

UNOFFICIAL COPY

990029053/467610
This instrument was prepared by and
after recording return to:



0010372213

1964/0214 45 001 Page 1 of 30
2001-05-04 12:05:29
Cook County Recorder 155.50

Gardner Carton & Douglas
321 N. Clark, Suite 3400
Chicago, IL 60610
Attn: Valerie A. Haugh



SECOND MORTGAGE AND SECURITY AGREEMENT

THIS SECOND MORTGAGE AND SECURITY AGREEMENT ("Mortgage") made as of 5/12/01, 2001, by LaSalle Bank National Association (as successor to Bank One Trust Co., N.A. f/k/a Bank One Chicago, N.A., as successor to First Illinois Bank of Wilmette) not personally but as trustee under Trust Agreement dated February 8, 1990 and known as Trust No. TWB-0867 ("Trust") and Dennis J. O'Keefe and Mary Jo Barrett ("Beneficiary" and together with Trust and each of their respective successors and assigns collectively referred to herein as "Borrower"), having their mailing address c/o Dennis J. O'Keefe and Mary Jo Barrett, 540 Florence, Evanston, IL 60201, in favor of CHARTER ONE BANK, F.S.B., a federally-chartered savings bank (the "Lender"), having an address at 1215 Superior Avenue, Cleveland, Ohio 44114:

30
50

RECORD TITLE INSURANCE

WITNESSETH:

WHEREAS, Borrower is the owner in fee simple of certain real property (the "Premises") located in the City of Evanston, Cook County, Illinois, as more particularly described on Exhibit A attached, as improved on the date hereof;

WHEREAS, Borrower has applied to Lender for a loan in the amount of Three Hundred Thousand and No/100 Dollars U.S. (\$300,000.00) (the "Loan Amount") and, in accordance with a Loan Commitment (hereinafter defined) Borrower has executed and delivered a certain Promissory Note of even date herewith, in the principal sum of Three Hundred Thousand and No/100 Dollars U.S. (\$300,000.00) made payable to the order of Lender (the "Note"); and

WHEREAS, Borrower is required to execute and deliver this Mortgage as a covenant and condition to obtaining the loan.

NOW, THEREFORE, BENEFICIARY HEREBY WARRANTS AND BORROWER HEREBY MORTGAGES, CONVEYS, TRANSFERS AND ASSIGNS TO LENDER, AND GRANTS TO LENDER AND ITS SUCCESSORS AND ASSIGNS FOREVER ALL OF THE FOLLOWING TO HAVE AND TO HOLD the following unto Lender forever, for the purposes and uses herein set forth, and Borrower hereby expressly waives and releases any and all right, benefit, privilege, advantage or exemption under and by virtue of any and all statutes and laws of the State of Illinois or other jurisdiction in which the Premises is located providing for the exemption of homesteads from sale on execution or otherwise;

UNOFFICIAL COPY

TOGETHER with all right, title and interest of Borrower, including any after-acquired title or reversion, in and to the ways, easements, streets, alleys, passages, water, water courses, riparian rights, oil, gas and other mineral rights, gaps, gores, rights, hereditaments, liberties and privileges thereof, if any, and in any way appertaining to the Premises;

TOGETHER with all rents, royalties, issues, proceeds and profits accruing and to accrue from the Premises as more particularly described in that certain Assignment of Leases and Rents of even date herewith (the "Assignment") from Borrower as Assignor to Lender as Assignee;

TOGETHER with all buildings and improvements of every kind and description now or hereafter erected or placed on the Premises including, without limitation, all materials intended for construction, reconstruction, alteration and repair of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the Mortgaged Property (as hereinafter defined) immediately upon the delivery thereof to the Premises, and all fixtures and articles of personal property now or hereafter owned by Borrower and attached to or contained in and used in connection with the Premises, including, without limitation, all furniture, apparatus, machinery, equipment, motors, elevators, fittings, radiators, furnaces, stoves, microwave ovens, awnings, shades, screens, blinds, office equipment, trash and garbage removal equipment, carpeting and other furnishings, and all plumbing, heating, lighting, cooking, laundry, ventilating, refrigerating, incinerating, air-conditioning, conveyor, security, sprinkler and other equipment, and all fixtures and appurtenances thereof; and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to such improvements in any manner; it being intended that all the above-described property owned by Borrower and placed by Borrower on the Premises shall, so far as permitted by law, be deemed to be fixtures and a part of the realty, and security for the indebtedness of Borrower to Lender hereinafter described and secured by this Mortgage, and as to the balance of the above-described property, this Mortgage is hereby deemed to be as well a Security Agreement for the purpose of creating hereby a security interest in such property, securing such indebtedness, for the benefit of Lender; all of the property described in this paragraph is hereinafter sometimes collectively called the "Improvements";

TOGETHER with any and all warranty claims, maintenance contracts and other contract rights, instruments, documents, chattel papers and general intangibles with respect to or arising from the Premises, the Improvements and the balance of the Mortgaged Property, and all cash and non-cash proceeds and products thereof; and

TOGETHER with all awards and other compensation heretofore or hereafter to be made to the present and all subsequent owners of the Mortgaged Property for any taking by eminent domain, either permanent or temporary (a "Taking"), of all or any part of the Mortgaged Property or any easement or other appurtenance thereof, including severance and consequential damage and change in grade of streets (collectively, "Taking Proceeds"), and any and all refunds of impositions or other charges relating to the Mortgaged Property or the indebtedness secured by this Mortgage.

10372213

UNOFFICIAL COPY

The property described above is hereafter called the "Premises" to the extent that such property is realty, and the "Collateral" to the extent that such property is personalty. The Premises and the Collateral are hereafter collectively called the "Mortgaged Property."

TO HAVE AND TO HOLD, all and singular, the Mortgaged Property, whether now owned or held or hereafter acquired by Borrower, with the appurtenances thereunto belonging, unto Lender, its successors and assigns, forever (provided, however, that the maximum amount to be secured by this Mortgage shall not exceed three times the Loan Amount plus the total amount of all advances made by Lender to protect the Mortgaged Property and the security interest and lien created hereby). Borrower does hereby covenant with Lender, its successors and assigns, that Borrower is well seized of the Premises as a good and indefeasible estate in fee simple and is the sole owner of the Collateral, and has good right to bargain, sell and convey the Mortgaged Property in manner and form as above written; that title to the Mortgaged Property is free and clear of all defects, liens and encumbrances except for real estate taxes and assessments and rights of way of record and that certain prior Mortgage from Borrower to Lender and/or its subsidiary, St. Paul Federal Bank For Savings (the "Permitted Exceptions") and that Borrower will warrant and defend the Premises, with the appurtenances thereunto belonging, and the Collateral to Lender, its successors and assigns, forever, against all liens, security interests, encumbrances, defects, claims and demands whatsoever.

