hereafter shall perform all of the transactions described in or contemplated by this Mortgage and the Other Agreements.

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(D) The execution, delivery and performance by Borrower of and under this Mortgage and the Other Agreements (i) does not and will not constitute a violation of any applicable law, and (ii) does not and will not conflict with or result in a default or breach of or under any obligation arising, existing or created by or under any agreement, instrument, document, mortgage, deed, trust deed, note, judgment, order, award, decree or other restriction to which Borrower now is or hereafter shall become a party or by which any of them or any of the Mortgaged Property is or hereafter shall become bound.

(E) Borrower shall timely file all federal, state and other governmental tax and similar returns which Borrower is required by law to file with respect to the Mortgaged Property and the operation and business thereof. All taxes and other sums which are shown to be payable under such returns have been and shall be fully and timely paid and Borrower shall maintain adequate reserves in an amount to pay fully all such liabilities which hereafter may accrue.

(F) All of the Leases are and shall remain genuine, in all respects what they purport to be, free of set-offs, counterclaims or disputes and are valid and enforceable in accordance with their terms. All parties to the Leases have and shall have the capacity to contract thereunder. Except for security deposits provided for under the Leases as indicated by Borrower to the Lender in writing, no advance payments have been or shall be made thereunder.

(G) There is no litigation, action, claim or proceeding pending or threatened which might, in any way, manner or respect, adversely affect the Mortgaged Property, the operation or the business thereof, the Lender's Lien, the collectibility or the ability of Borrower to repay the Liabilities or the financial condition of Borrower or the operation or business thereof.

(H) Borrower possesses and holds and shall maintain adequate properties, interests in properties, leases, licenses, franchises, rights and other permits, certificates, consents and approvals to conduct and operate the business of the Mortgaged Property. None of the foregoing contain or shall contain any term or condition that is burdensome to said business or different than those customarily possessed or held by other Persons conducting or operating a similar business.

(I) The location, existence and use of the Premises and the Equipment are and shall remain in compliance with all applicable laws, rules, ordinances and regulations, including, without limitation, building and zoning laws, and all covenants and restrictions of record.

(J) Borrower is in peaceful possession of and will forever warrant and defend the Mortgaged Property from and against any and all claims and Encumbrances thereon or thereto.

(K) Borrower is not using and shall not use the Mortgaged Property for any purpose in violation of any applicable environmental, hazardous waste and substances, health or safety laws, rules or regulations, including, but not limited to, the Resource Conservation and Recovery Act, as amended ("RCRA"), the Toxic Substances Control Act, as amended ("TSCA"), the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), the Clean Air Act, as amended ("CAA"), and the Clean Water Act, as amended ("CWA"), regulations thereunder and corresponding state statutes and regulations. Borrower has all required permits, certificates, consents and approvals required under any applicable environmental, health or safety laws, rules or regulations. Borrower is and shall remain in compliance with all applicable environmental, health and safety laws, rules or regulations in connection with the use of the Mortgaged Property.

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(L) All hazardous waste accumulations at the Mortgaged Property shall be in tanks or containers, as defined in 40 C.F.R. 260.10, and shall be in compliance with applicable United States Environmental Protection Agency and State of Illinois small quantity generator limitations under RCRA, regulations thereunder and corresponding Illinois statutes and regulations.

(M) There are no underground or above ground storage tanks on the Premises.

(N) No burial, disposal or landfilling of hazardous waste or hazardous substances, regulated substances or other pollutants (as such are defined in RCRA, TSCA, CERCLA, CAA or CWA) will be carried on at the Mortgaged Property. Further, Borrower shall operate no surface impoundment, lagoon, or other earthen device for the purposes of treatment, storage or disposal of hazardous wastes and hazardous substances.

(O) Borrower shall not use, release or cause to be used or released asbestos as defined by 29 C.F.R. 1910.1001(a). Any repairs, maintenance or modifications to the Mortgaged Property which may result in release of asbestos shall be performed by or under the supervision of personnel appropriately accredited by the State of Illinois or the United States Environmental Protection Agency.

(P) Borrower shall immediately provide the Lender a copy of any administrative, civil or criminal complaint received by Borrower alleging (i) violations of environmental, health and safety statutes, ordinances or regulations, or (ii) bodily injury or property damage arising from Borrower's operations or Borrower's ownership of the Mortgaged Property.

(Q) There are no past due assessments in connection with the Mortgaged Property nor any assessment liens arising from the non-payment of any such assessments.

3.2 Borrower further represents, warrants and covenants unto the Lender as follows:

(A) Borrower is lawfully seized, possessed and the owner of and have good and indefeasible, marketable fee-simple title to the Mortgaged Property, free and clear of all Encumbrances, except for the Lender's Lien and those Encumbrances described on Exhibit "B" to this Mortgage (collectively the "Permitted Encumbrances").

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(B) Borrower will (i) not materially change the use or character of or abandon the Mortgaged Property, except as approved by the Lender in writing, (ii) keep the Mortgaged Property in good condition and repair, and (iii) not commit or suffer waste and will make all necessary repairs, replacements and renewals, including, but not limited to, the replacement of any items of the Equipment to the Mortgaged Property so that the value and operating efficiency thereof shall at all times hereafter be maintained and preserved. Borrower shall not remove any trade fixture or demolish any building or improvement located in or on the Premises without the Lender's prior written consent. Borrower shall (A) pay for and promptly complete any building or improvement at any time in the process of erection upon the Premises, (B) refrain from impairing or diminishing the value of the Mortgaged Property, and (C) make no material alterations to the Mortgaged Property which in the reasonable opinion of the Lender diminishes its value. Subject to the provisions of subparagraphs 4.3 and 4.5(A) of this Mortgage, if the Lender elects to make all or a portion of any insurance, eminent domain or condemnation proceeds available to Borrower, Borrower shall promptly repair, restore or rebuild any building or improvement now or hereafter on the Premises which may become damaged or destroyed. Borrower shall comply with all laws and municipal ordinances governing the Mortgaged Property and the use thereof. At all times during the term of this Mortgage and the Other Agreements, Borrower shall permit the Lender, and its agents, access to inspect the Mortgaged Property.

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(C) Borrower shall fully and timely pay and discharge or cause to be paid and discharged, as and when due and payable, all Charges that may be at any time levied, assessed or imposed upon or against the Mortgaged Property, or any part thereof. Borrower shall, immediately upon the Lender's request, deliver to the Lender receipts evidencing payment thereof or partial payment thereof, if payable in installments, at least thirty (30) days before delinquency; provided, however, that Borrower shall have the right to contest in good faith, by an appropriate proceeding properly initiated and diligently conducted, the validity, amount or imposition of any Charges, and upon such good faith contest, to delay or refuse payment thereof, if (i) Borrower establishes with the Lender, adequate reserves to cover such contested Charges, and (ii) either such contest will not affect the priority or value of the Lender's Lien on the Mortgaged Property or Borrower otherwise takes steps acceptable to the Lender in its sole discretion to protect the priority and value of the Lender's Lien on the Mortgaged Property. If at any time the United States of America shall require internal revenue stamps to be affixed to this Mortgage, Borrower will pay for the same, together with any interest or penalties imposed in connection therewith.

(D) Except for the Lender's Lien and the Permitted Encumbrances, Borrower shall keep the Mortgaged Property free and clear of all Encumbrances of any and every kind and nature including, without limitation, mechanics' liens and other similar liens or claims for liens. Borrower shall promptly pay or cause to be paid, as and when due and payable or when declared due and payable, any indebtedness which may become, or be secured by, an Encumbrance and, immediately upon request by the Lender, shall deliver to the Lender evidence satisfactory to the Lender of the payment and discharge thereof. If, in accordance with the terms of this Mortgage, the Lender makes payment of any such Encumbrance, the Lender shall be subrogated to the rights of such claimant, notwithstanding that the Encumbrance may be released of record.