Borrower has executed and delivered this Mortgage to secure the following:

- (a) Payment of principal, interest and all other charges under the Note, as the same may be amended, extended, supplemented, modified and/or renewed, and all replacements and substitutions therefor (alternatively and collectively, the "Note"), together with interest thereon at a rate or rates which may vary from time to time as specified in the Note; the Note also contains an option in Lender to declare the unpaid balance under the Note due and payable forthwith upon the occurrence of an Event of Default (as hereinafter defined);
- (b) Payment of any and all amounts or charges required to be paid by Borrower pursuant to this Mortgage or any of the other Loan Documents (as hereinafter defined);
- (c) Payment by Borrower to Lender of all sums expended or advanced by Lender pursuant to this Mortgage or any of the other Loan Documents;
- (d) Payment of any and all amounts advanced by Lender with respect to the Mortgaged Property for the payment of taxes, assessments, insurance premiums or costs incurred in the protection of the Mortgaged Property;
- (e) Performance and observance of each covenant and agreement of Borrower contained herein or in any of the other Loan Documents; and
- (f) Payment by Borrower to Lender of any and all other liabilities and indebtedness of Borrower to Lender, direct or contingent, now or hereafter owing by Borrower to Lender, other than as provided in subparagraphs (a) through (e) above.

10372213

UNOFFICIAL COPY

PROVIDED, HOWEVER, that if Borrower shall pay or cause to be paid to Lender the principal, interest and all other charges under the Note on or before the date on which the outstanding principal balance of the Note is due and payable in full in accordance with the terms of the Note, and in the manner stipulated therein and herein, all without deduction or credit for taxes or other charges paid by Borrower, and if Borrower shall have kept, performed and observed all of the covenants and conditions contained in this Mortgage and all of the other Loan Documents, then this Mortgage shall cease, determine and be void, but otherwise shall remain in full force and effect.

Borrower further covenants and agrees as follows:

1. Payment of Indebtedness. Borrower shall pay promptly the indebtedness evidenced by the Note at the time and in the manner provided herein and in the Note, and all other sums and charges payable when due by Borrower and pursuant to the Note, this Mortgage and any of the other Loan Documents.

2. Tax and Insurance Escrows.

(a) Subject to the terms and conditions of subsection 2(d) below, Borrower shall pay to Lender, in addition to the monthly payments under the Note and concurrently therewith in a single payment monthly until the Note is fully paid, a sum equal to annual real estate taxes, general and special assessments and premiums for insurance required hereunder (all as estimated by Lender) less all sums previously paid therefor, divided by the number of full calendar months to elapse before the date which is one (1) month prior to the date when such taxes and assessments and insurance premiums will become due. Such sums shall be held by Lender for payment of such taxes and assessments and insurance premiums as and when due. Lender shall have the right to commingle and hold such sums with its general funds, and no interest shall accrue thereon in favor of Borrower.

(b) Lender shall have the right to make any and all payments notwithstanding that at that time any such tax, assessment or premium is then being protested or contested by Borrower, unless Borrower shall have notified Lender in writing not less than thirty (30) days prior to the due date of such protest or contest of such tax, assessment or premium, in which event Lender shall make such payment under protest in the manner prescribed by law or shall withhold such payment, but only if (a) such contest precludes enforcement of collection and the sale of the Mortgaged Property in satisfaction of such tax, assessment, or premium; (b) Borrower shall first pay to Lender such amount as Lender may request as security for the payment of the amount withheld; and (c) the withholding of such payment shall not result in any criminal or civil penalty being imposed against Borrower, Lender or any of the Mortgaged Property. In the event such protest or contest shall or might result in a penalty or other charges, Borrower shall likewise deposit with Lender monthly pro-rata the amount of any such penalty or additional charge. If, upon receipt by Lender of any refunds of impositions or other charges relating to the Mortgaged Property or the indebtedness secured hereby, Borrower is not in default hereunder, then Lender shall promptly pay such refund to Borrower; if Borrower is in default hereunder beyond any applicable grace period, Lender shall have the right to apply such refund to reduce the indebtedness secured hereby.

UNOFFICIAL COPY

(c) Without limiting the rights of Lender hereunder, including, without limitation, those provided in Paragraph 18 hereof, in the event of a sale of the Premises or any other part of the Mortgaged Property, any funds then on deposit with the Lender shall, at Lender's option, and thereupon automatically and without the necessity of further notice or written assignment, be transferred to and held thereafter for the account of the new owner, to be applied in accordance with the foregoing. If the Premises or any other part of the Mortgaged Property is purchased by Lender at foreclosure sale or is otherwise acquired by Lender after an Event of Default, the remaining balance, if any, of the funds deposited with Lender pursuant to subsection 2(a) above shall continue to be applied, subject to the security interest hereunder, first to Lender's unreimbursed costs and expenses in such purchase or acquisition, then to reduce the indebtedness secured by this Mortgage, and the balance, if any, shall be paid to Borrower, subject to the order of the court having jurisdiction in any such proceeding.

(d) Lender hereby waives the requirement for deposit by Borrower of the sums described in subsection 2(a) above, for so long as (i) there is no default in the obligations of Borrower or any other person under this Mortgage or any of the Loan Documents, and no event which, with the giving of notice, passage of time or both, would constitute such a default, and (ii) Borrower delivers to Lender, no later than five (5) days prior to the last day for payment of such sums without penalty or interest, evidence satisfactory to Lender in Lender's sole and absolute discretion, that all sums described in subsection 2(a) above have been paid in full. Upon failure of either of the foregoing conditions, the waiver set forth in this subsection 2(d) shall immediately and automatically become null and void, without notice from Lender to Borrower.

(e) Without in any way limiting any of the provisions contained herein and/or Lender's rights hereunder, in the event that Borrower does not fulfill its requirements to carry the required insurance hereunder and/or to provide the Lender with proof of such insurance, Lender may, but is not obligated to, purchase such insurance at Borrower's expense to protect Lender's interests in and to the Mortgaged Property. This insurance may, but need not, protect Borrower's interests. The coverage obtained by Lender may not pay any claim that is made by or against Borrower in connection with the Mortgaged Property. If Borrower complies with the requirements hereunder and subsequently provides evidence of the required insurance hereunder, Borrower may cancel any of such insurance purchased by Lender. Borrower shall be responsible for any and all costs of any insurance purchased by Lender hereunder, including interest (at the Default Rate) thereon, and any other charges that Lender may impose in connection with the placement of such insurance, until the effective date of the cancellation of the insurance or payment of such amounts due. These costs, including interest and other charges, may be added to the outstanding principal balance of the Note, at Lender's option. The cost of such insurance may be more than the cost of insurance Borrower may be able to obtain on its own.

3. Protection Against Charges. Except for the Permitted Exceptions, Borrower shall keep the Mortgaged Property free from liens of every kind, except only for real estate taxes and general and special assessments which are not yet due and payable, and mortgage taxes, if any, as provided in Paragraph 7 hereof, and shall pay, before delinquency and before any penalty for non-payment attaches thereto, all taxes, assessments, and other governmental or municipal or public dues, charges, fines or impositions which are or hereafter may be levied against the Mortgaged Property

UNOFFICIAL COPY

or any part thereof. Borrower shall promptly deliver to Lender receipted bills evidencing each such payment, together with any other evidence of payment required by Lender in its sole and absolute discretion, no later than five (5) days prior to the last day upon which such payment can be made without penalty or interest. Borrower shall also pay, in full, under protest or otherwise in the manner provided by law, any tax, assessment, charge, fine or imposition described above which Borrower contests in accordance with the provisions of law and this Mortgage.

4. Insurance and Casualty Damage.

(a) Borrower shall keep, or cause to be kept, all of the following insurance policies with respect to the Mortgaged Property in companies, forms, amounts and coverage satisfactory to Lender, containing waiver of subrogation and first mortgagee clauses in favor of Lender and providing for thirty (30) days' written notice to Lender in advance of cancellation of said policies for non-payment of premiums or any other reason or for material modification of said policies, and ten (10) days' written notice to Lender in advance of payment of any insurance claims under said policies to any person:

(i) Insurance against loss or damage by fire and such other hazards, casualties and contingencies (including, without limitation, so-called all risk coverages) as Lender reasonably may require, in an amount equal to the greater of (1) the Loan Amount, or (2) the replacement cost of the Mortgaged Property, with a replacement cost endorsement and in such amounts so as to avoid the operation of any coinsurance clause, for such periods and otherwise as Lender reasonably may require from time to time.

(ii) Comprehensive general public liability, property damage and indemnity insurance, including, without limitation, so-called assumed and contractual liability coverage and claims for bodily injury, death or property damage, naming Lender as an additional insured, in such amounts as Lender reasonably may from time to time require.

(iii) Insurance against rent loss or abatement of rent, covering payment of rent and like charges from the Mortgaged Property over a term of not less than twelve (12) months, in an amount at least equal to the aggregate annual amount payable from time to time under the Note.

(iv) Flood insurance in an amount as Lender may reasonably require if the Mortgaged Property is located in a Special Flood Hazard Area (as defined in the National Flood Insurance Act of 1968, as amended).

Borrower shall deliver renewal certificates of all insurance required above, together with written evidence of full payment of the annual premiums therefor at least thirty (30) days prior to the expiration of the existing insurance. Any such insurance may be provided under so-called "blanket" policies, so long as the amounts and coverages thereunder will, in Lender's sole judgment,

UNOFFICIAL COPY

provide protection equivalent to that provided under a single policy meeting the requirements hereinabove.

(b) Notice. In case of any material damage or destruction of the Mortgaged Property, or any part thereof, or any interest therein or right accruing thereto, Borrower shall promptly give to Lender written notice generally describing the nature and extent of such damage or destruction which has resulted or which may result therefrom. Lender may appear in any such proceedings and negotiations and Borrower shall promptly deliver to Lender copies of all notices and pleadings in any such proceedings. Borrower will in good faith, file and prosecute all claims necessary for any award or payment resulting from such damage or destruction. All costs and expenses incurred by Lender in exercising its rights under this section shall constitute indebtedness secured by this Mortgage.

(c) Application of Insurance Proceeds. Upon occurrence of any loss or damage to all or any portion of the Mortgaged Property resulting from fire, vandalism, malicious mischief or any other casualty or physical harm (a "Casualty"), Lender may elect subject to the provisions set forth below to collect, retain and apply as a Loan prepayment all proceeds (the "Proceeds") of any insurance policies collected or claimed as a result of such Casualty after deduction of all expenses of collection and settlement, including attorney's and adjusters' fees and charges. Borrower hereby authorizes Lender, at Lender's option, to collect, adjust and compromise and losses under any insurance with respect to the Mortgaged Property which is kept, or caused to be kept, by Borrower, and hereby irrevocably appoints Lender as its attorney-in-fact, coupled with an interest, for such purposes. Any Proceeds remaining after payment in full of the Loan and all other sums due Lender hereunder shall be paid by Lender to Borrower without any allowance for interest thereon.

In the event Lender elects to allow Borrower to restore or rebuild the Mortgaged Property and such Proceeds would not be sufficient to restore or rebuild the Mortgaged Property, then Borrower shall deposit with Lender cash, letters of credit, surety bonds or equivalent assurances of the availability of funds with which to pay for the restoration or rebuilding of the Mortgaged Property. Such letters of credit, surety bonds or equivalent assurances shall in all respects be in form, substance, execution and sufficiency acceptable to Lender. Borrower shall promptly proceed with restoration of the Mortgaged Property resulting from any such Casualty.

5. Maintenance of Improvements.

(a) None of the Improvements shall be structurally or otherwise materially altered, removed or demolished, nor shall any fixtures or any portion of the Collateral on, in or about the Premises be severed, removed, sold, mortgaged or otherwise encumbered, without the prior written consent of Lender in each case; except, however, that Borrower shall have the right, without such consent, to remove and dispose of, free from the lien of this Mortgage such Collateral as from time to time may become worn out or obsolete, provided that simultaneously with or prior to such removal, such Collateral shall be replaced with other new Collateral of like kind and quality, and by such removal, the Borrower shall be deemed to have subjected the replacement Collateral to the lien of this Mortgage. Any Improvements or any of the Collateral which are demolished or destroyed in whole or in part shall be replaced promptly by similar Improvements and articles of personal

UNOFFICIAL COPY

property of comparable quality, condition and value as those demolished or destroyed, thereupon becoming part of the Mortgaged Property free from any other lien or security interest or encumbrance on or reservation of title to such property. Borrower shall not permit, commit or suffer any waste, impairment or deterioration of the Mortgaged Property or any part thereof and shall keep and maintain (or cause to be kept and maintained) the same in good repair and condition. Borrower shall make (or cause to be made) all necessary and proper repairs and replacements so that all components of the Mortgaged Property will, at all times, be in good condition, fit and proper for the respective purposes for which they were erected or installed, other than for matters of health and safety prior to the demolition thereof.

(b) Borrower hereby grants to Lender and its agents the right in their reasonable discretion, but Lender shall have no obligation, to enter upon the Premises at any time for the purpose of inspecting and appraising the Mortgaged Property and conducting tests and surveys thereof. In the event that Borrower shall fail fully to comply with any of the requirements of this Paragraph 5, without prejudice to any other right or remedy that may be available to Lender in such event, Lender shall have the right to recover, as damages for such failure, an amount equivalent to the cost required to restore the Mortgaged Property to the condition hereby required.

(c) Borrower hereby covenants and agrees to comply with, and to cause all occupants of all or any portion of the Mortgaged Property to comply with, all applicable zoning, building, use and environmental restrictions and all laws, rules, statutes, ordinances, regulations, orders and requirements, including, without limitation, environmental matters and notices of violation of all governmental authorities having jurisdiction over the Mortgaged Property or the maintenance, use and operation thereof, and all applicable restrictions, agreements and requirements, whether or not of record (collectively, "Laws"). Borrower will deliver to Lender within ten (10) days after receipt thereof any additional permits or renewals, issued and approved or disapproved with respect to the Mortgaged Property. Borrower hereby indemnifies Lender and its officers, directors, shareholders, employees, agents and partners and their respective heirs, successors and assigns (collectively, "Indemnified Parties") and agrees to defend and hold the Indemnified Parties harmless from and against any and all claims, demands, loss, cost, damage, liability or expense incurred or suffered by the Indemnified Parties arising from any failure of the Mortgaged Property to comply with Laws, or from any failure of Borrower to obtain, maintain or renew, or to have obtained, maintained or renewed, any permit or approval required with respect to the Mortgaged Property. The foregoing indemnification and agreement shall survive the release of this Mortgage and the payment or other satisfaction of the indebtedness secured hereby.