(E) Borrower shall not, at any time or times hereafter, pledge, hypothecate, encumber, sell, permit or otherwise transfer all or any portion of the Mortgaged Property or Borrower's interest therein.

(F) All present and future items of fixtures, equipment, furnishings or other tangible personal property, whether or not constituting a part of the Mortgaged Property, related, necessary to or used or useable in connection with any present or future building or improvement on the Premises, or the operation or business thereof, are and will be owned free and clear of all Encumbrances, except for the Lender's Lien and the Permitted Encumbrances, and Borrower will not acquire any such property subject to any Encumbrance, except for the Lender's Lien and the Permitted Encumbrances.

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3.3 If Borrower fails to (A) keep the Mortgaged Property in good operating condition and repair or to replace or maintain the same as herein agreed, (B) pay the premiums for the insurance which is required to be maintained hereunder, or (C) pay and discharge all Encumbrances as herein agreed, or upon an Event of Default, the Lender, in its sole discretion, may cause such repairs or replacements to be made, obtain such insurance or pay and discharge such Encumbrances. Any amounts paid by the Lender in taking such action together with interest thereon at the Default Rate shall be due and payable by Borrower to the Lender upon demand, and, until paid, shall constitute a part of the Liabilities secured by this Mortgage and the Other Agreements. Notwithstanding the foregoing, such advances by the Lender shall not be deemed to relieve Borrower from any Event of Default hereunder or impair any of the Lender's rights or remedies. The exercise of the right to take such action shall be optional with the Lender and not obligatory upon the Lender, and in no event whatsoever, shall the Lender be liable to Borrower for failure or refusal to exercise any such right. In making any payments pursuant to the exercise of any such right, the Lender may rely upon any bills delivered to it by Borrower or any such payee and shall not be liable for any failure to make payments in any amounts other than as set forth in any such bills.

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3.4 Borrower hereby represents and warrants that all of the Leases set forth on Exhibit "C" attached hereto have been fully executed by the parties thereto and are fully enforceable in accordance with the terms thereof.

3.5 Borrower covenants unto the Lender that it will deliver to the Lender such information, financial or otherwise, as the Lender requests from time to time, which information shall be in form and substance acceptable to the Lender.

3.6 Borrower covenants unto the Lender that it will use the "Excess Proceeds" (hereafter defined) to improve the Mortgaged Property. "Excess Proceeds" shall mean the difference between the amount advanced by Lender to Borrower evidenced by the Mortgage Note (\$800,000) and the amount disbursed at closing to the prior lender, the title company, and the Lender's attorney. Borrower further covenants that (i) the improvements to the Mortgaged Property shall begin within sixty (60) days of the date hereof, and (ii) all the Excess Proceeds shall be spent on improvements to the property within eighteen (18) months of the date hereof.

4. TAXES, INSURANCE AND CONDEMNATION

4.1 Borrower represents, warrants and covenants unto the Lender as follows:

(A) Borrower, at all times, shall keep and maintain, or cause to be kept and maintained, the Mortgaged Property fully insured, without co-insurance, against loss or damage by, or abatement of rental income resulting from, fire and such other hazards, casualties and contingencies as the Lender from time to time may require with insurance companies, and in form, amounts and for such periods as are satisfactory to the Lender, but, in any event, for not less than the full replacement cost of the Mortgaged Property. All such policies and renewals thereof shall contain, in form and substance acceptable to the Lender, standard mortgagee loss payable clauses naming the Lender as a loss payee and additional insured, together with a standard waiver of subrogation endorsement and shall be delivered to the Lender, with premiums therefor paid in full by Borrower. All policies shall provide that the insurer may not cancel same without thirty (30) days prior written notice to the Lender, unless such cancellation is for non-payment of premiums, in which case, the insurer shall give the Lender ten (10) days prior written notice. Borrower will provide immediate written notice to the Lender of any loss or damage to the Mortgaged Property caused by any casualty. In case of insurance policies about to expire, Borrower will, upon the Lender's request, deliver to and deposit with the Lender renewal policies not less than thirty (30) days prior to the respective dates of expiration and receipts for the payment of the premiums on all policies and renewals thereof. In the event of a deed in lieu of foreclosure or other foreclosure of title to the Mortgaged Property, all right, title and interest of Borrower in and to any policies then in force shall pass to the purchaser, grantee or assignee.

4.2 Borrower hereby authorizes the Lender:

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- (A) to settle and compromise all claims under all insurance policies;
- (B) to demand and receive all monies becoming due or payable under all insurance policies;
- (C) to execute, in the name of Borrower or the name of the Lender, any proofs of loss, notices or other instruments in connection with all claims under all policies; and

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(D) to assign all policies to any holder of the Liabilities or to the grantee of the Mortgaged Property in the event of the foreclosure or other transfer of title to the Mortgaged Property.

4.3 In the event of payment under any of the policies, Borrower acknowledges and agrees that the proceeds of any of the insurance policies shall be paid by the insurer to the Lender and the Lender may, in its sole discretion, in whole or in part after deducting all costs of collection, including attorneys' fees, either:

(A) make available to Borrower all or a portion of such proceeds necessary to replace, reconstruct, repair or restore the Mortgaged Property or any portion thereof;

(B) apply all or a portion of such proceeds as payment on account of the Liabilities, whether or not then due and payable without affecting the amount or time of subsequent payments required to be made by Borrower to the Lender whether pursuant to the Other Agreements or otherwise;

(C) apply such proceeds, in whole or in part, to satisfy, perform or discharge any of the Covenants;

(D) require that Borrower continue paying or cause to be paid the Liabilities as and when due and payable notwithstanding any loss of use of all or any part of the Mortgaged Property; or

(E) if, prior to the receipt by the Lender of proceeds of such policies, the Mortgaged Property shall have been transferred pursuant to a deed in lieu of foreclosure or otherwise sold or transferred by foreclosure of this Mortgage, receive proceeds of such policies to the extent of any deficiency with interest thereon at the Default Rate, whether or not a deficiency judgment on this Mortgage shall have been sought or recovered or denied, and the attorneys' fees, costs, expenses and disbursements incurred by the Lender in connection with the collection of the proceeds of such policies.

Any insurance proceeds received by the Lender hereunder after the payment and satisfaction in full of the Liabilities shall be remitted to Borrower or as otherwise directed by a court of competent jurisdiction.

4.4 Borrower further represents, warrants and covenants unto the Lender as follows:

(A) Upon request by the Lender, Borrower shall make monthly deposits to the Lender in an amount equal to one-twelfth (1/12th) of one hundred fifteen percent (115%) of that portion of the total annual Charges arising with respect to the Mortgaged Property for the most recent ascertainable tax year. Provided that no Event of Default then exists, and no event which with notice, lapse of time or both would become an Event of Default, the Lender shall pay when and to whom due and payable under applicable law, all of the aforesaid Charges from the monies deposited pursuant to this Paragraph 4.4(A). Notwithstanding the foregoing, the Lender does not assume any of Borrower's obligations under said laws to make such payments and nothing contained in this Mortgage or the Other Agreements shall require the Lender to perform any such obligations of Borrower. Upon the occurrence of an Event of Default under this Mortgage, the Lender shall not be obligated to make such payments, but, at its sole election and in its discretion, may make any or all such payments or apply such deposits to the Liabilities.

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(B) If the monies deposited pursuant to Section 4.4(A) above are insufficient to pay the Charges for which they are provided, thirty (30) days before such Charges shall become due and payable, Borrower shall deposit with the Lender such additional monies as are necessary to pay, in full, such Charges.

(C) Upon request by the Lender, Borrower shall establish with the Lender an insurance escrow for deposit of funds for the payment of insurance premiums for all insurance policies required to be obtained and maintained by Borrower, whether pursuant to this Mortgage, the Other Agreements or otherwise. Such insurance escrow shall be in such amount as is satisfactory to satisfy the required premiums under such policies as reasonably estimated by the Lender, and shall be subject to such other terms and conditions as the Lender, in its sole and absolute discretion, may determine.