6. Hazardous Materials and Wetlands.

(a) Without limiting the generality of any provision herein or in any of the Loan Documents, Borrower hereby represents and warrants to Lender that neither Borrower nor, to the best knowledge and belief of Borrower, any previous owner or user of the Mortgaged Property or any adjacent properties, has used, generated, stored or disposed of in violation of Environmental Law (as defined below) in, on, under, around or above the Mortgaged Property, any Regulated Material (defined herein as flammable explosives, radioactive materials, solid waste, hazardous substances, hazardous waste, hazardous materials, asbestos containing materials, petroleum or any fraction

UNOFFICIAL COPY

thereof, pollutants, irritants, contaminants, toxic substances, or any other materials respectively defined as such in, or regulated by, any applicable Environmental Law), that, to the best knowledge and belief of Borrower, or any of them, the Mortgaged Property is not currently in violation of any Environmental Law (defined herein as any federal, state or local law, regulation or ordinance, as each may be validly interpreted and applied by the appropriate governmental entity, governing any Regulated Material for the protection of human health, safety or the environment, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 and the Emergency Planning and Community Right-to-Know Act of 1986, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Clean Air Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act and the Oil Pollution Act of 1990, the Illinois Environmental Protection Act, Ill. Rev. Stat. Ch. 111-1/2, §1001 et seq., in each case as amended and as effective at the date of this Agreement), that underground storage tanks are not and have not been located on the Mortgaged Property. Borrower shall cause all tenants and any other persons present on or occupying the Mortgaged Property ("Tenants"), employees, agents, contractors and subcontractors of Borrower and Tenants, to keep and maintain the Mortgaged Property, including, without limitation, the soil and ground water thereof, in compliance with, and not cause or knowingly permit the Mortgaged Property, including the soil and ground water thereof, to be in violation of any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions thereon (including but not limited to any Environmental Law). Neither Borrower nor Tenants nor any employees, agents, contractors and subcontractors of Borrower or Tenants or any other persons occupying or present on the Mortgaged Property shall (i) use, generate, manufacture, store or dispose of in violation of Environmental Law on, under or about the Mortgaged Property or transport to or from the Mortgaged Property any Regulated Material, except as such may be required to be used, stored, or transported in connection with the permitted uses of the Mortgaged Property and then only to the extent permitted by law after obtaining all necessary permits and licenses therefor; (ii) perform, cause to be performed or permit any fill activities or other acts which would in any way destroy, eliminate, alter, obstruct, interfere with, or otherwise affect any Wetlands, as defined in 33 C.F.R. Section 328.3 and in any comparable state and local law, statute, ordinances, rule or regulation ("Wetlands"), in violation of any federal, state or local laws, statutes, ordinances, rules or regulations pertaining to such Wetlands ("Wetlands Law").

(b) Borrower shall immediately advise Lender in writing of: (i) any notices (whether such notices are received from the Environmental Protection Agency, or any other federal, state or local governmental agency or regional office thereof) of violation or potential violation which are received by Borrower of any applicable federal, state or local laws, ordinances, or regulations relating to any Environmental Law or any Wetlands Law; (ii) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened pursuant to any Environmental Law or Wetlands Law; (iii) all claims made or threatened by any third party against Borrower or the Mortgaged Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Environmental Law or Wetlands Law (the matters set forth in clauses (i), (ii) and (iii) above are hereinafter referred to as "Environmental or Wetlands Claims"); and (iv) discovery by Borrower of any occurrence or condition on any real property adjoining or in the vicinity of the Mortgaged Property that could cause the Mortgaged Property or any part thereof to be classified as in violation of any Environmental Law or Wetlands

UNOFFICIAL COPY

Law or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Mortgaged Property under any Environmental Law or Wetlands Law.

(c) Lender shall have the right but not the obligation to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Environmental or Wetlands Claims, and to have its reasonable attorneys' and consultants' fees in connection therewith paid by Borrower upon demand.

(d) Borrower shall be solely responsible for, and each hereby jointly and severally indemnifies and agrees to defend and hold harmless Lender, its directors, officers, employees, agents, successors and assigns and any other person or entity claiming by, through, or under Lender, from and against, any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence (whether prior to or during the term of the loan secured by this Mortgage) of Regulated Materials on, under or about the Mortgaged Property (whether by Borrower or a predecessor in title or any Tenants, employees, agents, contractors or subcontractors of Borrower or any predecessor in title or any third persons at any time occupying or present on the Mortgaged Property), including, without limitation: (i) all foreseeable consequential damages; (ii) the cost of any required or necessary repair, cleanup or detoxification of the Mortgaged Property, including the soil and ground water thereof, and the preparation and implementation of any closure, remedial or other required plans; (iii) damage to any Wetlands or natural resources; and (iv) all reasonable costs and expenses incurred by Lender in connection with clauses (i), (ii), and (iii), including but not limited to reasonable attorneys' and consultants' fees; provided, however, that nothing contained in this paragraph shall be deemed to create or give any rights to any person other than Lender and its successors and assigns, it being intended that there shall be no third party beneficiary of such provisions, or preclude Borrower from seeking indemnification from, or otherwise proceeding against, any third party including, without limitation, any tenant or predecessor entitled to the Mortgaged Property.

(e) Any costs or expenses reasonably incurred by Lender for which Borrower is responsible or for which Borrower has indemnified Lender shall be paid to Lender within ten days of demand, and failing prompt reimbursement, shall earn interest at the default rate of interest set forth in the Loan Documents (the "Default Rate").

(f) Borrower shall take any and all remedial action in response to the presence of any Regulated Materials or Wetlands on, under, or about the Mortgaged Property, required pursuant to any settlement agreement, consent decree or other governmental proceeding; furthermore, Borrower shall take such additional steps as may be necessary to preserve the value of Lender's security under the Loan Documents.

(g) Upon Lender's reasonable request, Borrower shall retain, at Borrower's sole cost and expense, a licensed geologist, industrial hygienist or an environmental consultant (referred to hereinafter as the "Consultant") acceptable to Lender to conduct a baseline investigation of the Mortgaged Property for the presence of Regulated Materials or Wetlands ("Environmental Audit").

UNOFFICIAL COPY

The Environmental Audit shall be performed in a manner reasonably calculated to discover the presence of Regulated Materials contamination or Wetlands; provided, however, such investigation shall be of a scope and intensity no greater than a baseline investigation conducted in accordance with the general standards of persons providing such services taking into consideration the known uses of the Mortgaged Property and property in the vicinity of the Mortgaged Property and any factors unique to the Mortgaged Property. The Consultant shall concurrently deliver the results of its investigation in writing directly to Borrower and Lender. Such results shall be kept confidential by both Borrower and Lender unless legally compelled or required to disclose such results or disclosure is reasonably required in order to pursue rights or remedies provided herein or at law.

(h) If Borrower fails to pay for or obtain an Environmental Audit as provided for herein, Lender may, but shall not be obligated to, obtain the Environmental Audit, whereupon Borrower shall immediately reimburse Lender all its costs and expenses in so doing, together with interest on such sums at the Default Rate.

(i) Borrower covenants to reasonably cooperate with the Consultant and to allow entry and reasonable access to all portions of the Mortgaged Property for the purpose of Consultant's investigation. Borrower covenants to comply, at its sole cost and expense, with all recommendations contained in the Environmental Audit reasonably required to bring the Mortgaged Property into compliance with all Environmental Laws and Wetlands Laws, including any recommendation for additional testing and studies to detect the quantity and types of Regulated Materials or Wetlands present, if Lender requires the implementation of the same.