4.5 Borrower further represents, warrants and covenants unto the Lender as follows:

(A) All awards now or hereafter made by any public or quasi-public authority to or for the benefit of Borrower in any way, manner or respect affecting, arising from or relating to the Mortgaged Property, or any portion thereof, by virtue of an exercise of the right of eminent domain by such authority, including, without limitation, any award for taking of title, possession, right of access to a public way or for any change of grade of streets affecting the Mortgaged Property, hereby are assigned to the Lender as additional security for the full and timely payment and performance by Borrower of the Liabilities and the Covenants, and for such purpose, Borrower hereby grants to the Lender a security interest therein.

(B) The Lender is hereby authorized, directed and empowered to collect and receive the proceeds of any such awards and to give proper receipts therefor whether in Borrower's name, in the Lender's name or in both names, and may, in the Lender's sole and absolute discretion, after deducting all costs of collection, including, but not limited to, attorneys' fees:

(1) apply such proceeds, in whole or in part, to the Liabilities, whether or not then matured and without affecting the amount or time of subsequent payments required to be made by Borrower to the Lender under this Mortgage or the Other Agreements;

(2) apply such proceeds, in whole or in part, to satisfy, perform or discharge any of the Covenants;

(3) make available to Borrower all or a portion of such proceeds to replace, repair or restore any or all of the Mortgaged Property to a condition satisfactory to the Lender; or

(4) require that Borrower continue to pay or cause to be paid the Liabilities, as and when due and payable notwithstanding any loss of use of all or any part of the Mortgaged Property.

(C) Borrower, promptly after request by the Lender, shall make, execute and deliver or cause to be made, executed and delivered to or for the benefit of the Lender any and all assignments and other instruments sufficient to assign, and cause the payment directly to the Lender of, all such awards, free and clear of all Encumbrances, except for the Lender's Lien and the Permitted Encumbrances. Notwithstanding any taking by eminent domain, alteration of the grade of any street or other injury to or decrease in value of the Mortgaged Property by any public or quasi-public authority or corporation, Borrower shall continue to pay or cause to be paid all of the Liabilities as and when due and payable. If, prior to the receipt by the Lender of such award or payment, the Mortgaged Property shall have been transferred by a deed in lieu of foreclosure or otherwise sold or transferred by foreclosure of this Mortgage, the Lender shall have the right to receive such award or payment to the extent of any deficiency with interest thereon at the Default Rate,

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whether or not a deficiency judgment on this Mortgage shall have been sought or recovered or denied, and the attorneys' fees, costs, expenses and disbursements incurred by the Lender in connection with the collection of such award or payment.

5. LEASES AND RENTS

5.1 Provided an Event of Default does not exist under this Mortgage or the Other Agreements, Borrower shall have the right to collect all of the Rents arising from the Leases, or renewals thereof, and shall hold the same, in trust, to be applied, except as otherwise provided by applicable law, first to the payment of all Charges upon the Mortgaged Property, second to the cost of the maintenance of insurance policies upon the Mortgaged Property required hereby, and third to the maintenance and repairs required hereby, before using any part of the Rents for any other purposes.

5.2 At all times, the Lender, or any of the Lender's agents, shall have the right to verify the validity, amount or any other matter relating to any or all of the Leases, by mail, telephone, telegraph or otherwise, in the name of Borrower, the Lender, a nominee of the Lender or in any or all of said names.

5.3 Unless the Lender agrees otherwise in writing, Borrower shall: (A) promptly upon Borrower's receipt or learning thereof, inform the Lender, in writing, of any assertion of any claims, offsets or counterclaims by any of the obligors of the Leases; (B) not permit or agree to any extension, compromise or settlement or make any change or modification of any kind or nature of or with respect to the Leases or the terms thereof; and (C) promptly upon Borrower's receipt or learning thereof, furnish to and inform the Lender of all adverse information relating to or affecting the financial condition of any obligor of the Leases.

5.4 Upon demand therefor by the Lender, Borrower shall deliver to the Lender, in form and substance acceptable to the Lender, a detailed certified rent roll of all the Leases and such other matters and information relating thereto as the Lender may request.

5.5 Borrower acknowledges and agrees that:

(A) Borrower shall, contemporaneously herewith, deliver to the Lender true, accurate and complete copies of the Leases, including, but not limited to, the Leases set forth on Exhibit "C" attached hereto, in form and substance acceptable to the Lender.

(B) The Lender may, at its election, without notice thereof to Borrower, notify any or all of the obligors of the Leases that the Leases have been assigned to the Lender and, upon an Event of Default, the Lender, whether in its name, in the name of Borrower or in both names, may direct said obligors thereafter to make all payments due from them under the Leases directly to the Lender.

(C) Borrower shall irrevocably direct all obligors of the Leases to make, upon an Event of Default, all payments under the Leases directly to the Lender.

(D) Upon an Event of Default, the Lender shall have the right without notice thereof to Borrower to enforce the terms of the Leases and obtain payment of and collect the Rents, by legal proceedings or otherwise, in the name of Borrower, the Lender or in both names.

(E) Upon an Event of Default, the Lender may (1) demand payment of the Rents and performance of the Leases; (2) enforce payment of the Rents and performance of the Leases by legal proceedings or otherwise; (3) exercise any or all of Borrower's rights, interests and remedies in and under

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the Leases and to collect the Rents; (4) settle, adjust, compromise, extend or renew the Leases or the Rents; (5) settle, adjust or compromise any legal proceeding brought to collect the Rents or obtain performance of the Leases; (6) take possession, in any manner, of the Rents; (7) prepare, file and sign Borrower's name on any Proof of Claim in bankruptcy, or similar document in a similar proceeding, against any obligor of the Leases; (8) endorse the name of Borrower upon any payments or proceeds of the Rents and deposit the same to the account of the Lender; and (9) do all acts and things necessary, in the Lender's discretion, to carry out any or all of the foregoing.

(F) All of the foregoing payments and proceeds received by the Lender shall be utilized by the Lender, at its election and in its discretion, for any one or more of the following purposes: (1) to be held by the Lender as additional collateral for the payment of the Liabilities; (2) to be applied against the Liabilities, in such manner as the Lender may determine in its sole and absolute discretion; (3) to be applied against the Covenants, or the operation or business thereof as the Lender, at its election, shall determine; or (4) to be remitted to Borrower.

6. EVENT OF DEFAULT

6.1 The occurrence of any one or more of the following shall constitute an "Event of Default" under this Mortgage:

(A) The Liabilities are not fully and timely paid when due and payable or declared due and payable and such failure to pay continues for a period of ten (10) days after notice of the failure to pay has been provided to Borrower;

(B) Borrower fails or neglects to perform, keep or observe or cause to be performed, kept or observed, any of the Covenants and such failure or neglect continues for a period of thirty (30) days after notice of the occurrence thereof has been provided to Borrower;

(C) any statement, report or certificate made or delivered by Borrower, or any of their partners, officers, employees or agents, to the Lender is not true and correct;

(D) any of Borrower's assets are seized, attached, subjected to a writ or distress warrant, or are levied upon, or come within the possession of any receiver, trustee, custodian or assignee for the benefit of creditors;

(E) Borrower makes an assignment for the benefit of creditors, or an application is made by Borrower for the appointment of a receiver, trustee, custodian or conservator for any of Borrower's assets;

(F) an application is made against Borrower for the appointment of a receiver, trustee, custodian, or conservator for any of Borrower's assets and such application is granted or is not dismissed within thirty (30) days of the filing thereof;

(G) a petition under the United States Bankruptcy Code or any similar federal, state or local law, statute or regulation shall be filed by Borrower;

(H) a petition under the United States Bankruptcy Code or any similar federal, state or local law, statute or regulation shall be filed against Borrower and such petition is granted or is not dismissed within thirty (30) days after the filing thereof;

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(I) Borrower is enjoined, restrained or in any way prevented by court order from conducting any material part of its business;