7. Mortgage Tax. If at any time any governmental authority, whether federal, state or municipal, or any agency or subdivision of any of them, shall require Internal Revenue or other documentary stamps on the Note, this Mortgage or any of the other Loan Documents, or upon the passage of any law of the State of Illinois deducting from the value of land for the purposes of real estate taxation the amount of any lien thereon, or changing in any way the laws for the taxation of mortgages or debts secured by mortgages for federal, state or local purposes, or the manner of the collection of any such taxes so as to impose, in any such event, a tax (other than an income tax) upon or otherwise to substantially and adversely affect the value of this Mortgage, then all indebtedness secured hereby shall become due and payable at the election of Lender thirty (30) days after the mailing of notice of such election to Borrower; provided, however, this Mortgage, the Note and the other Loan Documents shall be and remain in effect if Borrower lawfully may pay, and does in fact pay, when payable, for such stamps and taxes, including interest and penalties thereon, to or for Lender. Borrower further agrees to deliver to Lender, at any time, upon demand, such evidence as may be required by any government agency having jurisdiction in order to determine whether the obligation secured hereby is subject to or exempt from any such tax.

8. Indemnification for Costs. Borrower hereby indemnifies Lender and agrees to defend and hold Lender harmless from and against all costs, liabilities and expenses, including but not limited to attorneys' fees and expenses to the fullest extent not then prohibited by applicable law, and costs of any Environmental Audit, title search, continuation of abstract and preparation of survey, incurred by reason of any action, suit, proceeding, hearing, motion or application before any court or administrative body, including an action to foreclose or to collect any indebtedness or obligation

UNOFFICIAL COPY

secured hereby, or incurred in connection with any extra-judicial collection procedure, in and to which Lender may be or become a party by reason hereof, including, without limitation, any Taking, bankruptcy, probate and administration proceedings, as well as any other proceeding wherein proof of claims required to be filed by law or in which it becomes necessary to defend or uphold the terms of and the lien created by this Mortgage.

9. Taking.

(a) In the event all or any part of the Mortgaged Property shall be damaged or taken as a result of a Taking, either temporarily or permanently. Borrower shall assign, transfer and set over unto Lender the Taking Proceeds or any claim for damages for any of the Premises taken or damaged under the power of eminent domain, and agrees that in the event the whole or any part of the Premises is taken by eminent domain proceedings, then all sums awarded as damages for the Taking shall be applied in reduction of the indebtedness secured by this Mortgage, but without imposition of the prepayment premium to such application. Any and all costs and expenses, including, without limitation, reasonable attorneys' fees and expenses to the fullest extent not then prohibited by applicable law, incurred by Lender by reason of any condemnation, threatened condemnation or proceedings thereunder shall be secured hereby and Borrower shall reimburse Lender therefor immediately, or Lender shall have the right, at its option, to deduct such costs and expenses from any Taking Proceeds paid to Lender hereunder. In the event that the Premises is wholly condemned, Lender shall receive from Borrower and/or from the Taking Proceeds payment of the entire amount of the indebtedness secured by this Mortgage.

(b) Subject to paragraph (a) of this Section, Borrower will immediately notify Lender of the actual or threatened commencement of any Taking proceedings affecting all or any part of the Premises, including any easement therein or appurtenance thereof, including severance and consequential damage and change in grade of streets, and will deliver to Lender copies of any and all papers served in connection with any such proceedings. Borrower further covenants and agrees to make, execute and deliver to Lender, from time to time upon request, free, clear and discharged of any encumbrances of any kind whatsoever, any and all further assignments or other instruments deemed necessary by Lender for the purpose of validly and sufficiently assigning the Taking Proceeds and all other awards and compensation heretofore and hereafter to be made to Borrower, including the assignment of any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for payment thereof, for any Taking, either permanent or temporary, under any such proceedings. In the event of a Taking, Lender shall not be limited to the rate of interest paid on the award by the condemning authority but shall be entitled to receive out of the Taking Proceeds interest on the entire unpaid principal sum under the Note and the other Loan Documents at the applicable rate(s) provided therein. Borrower hereby assigns to Lender so much of the balance of the Taking Proceeds payable by the condemning authority as is required to pay such interest.

(c) Subject to paragraph (a) of this Section, Borrower hereby irrevocably authorizes and appoints Lender its attorney-in-fact, coupled with an interest, to collect and receive any such Taking Proceeds from the authorities making the same, to appear in any proceeding therefor, to give receipts and acquittances therefor, and to apply the same to payment on account of

UNOFFICIAL COPY

the indebtedness secured hereby whether then matured or not. Borrower shall execute and deliver to Lender on demand such assignments and other instruments as Lender may require for such purposes.

10. Estoppel Certificate. Within ten (10) days after request by Lender, Borrower shall furnish to Lender a written statement, duly acknowledged, of the aggregate amount of indebtedness secured by this Mortgage, confirming (to the extent true) that no right of offset exists under the Loan Documents or otherwise, and stating either that no defenses exist against the indebtedness secured hereby, or, if such defenses are alleged to exist, the nature thereof, and any other information which Lender may reasonably request.

11. Title Warranty; Title Evidence. Borrower hereby confirms the warranties and representations as to title to the Mortgaged Property made in the granting clause of this Mortgage, and agrees to pay the costs of title evidence satisfactory to Lender showing title to the Mortgaged Property to be as herein warranted. In the event of any subsequent change in title to the Mortgaged Property, other than a change expressly permitted by the Loan Documents, Borrower agrees to pay the cost of (i) an extension or endorsement to such title evidence showing such change in title, and (ii) changing any and all insurance and other records in connection with the servicing of the loan secured hereby made necessary by such change in title.

12. Lender's Reliance. Lender, in advancing any payment relating to taxes, assessments and other governmental or municipal charges, fines, impositions or liens asserted against the Mortgaged Property, shall have the right to do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy or validity thereof. Lender shall have the right to make any such payment whenever Lender, in its sole discretion, shall deem such payment to be necessary or desirable to protect the security intended to be created by this Mortgage. In connection with any such advance, Lender, at its option, shall have the right to and is hereby authorized to obtain, at Borrower's sole cost and expense, a continuation report of title prepared by a title insurance company of Borrower's choice.