(J) a lawsuit or other proceeding is filed by Borrower to liquidate any of Borrower's assets;

(K) a lawsuit or other proceeding is filed against Borrower claiming damages in excess of \$50,000 to liquidate Borrower's assets unless the potential loss with respect to such lawsuit is fully insured and the insurance company has acknowledged in writing its coverage thereof;

(L) a notice of a lien, levy or assessment is filed of record with respect to any of Borrower's assets by the United States of America, any department, agency, or instrumentality thereof, or by any state, county, municipal or other governmental department, agency or instrumentality;

(M) a breach, default or event of default occurs under any agreement, instrument or document executed and delivered by any Person to the Lender pursuant to which such Person has guaranteed to the Lender the payment of the Liabilities, or such Person terminates or purports to terminate his guarantee of payment of the Liabilities to the Lender, including, but not limited to, the Bender Guaranty and the Fishman Guaranty;

(N) a breach, default or event of default occurs under any of the Other Agreements after the expiration of any applicable grace or cure period;

(O) a breach, default or event of default occurs, whether by the lessor or the lessee, under any Lease which the Lender deems material in its reasonable discretion; or

(P) the Lender, in good faith, believes its prospect of payment or performance of the Liabilities and the Covenants is impaired or it deems itself insecure for whatever reason.

6.2 Upon the occurrence of an Event of Default, without further notice to or demand of Borrower, all of the Liabilities shall become immediately due and payable, and the Lender, in its discretion and at its election, may do any one or more of the following:

(A) Without notice to Borrower, accelerate the maturity of the Liabilities and/or foreclose upon the Lender's Lien and exercise any rights or remedies granted to the Lender under this Mortgage, the Other Agreements, or provided by law, in equity or otherwise. Upon an Event of Default, the Liabilities shall bear interest at the Default Rate.

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(B) Subject to applicable law, forcibly or otherwise, enter upon and take immediate possession of the Mortgaged Property, expel and remove any Persons, goods or chattels occupying or upon the Mortgaged Property, receive all Rents, and issue receipts therefore, manage, control and operate the Mortgaged Property as fully as Borrower might do if in possession thereof, including, but not limited to, the making of all repairs and replacements deemed necessary by the Lender and the leasing of the Mortgaged Property, or any part thereof, from time to time, and after deducting all reasonable attorneys' fees, costs, fees and expenses incurred in the protection, care, maintenance, management and operation of the Mortgaged Property, apply the remaining net income, if any, to the Liabilities, as the Lender shall determine in its sole discretion. At the option of the Lender, such entry and taking of possession shall be accomplished either by actual entry and possession or by written notice in accordance with Section 7.2 of this Mortgage. Borrower agrees to surrender possession of the Mortgaged Property to the Lender immediately upon the occurrence

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of an Event of Default. If Borrower shall remain in physical possession of the Mortgaged Property, or any part thereof, after an Event of Default, such possession shall be as a tenant at sufferance of the Lender, and Borrower agrees to pay to the Lender, or to any receiver appointed as provided below, after an Event of Default, a monthly rental for the Mortgaged Property, or the part thereof so occupied by Borrower to be applied as provided above in the first sentence of this Subparagraph, and to be paid in advance on the first day of each calendar month, and, upon failure to do so, Borrower may be dispossessed by the usual summary proceedings. In the event Borrower shall so remain in possession of all, or any part of, the Mortgaged Property, said monthly rental shall be in amounts established by the Lender in its discretion. This covenant shall be effective irrespective of (1) whether any foreclosure proceeding shall have been instituted, and (2) any application for, or appointment of, a receiver.

(C) File one or more suits at law or in equity for the foreclosure of all or any portion of this Mortgage to collect the Liabilities. In the event of the commencement of any such suit by the Lender, the Lender shall have the right, either before or after sale, without notice and without requiring bond, as notice and bond are hereby expressly waived by Borrower, and without regard to the solvency or insolvency of Borrower at the time of application and without regard to the then value of the Mortgaged Property or whether the same is then occupied, to make application for and obtain the appointment of a receiver for the Mortgaged Property. Such receiver shall have the power to collect the Rents during the pendency of such suit and, in case of a sale and a deficiency, during the full statutory period of redemption as well as during any further times when Borrower, except for the intervention of such receiver, would be entitled to collect the Rents, and shall have all other powers which may be necessary or usual in such cases for the protection, possession, control, management and operation of the Mortgaged Property. The court before which such suit is pending may from time to time authorize the receiver to apply the net income in his hands in payment, in whole or in part, of the Liabilities. In case of a sale pursuant to foreclosure, the Premises may, but need not, be sold as one parcel.

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(D) If the Lender commences any suit to foreclose this Mortgage, the Lender shall have the right to apply to the court in which such proceedings are pending for entry of an order placing the Lender in possession of the Mortgaged Property. If an order is entered placing the Lender in possession of the Mortgaged Property, the Lender may thereupon enter upon and take immediate possession of the Mortgaged Property, expel and remove any Persons, goods or chattels occupying or upon the Mortgaged Property, receive all Rents, and issue receipts therefor, manage, control and operate the Mortgaged Property, including, but not limited to, the making of all repairs and replacements deemed necessary by the Lender and the leasing of the Mortgaged Property or any part thereof, from time to time, and, after deducting all reasonable attorneys' fees, costs, fees and expenses incurred in the protection, care, maintenance, management and operation of the Mortgaged Property, apply the remaining net income, if any, to the Liabilities. At the option of the Lender, such entry and taking of possession shall be accomplished either by actual entry and possession or by written notice of entry of the order placing the Lender in possession in accordance with Section 7.2 of this Mortgage. If Borrower shall remain in physical possession of the Mortgaged Property after entry of an order placing the Lender in possession, Borrower's possession shall be as a tenant at sufferance of the Lender, and Borrower agrees to pay to the Lender, or to any other Person authorized by the Lender, after entry of such order, a monthly rental for the Mortgaged Property, or the part thereof so occupied by Borrower to be applied as provided above in the first sentence of Paragraph 6.2(A) and to be paid in advance on the first day of each calendar month, and, upon failure to do so, Borrower may be dispossessed by the usual summary proceedings. If Borrower shall so remain in possession of all or of any part of the Mortgaged Property, said monthly rental shall be in amounts established by the Lender in its discretion.

6.3 Upon the occurrence of an Event of Default under this Mortgage, there will be added to and included as part of the Liabilities, and allowed in any decree for sale of the Mortgaged Property or in any

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judgment rendered in connection with this Mortgage or the Other Agreements the following: (A) all of the costs, fees and the expenses of taking possession of the Mortgaged Property and of the holding, using, leasing, maintaining, repairing and selling of the Mortgaged Property, including, but not limited to, the reasonable costs, fees, charges, expenses and attorneys' fees specified in Paragraph 6.4 below; (B) receivers' fees; (C) any and all expenditures which may be paid or incurred by or on behalf of the Lender for appraisers' fees, documentary and expert evidence, stenographers' charges, publication costs, fees and expenses for examination of title, title searches, guaranty policies, Torrens certificates and other similar data and assurances with respect to the title to the Mortgaged Property; (D) all prepayment or similar premiums, if any; and (E) all other costs, fees and expenses, including, without limitation, reasonable attorneys' fees, which the Lender deems necessary to prosecute or enforce any right or remedy it has under this Mortgage, the Other Agreements, at law, in equity or otherwise, or to inform bidders at any sale which may be had pursuant to its rights hereunder, of the true condition of title or of the value of the Mortgaged Property. All such costs, charges, expenses, prepayment or like premiums, fees and other expenditures shall be a part of the Liabilities, secured by this Mortgage and the Other Agreements, payable on demand and shall bear interest at the Default Rate from the date of the Lender's payment thereof until repaid to the Lender.