13. Default. Each of the following events shall be deemed to be an "Event of Default" hereunder:

(a) Borrower shall fail to make payment of any sum of money due and payable under this Mortgage within fourteen (14) days after the date such payment is due as herein provided, or of the indebtedness evidenced by the Note, or any sum of money due and payable under any of the other Loan Documents on the date when the same is due and payable or within any applicable grace period; or

(b) Borrower shall file a voluntary petition in bankruptcy or under any bankruptcy act or similar law, state or federal, whether now or hereafter existing, or make an assignment for the benefit of creditors or file an answer admitting insolvency or inability to pay its or their debts generally as they become due, or shall fail to obtain a vacation or stay of any such proceedings which are involuntary within sixty (60) days after the institution of such proceedings, as hereinafter provided; or

UNOFFICIAL COPY

(c) Any plan of liquidation or reorganization is filed by or on behalf of Borrower or either in any bankruptcy, insolvency or other judicial proceeding, or a trustee or a receiver shall be appointed for the Mortgaged Property in any involuntary proceeding and such trustee or receiver shall not be discharged or such jurisdiction relinquished, vacated or stayed on appeal or otherwise within sixty (60) days after the appointment thereof; or

(d) Failure of Borrower to commence, diligently pursue and/or complete actions as and when provided in Paragraphs 2, 5 or 6 above; or

(e) Any sale or transfer of the Mortgaged Property in violation of Paragraph 18 of this Mortgage; or

(f) The occurrence of an involuntary transfer under subsection 26(d) of this Mortgage; or

(g) Any violation of the representations and warranties, or the filing of formal charges or commencement of proceedings as contemplated by Paragraph 32 of this Mortgage; or

(h) Default shall be made in the due observance or performance of any of the other covenants, agreements or conditions required to be kept, performed or observed by Borrower under this Mortgage, and such default is not cured within thirty (30) days after written notice thereof has been delivered to Borrower by Lender; provided, however if such default cannot reasonably be cured within the thirty (30)-day period, and Borrower promptly commences such cure within the thirty (30)-day period, then within such additional period during which Borrower diligently pursues and prosecutes such cure to completion and so long as the value of the Mortgaged Property is not impaired; or

(i) Default shall be made in the due observance or performance of any of the covenants, agreements or conditions required to be kept, performed or observed by Borrower or any other party under the Note, or any of the other Loan Documents, and such default is not cured within the applicable grace period, if any, expressly provided for therein;

then and upon any such Event of Default, the entire amount of the indebtedness hereby secured, shall, at the option of Lender, become immediately due and payable, without execution or other process and without further notice or demand, all of which are hereby expressly waived. Upon and after any such Event of Default, the indebtedness hereby secured shall, at the option of Lender, bear interest at the Default Rate (as defined in the Note), payable on demand. Acceleration of maturity, once claimed hereunder by Lender, may, at the option of Lender, be rescinded by written acknowledgment to that effect by Lender, but the tender and acceptance of partial payments alone shall not in any way affect or rescind such acceleration of maturity, nor extend or affect the grace period, if any.

14. Additional Rights upon Default. Without limiting the generality of the foregoing, Lender shall have the following additional rights during the continuance of any Event of Default:

UNOFFICIAL COPY

(a) Remedies Cumulative. No remedy or right of Lender hereunder or under the Note or any Loan Document or otherwise, or available under applicable law, shall be exclusive of any other right or remedy, but each such remedy or right shall be in addition to every other remedy or right now or hereafter existing under any such document or under applicable law. No delay in the exercise of, or omission to exercise, any remedy or right accruing on any Event of Default shall impair any such remedy or right or be construed to be a waiver of any such Event of Default or an acquiescence therein, nor shall it affect any subsequent Event of Default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by Lender. All obligations of Borrower, and all rights, powers and remedies of Lender, expressed herein, shall be in addition to, and not in limitation of, those provided by law or in the Note or any Loan Document or any other written agreement or instrument relating to any of the indebtedness evidenced by the Note and all other sums and charges payable when due by Borrower and pursuant to the Note, this Mortgage and any of the other Loan Documents or any security therefor.

(b) Possession of Premises; Remedies under Note and Loan Documents. Borrower hereby waives all right to the possession, income and rents of the Premises from and after the occurrence of any Event of Default. Lender is hereby expressly authorized and empowered, to the extent permitted by law, at and following any such occurrence, to enter into and upon and take possession of the Premises or any part thereof, to exclude Borrower and its agents and employees thereof from, and Borrower shall immediately surrender possession of the Premises. Lender may insure the Premises, contract with third parties to assist Lender, complete any construction in progress thereon at the expense of Borrower, lease the same (including without limitation leases extending past the term of the Loan), collect and receive all rents and apply the same, less the necessary or appropriate expenses of collection thereof, either for the care, operation and preservation of the Premises or, at the election of Lender in its sole discretion, to a reduction of such of the indebtedness evidenced by the Note and all other sums and charges due thereunder, under this Mortgage or under any other Loan Document in such order as Lender may elect. Lender, in addition to the rights provided under the Note and any Loan Documents is also hereby granted full and complete authority to enter upon the Premises, employ watchmen to protect the Collateral and Improvements from depreciation or injury and to preserve and protect the Mortgaged Property, and to continue any and all outstanding contracts for the erection and completion of Improvements to the Premises, to make and enter into any contracts and obligations wherever necessary in its own name, and to pay and discharge all debts, obligations and liabilities incurred thereby, all at the expense of Borrower. All such expenditures by Lender shall be indebtedness evidenced by the Note, which shall accrue interest at the Default Rate.

(c) Foreclosure; Expense of Litigation. When the indebtedness evidenced by the Note and all other sums and charges due thereunder, under this Mortgage or under any other Loan Document, or any part thereof, shall become due, whether by acceleration or otherwise, Lender shall have the right to foreclose the lien hereof for such indebtedness evidenced by the Note and all other sums and charges due thereunder, under this Mortgage or under any other Loan Document or part thereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Lender for attorneys' fees and expenses, appraisers' fees, environmental studies

UNOFFICIAL COPY

and/or audits, 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 the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title, as Lender may deem necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this Section mentioned and such expenses and fees as may be incurred in the protection of the Mortgaged Property and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Lender in any litigation or other proceeding affecting this Mortgage, the Note, the Loan Documents or the Mortgaged Property, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any litigation or other proceeding or threatened litigation or other proceeding, shall be immediately due and payable by Borrower, with interest thereon at the Default Rate, and shall be secured by this Mortgage.

(d) Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Mortgaged Property shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Section 14(c) hereof; second, on account of all indebtedness evidenced by the Note and all other sums and charges due thereunder, under this Mortgage or under any other Loan Document, with interest thereon as herein provided; and third, any surplus to Borrower.

(e) Appointment of Receiver. Upon, or at any time after, an Event of Default hereunder and before or after the filing of a complaint to foreclose this Mortgage, the Lender may petition to have a receiver for the Mortgaged Property appointed. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Borrower at the time of application for such receiver and without regard to the then value of the Mortgaged Property or whether the same shall be then occupied as a homestead or not, and Lender or any holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of and from the Mortgaged Property during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further period when Borrower, except for the intervention of such receiver, 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 Mortgaged Property during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his or her hands in payment in whole or in part of: (a) the indebtedness evidenced by the Note and all other sums and charges due thereunder, under this Mortgage or under any other Loan Document secured hereby or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; and/or (b) the deficiency in case of a sale and deficiency.

(f) Personal Property Foreclosure.