6.4 If foreclosure proceedings are instituted upon this Mortgage, or if the Lender shall be a party to, shall intervene, or file any petition, answer, motion or other pleading in any suit or proceeding relating to or in connection with the Liabilities or the Covenants, or if the Lender shall incur or pay any expenses, costs, charges, fees or attorneys' fees by reason of the employment of counsel for advice with respect to the Liabilities or the Covenants and whether in court proceedings or otherwise, such expenses, costs, charges and all of the Lender's attorneys' fees shall be part of the Liabilities, secured by this Mortgage and the Other Agreements, payable on demand and shall bear interest at the Default Rate from the date of the Lender's payment thereof until paid.

6.5 The proceeds of any foreclosure sale of the Mortgaged Property shall be applied and distributed, first, on account of the fees, charges, costs and expenses described in Paragraph 6.3 and 6.4 above, second, to the balance of the Liabilities and third, the surplus, if any, to Borrower.

6.6 If the Lender commences judicial proceedings to foreclose this Mortgage, Borrower, on behalf of itself, its successors and permitted assigns, and each and every Person which Borrower may legally bind which acquires any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage: (A) does hereby expressly waive any and all rights of appraisal, valuation, stay, extension and, to the extent permitted by law, redemption from sale under any order or decree of foreclosure of this Mortgage; and (B) does hereby agree that when sale is had under any decree of foreclosure of this Mortgage, upon confirmation of such sale, the master in chancery or other officer making such sale, or his successor in office, shall be and is hereby authorized immediately to execute and deliver to any purchaser at any sale a deed conveying the Mortgaged Property, showing the amount paid therefor, or if purchased by the Person in whose favor the order or decree is entered, the amount of his bid therefor.

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6.7 The Lender shall have the right to sue for any sums, whether interest, principal or other sums required to be paid by or for the account of Borrower under the terms of this Mortgage or the Other Agreements, as the same become due, or for any other of the Liabilities which shall become due, and without prejudice to the right of the Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

6.8 No right or remedy of the Lender hereunder is exclusive of any other right or remedy hereunder or now or hereafter existing at law, in equity or otherwise, but is cumulative and in addition thereto and the Lender may recover judgment thereon, issue execution therefor, and resort to every other right or

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remedy available at law, in equity or otherwise, without first exhausting or affecting or impairing the security or any right or remedy afforded by this Mortgage. No delay in exercising, or omission to exercise, any right or remedy will impair any such right or remedy or will be construed to be a waiver of any default by Borrower hereunder, or acquiescence therein, nor will it affect any subsequent default hereunder by Borrower of the same or different nature. Every such right or remedy may be exercised independently or concurrently, and when and so often as may be deemed expedient by the Lender. No terms or conditions contained in this Mortgage may be waived, altered or changed except as evidenced in writing signed by Borrower and the Lender.

6.9 If any rate of interest described in this Mortgage or the Other Agreements is greater than the rate of interest permitted to be charged or collected by applicable law, as the case may be, such rate of interest shall automatically be reduced to the maximum rate of interest permitted to be charged or collected by applicable law.

6.10 Any failure of the Lender to insist upon the strict performance by Borrower of any of the terms and provisions of this Mortgage or the Other Agreements shall not be deemed to be a waiver of any of the terms and provisions thereof, and the Lender, notwithstanding any such failure, shall have the right at any time or times thereafter to insist upon the strict performance by Borrower of any and all of the terms and provisions thereof to be performed by such party. Neither Borrower nor any other Person now or hereafter obligated for the payment of the whole or any part of the Liabilities, shall be relieved of such obligation by reason of (A) the sale, conveyance or other transfer of the Mortgaged Property, (B) the failure of the Lender to comply with any request of Borrower or of any other Person to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or the Other Agreements, (C) the release, regardless of consideration, of the whole or any part of the collateral or security held for the Liabilities or the Covenants, or (D) any agreement or stipulation between any subsequent owner or owners of the Mortgaged Property and the Lender extending or modifying the time of payment of the Liabilities or the Covenants, without first having obtained the consent of Borrower or such other Person, and, in such case, Borrower and all such other Persons, shall continue to be liable on account of the Liabilities and to make such payments according to the terms of any such agreement, extension or modification unless expressly released and discharged in writing by the Lender. The Lender, without notice, may release, regardless of consideration, any part of the security held for the Liabilities without, as to the remainder of the security therefor, in any way impairing or affecting the lien of this Mortgage or the priority of such lien over any subordinate lien. The Lender may resort for the payment of the Liabilities to any other security therefor held by the Lender in such order and manner as the Lender may elect.

7. MISCELLANEOUS

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7.1 **Financial Reporting.** Borrower represents, warrants and covenants unto the Lender that it will deliver to the Lender the following financial information, all of which shall accurately reflect the financial condition of Borrower and its subsidiaries at and for the periods of time described therein and shall be prepared in accordance with generally accepted accounting principles consistently applied.

(A) One the first day of each calendar quarter beginning April 1, 2001, Borrower shall provide Lender with a rent roll substantially in the form previously delivered to Lender. In addition, Borrower shall provide Lender with a rent roll within five (5) days of Lender's request for same, at any time. Borrower shall provide Lender with a copy of all tax returns filed by Lender within thirty (30) days of the filing of such tax returns.

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(B) Such other data and information, financial and otherwise as the Lender, from time to time, may request.

7.2 Any and all notices, demands, requests, consents, designations, waivers and other communications required or desired hereunder shall be in writing and shall be deemed effective upon personal delivery, upon confirmed facsimile transmission, upon receipted delivery by a reputable overnight carrier, or three (3) days after mailing if mailed by registered or certified mail, return receipt requested, postage prepaid, to Borrower or the Lender at the following addresses or facsimile numbers or such other addresses or facsimile numbers as Borrower or the Lender specify in like manner; provided, however, that notices of a change of address or facsimile numbers shall be effective only upon receipt thereof:

If to Borrower, then to:

Oak Lear Properties, L.L.C.
1332 North Halsted St., Suite 201
Chicago, Illinois 60622
Attention: Mr. Mark Fishman
Facsimile No.: (312) 640-0298

If to the Lender, then to:

Henry Silverman, Trustee
6739 N. Minnehaha Avenue
Lincolnwood, Illinois 60712
Facsimile No.: (847) 676-1866

with a copy to:

Kwiatt & Ruben, Ltd.
211 Waukegan Road, Suite 300
Northfield, Illinois 60093
Attention: Philip Ruben, Esq.
Facsimile No.: (847) 441-9976

with a copy to:

FagelHaber LLC
55 East Monroe Street, 40th Floor
Chicago, Illinois 60603
Attention: Victor A. Des Laurier, Esq.
Facsimile No.: (312) 580-2201

7.3 All the covenants contained in this Mortgage will run with the land. Time is of the essence of this Mortgage and all provisions herein relating thereto shall be strictly construed.

7.4 This Mortgage, and all the provisions hereof, will be binding upon and inure to the benefit of the successors of Borrower, and the successors, parents, divisions, affiliates and assigns of the Lender. This Mortgage may not be assigned by Borrower, but may be assigned by the Lender without notice to Borrower.

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7.5 This Mortgage shall be governed as to validity, interpretation, construction, effect and in all other respects by the laws and decisions of the State of Illinois. Wherever possible, each provision of this Mortgage shall be interpreted in such a manner as to be valid and enforceable under applicable law, but if any provision of this Mortgage is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be severed herefrom and such invalidity or unenforceability shall not affect any other provision of this Mortgage, the balance of which shall remain in and have its intended full force and effect. Provided, however, if such provision may be modified so as to be valid and enforceable as a matter of law, such provision shall be deemed to be modified so as to be valid and enforceable to the maximum extent permitted by law.