(i) If an Event of Default exists, Lender may exercise from time to time any rights and remedies available to it under applicable law, or otherwise available

UNOFFICIAL COPY

to it, in addition to, and not in lieu of, any rights and remedies expressly granted in this Lender. Borrower shall, promptly upon request by Lender, assemble the Collateral and make it available to Lender at such place or places, reasonably convenient for both Lender and Borrower, as Lender shall designate. Any notification required by law of intended disposition by Lender of any of the Collateral shall be deemed reasonably and properly given if given at least five (5) days before such disposition. Without limiting the foregoing, whenever an Event of Default exists, Lender may, with respect to so much of the Collateral as is personal property under applicable law, to the fullest extent permitted by applicable law, without further notice, advertisement, hearing or process of law of any kind, (i) notify any person obligated on the Collateral to perform directly for Lender its obligations thereunder, (ii) enforce collection of any of the Collateral by suit or otherwise, and surrender, release or exchange all or any part thereof or compromise or extend or renew for any period (whether or not longer than the original period) any obligations of any nature of any party with respect thereto, (iii) endorse any checks, drafts or other writings in the name of Borrower to allow collection of the Collateral, (iv) take control of any proceeds of the Collateral, (v) enter upon any premises where any of the Collateral may be located and take possession of and remove such Collateral, (vi) sell any or all of the Collateral, free of all rights and claims of Borrower therein and thereto, at any public or private sale, and (vii) bid for and purchase any or all of the Collateral at any such sale. Proceeds of any disposition by Lender of any of the Collateral may be applied by Lender to the payment of expenses in connection with the Collateral, including attorneys fees and legal expenses, and any balance of such proceeds shall be applied by Lender toward the payment of such of the indebtedness evidenced by the Note and all other sums and charges due thereunder, under this Mortgage or under any other Loan Document and in such order of application as Lender may from time to time elect. Lender may exercise from time to time any rights and remedies available to it under the Uniform Commercial Code or other applicable law as in effect from time to time or otherwise available to it under applicable law.

(ii) Borrower hereby expressly waives presentment, demand, notice of dishonor, protest and notice of protest in connection with the Note and to the fullest extent permitted by applicable law, any and all other notices, demands, advertisements, hearings or process of law in connection with the exercise by Lender of any of its rights and remedies hereunder. Borrower hereby constitutes Lender its attorney-in-fact with full power of substitution to take possession of the Collateral upon any Event of Default and, as Lender in its sole discretion deems necessary or proper, to execute and deliver all instruments required by Lender to accomplish the disposition of the Collateral; this power of attorney is a power coupled with an interest and is irrevocable while any of the indebtedness evidenced by the Note and all other sums and charges due thereunder, under this Mortgage or under any other Loan Document are outstanding.

UNOFFICIAL COPY

(g) Performance of Third Party Agreements. Lender may, in its sole discretion at any time after the occurrence of an Event of Default, notify any person obligated to Borrower under or with respect to any agreements, leases, licenses, permits or contracts with third parties of the existence of an Event of Default, require that performance be made directly to Lender at Borrower's expense, and advance such sums as are necessary or appropriate to satisfy Borrower's obligations thereunder; and Borrower agrees to cooperate with Lender in all ways reasonably requested by Lender (including the giving of any notices requested by, or joining in any notices given by, Lender) to accomplish the foregoing.

(h) No Liability on Lender; Indemnity. Notwithstanding anything contained herein, Lender shall not be obligated to perform or discharge, and does not hereby undertake to perform or discharge, any obligation, duty or liability of Borrower, whether hereunder, under any agreement, lease, license, permit or contract or otherwise. Borrower shall be and remain liable for all its obligations. Except for matters caused by the gross negligence or wilful misconduct of Lender, Borrower shall and does hereby agree to indemnify and defend against and hold Lender harmless of and from: (i) any and all liabilities, losses or damages which Lender may incur or pay under or with respect to any of the Collateral or under or by reason of its exercise of rights hereunder; and (ii) any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any of the Collateral or in any of the contracts, documents or instruments evidencing or creating any of the Collateral. Lender shall not have responsibility for the control, care, management or repair of the Mortgaged Property or be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Mortgaged Property resulting in loss, injury or death to any tenant, licensee, employee, stranger or other person. No liability shall be enforced or asserted against Lender in its exercise of the powers herein granted to it, and Borrower expressly waives and releases any such liability. Should Lender incur any such liability, loss or damage under any of the leases or under or by reason hereof, or in the defense of any claims or demands, Borrower agrees to reimburse Lender immediately upon demand for the full amount thereof, including costs, expenses and attorneys' fees, plus interest thereon at the Default Rate.

(i) Prepayment Charge. If this Mortgage, the Note or any Loan Document provides for any charge for prepayment of any indebtedness evidenced by the Note and all other sums and charges due thereunder, under this Mortgage or under any other Loan Document, Borrower agrees to pay said charge if for any reason any of said indebtedness evidenced by the Note and all other sums and charges due thereunder, under this Mortgage or under any other Loan Document shall be paid prior to the stated maturity date thereof, even if and notwithstanding that an Event of Default shall have occurred and Lender, by reason thereof, shall have declared said indebtedness evidenced by the Note and all other sums and charges due thereunder, under this Mortgage or under any other Loan Document or all sums secured hereby immediately due and payable, and whether or not said payment is made prior to or at any sale held under or by virtue of this Section 14.

(j) Suits to Protect the Premises. Lender shall have the power and authority (but not the duty) to institute and maintain any suits and proceedings as Lender may deem advisable (a) to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or which

UNOFFICIAL COPY

violate the terms of this Mortgage, (b) to preserve or protect its interest in the Mortgaged Property, or (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Lender's interest.

(k) Delay or Omission. No delay or omission of Lender in the exercise of any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy, or be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to Lender may be exercised from time to time and as often as may be deemed expedient by Lender.

15. Waiver. Borrower, on behalf of itself and all persons now or hereafter interested in the Premises or the Collateral, to the fullest extent permitted by applicable law hereby waives all rights under all appraisal, homestead, moratorium, valuation, exemption, stay, extension, and redemption statutes, laws or equities, or any so-called "Moratorium Laws", now or hereafter existing, and hereby further waives the pleading of any statute of limitations as a defense to any and all Liabilities secured by this Mortgage, and Borrower agrees that no defense, claim or right based on any thereof will be asserted, or may be enforced, in any action enforcing or relating to this Mortgage or any of this Mortgaged Property. Without limiting the generality of the preceding sentence, Borrower, on its own behalf and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage, hereby irrevocably releases and waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage or under any power contained herein or under any sale pursuant to any statute, order, decree or judgment of any court to the extent permitted by the provisions of 735 ILCS 5/15-1603 of the Illinois Compiled Statutes, as amended. Borrower, for itself and for all persons hereafter claiming through or under it or who may at any time hereafter become holders of liens junior to the lien of this Mortgage, hereby expressly waives and releases all rights to direct the order in which any of the Mortgaged Property shall be sold in the event of any sale or sales pursuant hereto and to have any of the Mortgaged Property and/or any other property now or hereafter constituting security for any of the indebtedness evidenced by the Note marshalled upon any foreclosure of this Mortgage or of any other security for such indebtedness. No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Note hereby secured. Borrower acknowledges that the Premises do not include either agricultural real estate or owner-occupied residential real estate, and to the full extent permitted by law, Borrower voluntarily and knowingly waives its rights to reinstatement and redemption.

16. Compliance With Illinois Mortgage Foreclosure Law. If any provision in this Mortgage shall be inconsistent with any provision of the statutes or common law of the State of Illinois governing the foreclosure of this Mortgage (collectively, "Foreclosure Laws"), the provisions of the Foreclosure Laws shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Foreclosure Laws. If any provision of this Mortgage shall grant to Lender any rights or remedies upon default of Borrower which are more limited than the rights that

UNOFFICIAL COPY

would otherwise be vested in Lender under the Foreclosure Laws in the absence of said provision, Lender shall be vested with the rights granted in the Foreclosure Laws to the full extent permitted by Law.