7.6 This Mortgage is given to secure, among other things, the Liabilities. This Mortgage shall secure not only presently existing indebtedness under the Other Agreements, but also future advances, whether such advances are obligatory, to be made at the option of the Lender or otherwise, to the same extent as if such future advances were made on the date of the execution of this Mortgage. The lien of this Mortgage shall be valid as to all indebtedness secured hereby, including future advances, from the time of

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its filing for record in the Cook County, Illinois Recorder's Office. The total amount of the indebtedness secured hereby, including, but not limited to, any disbursements which the Lender may make under this Mortgage or the Other Agreements, at any one time outstanding shall not exceed the principal amount of Ten Million and no/100 Dollars (\$10,000,000.00), plus interest thereon, and any disbursements made for payment of taxes, special assessments, or insurance on the Mortgaged Property, and any other costs, fees, expenses or other indebtedness owed by Borrower to the Lender pursuant to this Mortgage or the Other Agreements. This Mortgage shall be valid and have priority to the extent of the maximum amount secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Mortgaged Property given priority by law.

7.7 Borrower agrees to pay, upon demand, all fees, costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by the Lender, including, but not limited to, reasonable attorneys' fees in connection with the preparation, execution, delivery and administration of this Mortgage and the other agreements, documents and instruments executed and delivered in connection herewith or pursuant hereto. Borrower also agrees to pay all such fees incurred through the closing of this transaction contemporaneously with the closing of this transaction. Notwithstanding the above, the maximum amount of attorneys' fees due to Lender at closing shall be \$4,000.00

7.8 The terms and provisions of the Other Agreements are incorporated herein by this reference thereto.

7.9 The Exhibits referred to herein are attached hereto, made a part hereof and incorporated herein by this reference thereto.

7.10 BORROWER HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND CONSENTS THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO BORROWER AS SET FORTH HEREIN IN THE MANNER PROVIDED BY APPLICABLE STATUTE, LAW, RULE OF COURT OR OTHERWISE.

7.11 BORROWER AND THE LENDER IRREVOCABLY AGREE, AND HEREBY CONSENT AND SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, AND THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, WITH REGARD TO ANY LITIGATION, ACTIONS OR PROCEEDINGS ARISING FROM OR RELATING TO OR IN CONNECTION WITH THE LIABILITIES, THE COVENANTS, THIS MORTGAGE OR THE OTHER AGREEMENTS. BORROWER HEREBY WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION, ACTIONS OR PROCEEDINGS FILED IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

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7.12 BORROWER AND THE LENDER EACH HEREBY ABSOLUTELY AND UNCONDITIONALLY WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY IN CONNECTION WITH ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER OR RELATED TO THIS MORTGAGE, THE LIABILITIES, THE COVENANTS OR THE OTHER AGREEMENTS, OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED AND DELIVERED IN CONNECTION THEREWITH OR RELATED THERETO.

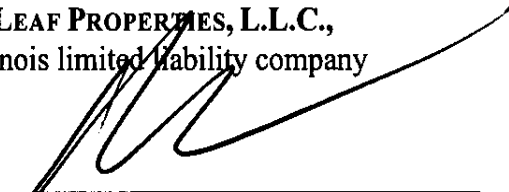
7.13 This Mortgage may be executed in multiple counterparts, each of which shall be deemed an original.

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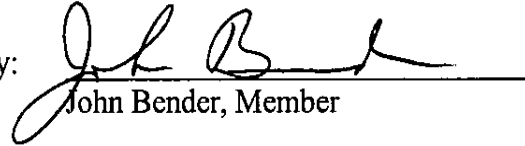
IN WITNESS WHEREOF, this Mortgage has been duly executed and delivered as of the day and year first above written.

OAK LEAF PROPERTIES, L.L.C.,
an Illinois limited liability company

By:


Mark Fishman, Member

By:


John Bender, Member

Property of Cook County Clerk's Office

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STATE OF ILLINOIS)
) S.S.
COUNTY OF COOK)

I, ALLEN D. KATZ, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Mark Fishman, who is personally known to me to be a member of Oak Leaf Properties, L.L.C. and the same person whose name is subscribed to the foregoing Mortgage and Security Agreement, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 13th day of March, 2001.



[Signature]
Notary Public

My commission expires:

8/28/04

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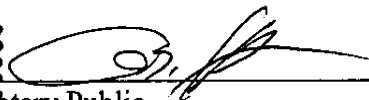
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STATE OF ILLINOIS)
) S.S.
COUNTY OF Cook)

I, ALLEN D. KATZ, a Notary Public in and for said County, in the State aforesaid, do hereby certify that John Bender, who is personally known to me to be a member of Oak Leaf Properties, L.L.C. and the same person whose name is subscribed to the foregoing Mortgage and Security Agreement, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 13th day of March, 2001.





Notary Public

My commission expires:

6/28/04

Property
Cook County Clerk's Office 10260518

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EXHIBIT "A" TO MORTGAGE AND SECURITY AGREEMENT

LEGAL DESCRIPTION

LOT 5 IN JOHN PREUSS' RESUBDIVISION OF LOTS 8 TO 12 OF BLOCK 4 IN HITT AND OTHERS SUBDIVISION OF 39 ACRES OF THE EAST SIDE OF THE SOUTHEAST 1/4 OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PIN: 13-26-414-031-0000

COMMON ADDRESS: 2600 North Sawyer Avenue
Chicago, Illinois 60647

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EXHIBIT "B" TO MORTGAGE AND SECURITY AGREEMENT PERMITTED ENCUMBRANCES

1. LIENS FOR TAXES NOT YET DUE AND PAYABLE.
2. RIGHTS OF THE MUNICIPALITY, THE STATE OF ILLINOIS, THE PUBLIC AND ADJOINING OWNERS IN AND TO THE WEST 10 FEET OF THE LAND USED AS AN ALLEY.
3. RESERVATION OF THE WEST 10 FEET OF THE LAND FOR PRIVATE ALLEY FOR USE OF OWNERS AND OCCUPANTS OF JOHN PREUSS' RESUBDIVISION ONLY AS SHOWN ON PLAT FILED OCTOBER 22, 1907 AS DOCUMENT LR7433 AS DISCLOSED BY CERTIFICATE OF TITLE RECORDED JULY 28, 1994 AS DOCUMENT 94664717.

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EXHIBIT "C" TO MORTGAGE AND SECURITY AGREEMENT
LEASES

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Security Deposits for 2600 N. Sawyer

<u>Unit</u>	<u>Security Deposit</u>
2600 - G	\$625.00
2600 -1F	\$820.00
2600 - 2F	\$800.00
3264-1	\$700.00
3264-2	\$750.00
3266-G	\$0
3266-1	\$750.00
3266-2	\$575.00

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10260518

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Rent Roll 2600saw - 2600 N. Sawyer From 02/09/01

Unit	Unit Type	Tenant Code	Tenant Name	Unit Sqft	Market Rent	Actual Rent	Deposit	Move-In	Past Due	NSF	Late
2600-1F	4-2	forste	Steve Forbes	800.0	820.00	820.00	0.00		0.00	0	0
2600-2F	4-2	flobra	Braulio Flores	800.0	820.00	820.00	0.00	07/01/00	0.00	0	0
2600-G	4-2	berhel	Helen Bermudez	700.0	625.00	625.00	0.00	07/01/00	-200.00	0	0
3264-1	4-2	sanshe	Sherry Sanders	800.0	800.00	800.00	0.00		0.00	0	0
3264-2	4-2	lopman	Manuel Lopez	800.0	800.00	800.00	0.00		350.00	0	0
3266-1	4-2	samdan	Daniela Samways	800.0	750.00	750.00	0.00		0.00	0	0
3266-2	4-2	woonic	Nick Wood	800.0	850.00	850.00	0.00		0.00	0	0
3266-G	4-2	avifru	Fructoso Avilas	700.0	685.00	685.00	0.00		300.00	0	0
<hr/>											
8			Total	6,200.0	6,150.00	6,150.00	0.00		450.00	0	0
8			Total Occupied	6,200	6,150.00	6,150.00					
100.00			% Occupied	100.00	100.00	100.00					
0			Total Vacant	0	0.00	0.00					
0.00			% Vacant	0.00	0.00	0.00					

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MAR. 8. 2001 9:46AM @ 370 OAKLEAF
CHICAGO, IL

NO. 161 P. 3/4
ALL RIGHTS RESERVED

APARTMENT LEASE

DATE OF LEASE		TERM OF LEASE		MONTHLY RENT	SECURITY DEPOSIT
BEGINNING	ENDING				
3/10/2000	3/11/2000	2/28/2001		\$ 750 -	\$ 750 -

ADDITIONAL CHARGES AND FEES					
Late Charge \$ 20.00	Returned Check Charge \$ 25.00	Notifying Charge \$ 750 -	Parking Fee \$ N/A	Laundry Room Fee \$ N/A	
Social Security No. 325 88 8421		Storage Fee \$ N/A			

"IF NONE, WRITE "NONE." Paragraph 6 of Lease Agreements and Covenants then INAPPLICABLE.

<p>TENANT</p> <p>TENANT DANIELLE SAMWAYS</p> <p>APARTMENT EVELYN MAYER</p> <p>BUILDING 3266 WRIGHTWOOD</p> <p>CITY Chicago, IL 60647</p>	<p>LESSOR (Owner or agent authorized to manage the Apartment)</p> <p>NAME JOHN BURRIS</p> <p>ADDRESS P.O. Box 8455</p> <p>CITY Northfield, FL</p> <p>PHONE 60993</p>
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In consideration of the mutual agreements and covenants set forth below and on the reverse side hereof (the same being fully included as part of this Lease) Lessor hereby leases to Tenant and Tenant hereby leases from Lessor for use in accordance with paragraph 8 hereof the Apartment designated above, together with the fixtures and accessories belonging thereto, for the above Term. All parties listed above as Lessor and Tenant are herein referred to individually and collectively as Lessor and Tenant respectively.

ADDITIONAL AGREEMENTS AND COVENANTS (including DECORATING AND REPAIRS), if any.

1. Rents are due the 1st of every month
2. Send all rents to above address
3. Please call Louise at 708-393-2517 if you have any trouble

TENANT(S)	SIGNATURES	LESSOR(S)
<i>Danielle Samways</i>	(SEAL) <i>John Burris</i>	(SEAL)
<i>Evelyn Mayer</i>	(SEAL)	(SEAL)

LEASE AGREEMENTS AND COVENANTS 10260518

1. **RENT:** Tenant shall pay to Lessor at the above address (or such other address as Lessor may designate in writing) the monthly rent set forth above on or before the first day of each month in advance. The time of each and every payment of rent in the absence of this Lease, to cover Lessor's added costs for late payments, the monthly rent set forth above shall be increased by the amount set forth above as "Late Charge" if paid after the 15th of the month, to cover Lessor's added costs for processing of checks that are dishonored or are returned due to insufficient funds in the account, the monthly rent shall be increased by the amount set forth above as "Returned Check Charge." Rent mailed in shall be deemed paid on date of receipt by Lessor.
2. **POSSESSION:** At the commencement of this Lease, Lessor shall deliver possession of the apartment to Tenant. Possession shall be deemed to have been delivered to Tenant on the day that Lessor either (A) actually delivers to Tenant keys to the Apartment or (B) makes available to Tenant at the office of the Building or at such other place, as designated by Lessor keys to the Apartment. If Lessor fails to so deliver possession within 10 days from the date hereof, the Lease shall terminate unless reaffirmed in writing within an additional 10 days by Tenant. Upon each termination, Lessor shall refund all prepaid rent and security, which shall be Tenant's sole remedy. It is understood that decaying (if any, to be performed by Lessor) shall not be a condition precedent to possession or use.
3. **APPLICATION:** The application for this Lease and all representations and promises contained therein are hereby made a part of this Lease. Tenant warrants that the information given by Tenant in the application is true. If such information is false, Lessor may at Lessor's option terminate this Lease by giving Tenant not less than 10 days prior written notice, which shall be Lessor's sole remedy.
4. **PROMISES OF THE PARTIES:** The terms and conditions contained herein shall be considered to be the entire agreement between Tenant and Lessor and no modification, waiver or amendment of this Lease or any of its terms, conditions or covenants shall be binding upon the parties unless in writing and signed by the party sought to be bound.
5. **SECURITY DEPOSIT:** Tenant has deposited with Lessor the Security Deposit in the amount set forth above for the performance of each and every covenant and agreement to be performed by Tenant under this Lease. Lessor shall have the right, but not the obligation, to apply the Security Deposit as a whole or in part as payment of such amounts as are reasonably necessary to remedy Tenant's default in the payment of rent or in the performance of the covenants or agreements contained herein. Lessor's right to possession of the Apartment for non-payment of rent or any other reason shall not be affected by the fact that Lessor holds security. Tenant's liability is not limited to the amount of the Security Deposit.
6. Lessor shall give Tenant written notice of the application of the Security Deposit as a part of its written notice (30) days of such application if the application is an account of maintenance repairs or replacement necessitated by Tenant, and notice shall include the estimated or actual cost of the work, allowing estimation of paid receipts. Upon receipt of said notice, Tenant shall at once pay to Lessor an amount sufficient to restore the Security Deposit in full. Upon termination of this Lease, all payments of all payments that are not performance of all Tenant's covenants and agreements (including a warranty of title) is however understood and agreed that buildings and physical structures subject to aging, wear, tear, abuse, inherent defects, and numerous factors causing gradual or breakdown beyond Lessor's reasonable control, and that components and skilled workers are not always immediately available, it is further understood and agreed that for the most part Lessor's costs of operation are fixed and unavoidable and in part are dependent on or damaged to Tenant would create an intolerable burden on Lessor. (4) tenants and surrounding neighborhood, it is, therefore, understood and agreed that Lessor's delay in performing agreements and forth in Paragraph 6B, interruptions in services provided by Lessor, breakdowns of equipment or disruption caused by (1) conditions caused by Tenant, members of Tenant's household, guests or other persons on the premises with Tenant's consent or other tenants; (2) Tenant's unreasonable refusal or other interference with entry of Lessor or Lessor's workmen or contractors into the Apartment or Building for purposes of correcting defective conditions; (3) lack of reasonable opportunity for Lessor to correct defective conditions; (4) conditions beyond Lessor's reasonable control, including strikes or lockouts; (5) Lessor not having actual knowledge of such defective conditions shall be an absolute defense in any action against Lessor for breach of covenant based upon the failure of Lessor to maintain the Apartment or Building; or (6) Lessor's having exercised due care but such defective conditions continue to persist, shall be an absolute defense in any action against Lessor for breach of covenant based upon the failure of Lessor to maintain the Apartment or Building. Lessor's failure or inability to make repairs or provide services in any of the just described circumstances shall in no event form the basis of any claim or action for damages against Lessor nor a basis for an abatement of rent nor a cause for termination of the Lease.
7. **UTILITIES:** Unless otherwise agreed in writing, if the Apartment is individually metered, payment to the utility company or authorized metering agency of the applicable charges for gas, electricity or water consumed by Tenant in the Apartment, including, if applicable, current used for electric heating, ventilation, air conditioning, hot water, etc., shall be Tenant's sole responsibility.
8. **TENANT'S USE OF APARTMENT:** The Apartment shall be occupied solely for residential purposes by Tenant, except other persons specifically listed in the application for this Lease, and any children which may be born to or legally adopted by Tenant during the Term hereof. Unless otherwise agreed in writing, guests of Tenant may occupy the Apartment in reasonable numbers for no more than three weeks each during each year of the Term hereof. Neither Tenant nor any of these persons shall perform nor permit any practices that may damage the reputation of or otherwise be injurious to the Building or neighborhood, or be disturbing to other tenants, be illegal, or increase the rate of insurance on the Building.
9. **TENANT'S UPKEEP:** Tenant covenants to perform the following obligations during the Term hereof: (A) maintain the Apartment and appliances in a clean, sanitary and safe condition, (B) prevent all rubbish, garbage and other waste in a clean, sanitary and timely manner from the

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MAR. 8. 2001 9:45AM

OAKLEAF FIRM OF LEASE

MONTHLY RENT

NO. 161-UMLP. 4/4

5/30/2000	BEGINNING 7/1/2000	ENDING 6/30/2001	MONTHLY RENT 820 -	NO. 161-UMLP. 4/4 800 -
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ADDITIONAL CHARGES AND FEES				
Late Charge \$ 20 -	Returned Check Charge \$ 20 -	Reletting Charge \$ 820 -	Parking Fee \$ N/A	Laundry Room \$ N/A
Social Security No.		Storage Fee \$		

IF NONE, WRITE "NONE." Paragraph 5 of Lease Agreements and Covenants then INAPPLICABLE.

TENANT
 TENANT • *Bruce Flores*
 APARTMENT • *2F*
 BUILDING • *2600 N. Sawyer*
 CITY • *Chicago, Ill.*

LESSOR (Owner or agent authorized to manage the Apartment)
 NAME • *John T. Bussis*
 ADDRESS • *312 N. Dearborn*
 CITY • *Northfield, Ill.*
 PHONE • *60093*

In consideration of the mutual agreements and covenants set forth below and on the reverse side hereof (the same being fully included as part of this Lease) Lessor hereby leases to Tenant and Tenant hereby leases from Lessor for use in accordance with paragraph 8 hereof the Apartment designated above, together with the fixtures and accessories belonging thereto, for the above Term. All parties listed above as Lessor and Tenant are herein referred to individually and collectively as Lessor and Tenant respectively.

ADDITIONAL AGREEMENTS AND COVENANTS (including DECORATING AND REPAIRS), if any.

- Please make all checks to same address*
- Call Lessor 708-243-2517 for any complaints or information.*
- Rent due 1st of month*

TENANT(S)
 (SEAL)
 (SEAL)

SIGNATURES
 (SEAL) *John T. Bussis*
 (SEAL)

LESSOR(S)
 (SEAL)
 (SEAL)

LEASE AGREEMENTS AND COVENANTS 10260518

1. RENT: Tenant shall pay to Lessor at the above address (or such other address as Lessor may designate in writing) the monthly rent set forth above on or before the first day of each month in advance. The time of each and every payment of rent is of the essence of this Lease. To cover Lessor's added costs for late payments, the monthly rent set forth above shall be increased by the amount set forth above as "Late Charge" if paid after the 5th of the month. To cover Lessor's added costs for processing of checks that are dishonored or are returned due to insufficient funds in the account, the monthly rent shall be increased by the amount set forth above as "Returned Check Charge." Rent mailed in shall be deemed paid on date of receipt by Lessor.

2. POSSESSION: At the commencement of this Lease, Lessor shall deliver possession of the apartment to Tenant. Possession shall be deemed to have been delivered to Tenant on the day that Lessor either (A) actually delivers to Tenant keys to the Apartment or (B) makes available to Tenant at the office of the Building or at such other place as designated by Lessor keys to the Apartment. If Lessor fails to so deliver possession within 10 days from the date hereof, this Lease shall terminate unless confirmed in writing within an additional 5 days by Tenant. Upon such termination Lessor shall refund all prepaid rent and security, which shall be Tenant's sole remedy. It is understood that decorating, if any, to be performed by Lessor shall not be a condition precedent to possession or rent.

3. APPLICATION: The application for this Lease and all representations and promises contained therein are hereby made a part of this Lease. Tenant warrants that the information given by Tenant in the application is true. If such information is false, Lessor may at Lessor's option terminate this Lease by giving Tenant not less than 10 days prior written notice, which shall be Lessor's sole remedy.

4. PROMISES OF THE PARTIES: The terms and conditions contained herein shall be conclusively deemed the agreement between Tenant and Lessor and no modification, waiver or amendment of this Lease or any of its terms, conditions or covenants shall be binding upon the parties unless made in writing and signed by the party sought to be bound.

5. SECURITY DEPOSIT: Tenant has deposited with Lessor the Security Deposit in the amount set forth above for the performance of each and every covenant and agreement to be performed by Tenant under this Lease. Lessor shall have the right to apply the Security Deposit in whole or in part as payment of such amounts as are reasonably necessary to remedy Tenant's defaults in the performance of any of the covenants or agreements contained herein. Lessor's right to apply the Security Deposit for such purposes shall not be limited to the amount of the Security Deposit.

Lessor shall give Tenant written notice of the application of the Security Deposit or any part thereof within thirty (30) days of said application. If the application is on account of maintenance, repairs or replacements necessitated by Tenant, said notice shall include the estimated or actual cost of the same, attaching estimates or paid receipts. Upon receipt of said notice, Tenant shall at once pay to Lessor an amount sufficient to restore the Security Deposit in full. Upon termination of this Lease, full payment of all amounts due and performance of all Tenant's covenants and agreements (including surrender of the Apartment in accordance with Paragraph 16) the Security Deposit shall be returned to Tenant.

6. IT IS HEREBY UNDERSTOOD AND AGREED that buildings are physical structures subject to aging wear, tear, abuse, inherent defects, and numerous forces of cause, disrepair or breakdown beyond Lessor's reasonable control, and that carpenters and skilled workmen are not always immediately available; it is further understood and agreed that for the most part Lessor's costs of operation are fixed and unavoidable and to permit rent abatement or damages to Tenant would create an intolerable burden on Lessor; other tenants and surrounding neighborhood. It is, therefore, understood and agreed that Lessor's delay in performing agreements set forth in Paragraph 8B, interruptions in services provided by Lessor, breakdowns of equipment or disrepair caused by (1) conditions caused by Tenant, members of Tenant's household, guests or other persons on the premises with Tenant's consent or other tenants; (2) Tenant's unreasonable refusal of or other interference with entry of Lessor or Lessor's workmen or contractors into the Apartment or Building for purposes of correcting defective conditions; (3) lack of reasonable opportunity for Lessor to correct defective conditions; (4) conditions beyond Lessor's reasonable control, including strikes or lockouts; (5) Lessor's not having actual knowledge of such defective conditions shall be an absolute defense in any action against Lessor for breach of covenant based upon the failure of Lessor to maintain the Apartment or Building; or (6) Lessor's having exercised due care but such defective condition(s) continues to persist, shall be an absolute defense in any action against Lessor for breach of covenant based upon the duties of Lessor to maintain the Apartment or Building. Lessor's failure or inability to make repairs or provide services in any of the just described circumstances shall in no event form the basis of any claim or action for damages against Lessor nor a basis for an abatement of rent nor a cause for termination of the Lease.

E. Nothing herein contained shall in the event of fire, explosion or other casualty, impose upon Lessor any obligation to make repairs which are more extensive or different from those required by the provisions of Paragraph 14 of this Lease (Fire & Casualty).

7. UTILITIES: Unless otherwise agreed in writing, if the Apartment is individually metered, payment to the utility company or authorized metering agency of the applicable charges for gas, electricity or water consumed by Tenant in the Apartment, including, if applicable, current used for electric heating, ventilation, air conditioning, hot water, etc., shall be Tenant's sole responsibility.

8. TENANT'S USE OF APARTMENT: The Apartment shall be occupied solely for residential purposes by Tenant, those other persons specifically listed in the application for this Lease, and any children which may be born to or legally adopted by Tenant during the Term hereof. Unless otherwise agreed in writing, guests of Tenant may occupy the Apartment in reasonable numbers for no more than three weeks each during each year of the Term hereof. Neither Tenant nor any of these persons shall perform nor permit any practices that may damage the reputation of or otherwise be injurious to the Building or neighborhood, or be disturbing to other tenants, be illegal, or increase the rate of insurance on the Building.

9. TENANT'S UPKEEP: Tenant covenants to perform the following obligations during the Term hereof: (A) maintain the Apartment and appurtenances in a clean, sanitary and safe condition; (B) dispose of all rubbish, garbage and other waste in a clean, sanitary and timely manner from the