17. Subrogation. If the indebtedness hereby secured or any part thereof, including any amounts advanced by Lender, are used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Mortgaged Property or any part thereof, then Lender shall be subrogated to such other liens or encumbrances and to any additional security held by the holder thereof and shall have the benefit of the priority of all of the same, whether or not any such lien, encumbrance or additional security is canceled of record upon such payment or advancement or otherwise, and in addition to the security afforded by this Mortgage and the other Loan Documents.

18. Sale or Transfer. Borrower, without the prior written consent of Lender, shall not create, effect, consent to, attempt, contract for, agree to make, suffer or permit any conveyance, sale, assignments, transfer, lien, pledge, encumbrance, mortgage, security interest or alienation of all or any portion of, or any interest in, the Mortgaged Property or the Borrower, whether effected directly, indirectly, voluntarily, involuntarily, by operation of law or otherwise. If any of the foregoing shall occur without Lender's prior written consent, then the same shall conclusively be deemed to increase the risk to Lender and immediately constitute an Event of Default hereunder.

19. Lender's Cost of Collection or Performance. If any action or proceeding is commenced by or against Lender, including, without limitation, condemnation proceedings, proceedings involving the foreclosure of this Mortgage or of any other liens or encumbrances, the enforcement or interpretation of contracts, leases or other documents relating to the Mortgaged Property, or any other proceeding of any nature, legal or otherwise, affecting the Mortgage Property or any part thereof, or the title thereto, or the validity or priority of the lien of this Mortgage, Lender shall have the right to appear, defend, prosecute, retain counsel, and take such action as Lender shall determine. In addition, upon an Event of Default hereunder, Lender is authorized, but not obligated, to discharge Borrower's obligations hereunder. Borrower shall pay to Lender, promptly upon demand, all costs, including, without limitation, "late charges" payable under the Note, out-of-pocket expenses and attorneys' fees and expenses, to the fullest extent not prohibited by applicable law, and the costs of any environmental examination and analysis, title examination, supplemental examination of title or title insurance, that may be incurred by Lender in connection with any proceedings affecting the Mortgaged Property, or any part thereof, to cause the enforcement of the covenants or agreements of Borrower contained herein or in the any of other Loan Documents, or with or without the institution of an action or proceeding, or that may otherwise be incurred by Lender in the performance of any other action by Lender authorized by this Mortgage. All such costs, expenses and attorneys' fees and expenses, and any other moneys advanced by Lender to protect the Mortgaged Property shall, to the fullest extent not prohibited by applicable law, bear interest from the date of payment thereof at the Default Rate until repaid by Borrower, and shall be repaid by Borrower to Lender immediately upon demand. Borrower hereby agrees that if a default is made in the payment of the indebtedness secured hereby when due, pursuant to the terms hereof, even if the indebtedness secured hereby shall not have been declared due and payable upon any Event of Default, Lender shall be entitled to receive interest thereon at the Default Rate, to be

UNOFFICIAL COPY

computed from the due date through actual receipt and collection of the amount then in default. The preceding sentence shall not be construed as an agreement or privilege to extend the time for performance of any obligation under the Mortgage or any of the other Loan Documents, nor as a waiver of any other right or remedy accruing to Lender by reason of any such default.

20. Partial Release. Lender, without notice, and without regard to any consideration paid therefor, and notwithstanding the existence at the time of any inferior liens thereon, shall have the right to release (a) any part of the security for the indebtedness secured hereby, including, without limitation, the interest under this Mortgage in and to any of the Mortgaged Property, or (b) any person liable for any indebtedness secured hereby, without affecting the priority of any part of the security and the obligations of any person not expressly released, and shall have the right to agree with any party remaining liable for such indebtedness or having any interest therein to extend the time for payment of any part or all of the indebtedness secured hereby. Such agreement shall not in any way release or impair the lien hereof, but shall extend the lien hereof as against all parties having any interest in such security.

21. Non-Waiver. In the event Lender (a) releases, as aforesaid, any part of such security or any person liable for any indebtedness secured hereby; (b) grants an extension of time for any payments of the indebtedness secured hereby; (c) takes other or additional security for the payment thereof; (d) accepts partial payments; or (e) otherwise exercises or waives or fails to exercise any right granted herein or in any of the other Loan Documents, no such act or omission shall constitute a waiver of any default, or extend or affect the grace period, if any, release Borrower, subsequent owners of the Mortgaged Property or any part thereof, or makers or guarantors of the Note, this Mortgage, or any of the other Loan Documents, or preclude Lender from exercising any right, power or privilege herein granted or intended to be granted for any Event of Default.

22. No Merger of Estates. There shall be no merger of the lien, security interest or other estate or interest created by this Mortgage with the fee estate in the Mortgaged Property by reason that any such interest created by this Mortgage may be held, directly or indirectly, by or for the account of any person who shall own the fee estate or any other interest in the Mortgaged Property. No such merger shall occur unless and until all persons at the time having such concurrent interests shall join in a written instrument effecting such merger, and such instrument shall be duly recorded.

23. Further Assurances. Upon request of Lender, Borrower shall execute, acknowledge and deliver to Lender, in form satisfactory to Lender, financing statements covering as Collateral any personal property owned by the Borrower, which, in the sole opinion of Lender, is essential to the operation of any of the Mortgaged Property, and any supplemental mortgage, security agreement, financing statement, assignment of leases, rents, income and profits from the Mortgaged Property, affidavit, continuation statement or certification as Lender may request in order to protect, preserve, maintain, continue and extend the lien and security interest hereunder or the priority hereof. Borrower hereby irrevocably appoints Lender its attorney-in-fact, coupled with an interest, and authorizes, directs and empowers such attorney, at its option, to execute, acknowledge and deliver on behalf of Borrower, its successors and assigns, any such documents if Borrower shall fail so to do within five (5) days after request by Lender. Borrower shall pay to Lender on demand all costs

UNOFFICIAL COPY

and expenses incurred by Lender in connection with the preparation, execution, recording and filing of any such documents.

24. Application of Proceeds. All payments made by Borrower under the Note, this Mortgage or any of the other Loan Documents and received by Lender shall be applied by Lender to the following items and in such order as Lender may determine in its sole discretion: (a) advances by Lender for payment of taxes, assessments, insurance premiums and other costs and expenses, as set forth in this Mortgage, the Note or any of the other Loan Documents; (b) any amounts which may be overdue under the Note, this Mortgage or any of the other Loan Documents; (c) interest on the indebtedness secured hereby; and (d) outstanding principal under the Note.

25. Lender's Subordination Right. At the option of Lender, this Mortgage shall become subject and subordinate, but not with respect to the priority of entitlement to Casualty Proceeds or any Taking Proceeds, to any and all leases of all or any part of the Mortgaged Property, upon the execution by Lender and recording of a unilateral declaration to that effect at any time hereafter, in the Office of the Recorder of the County in which Mortgaged Property is located.

26. UCC Security Agreement. This Mortgage is hereby deemed to be as well a Security Agreement and creates a security interest in and to the Collateral securing the indebtedness secured by this Mortgage. Without derogating any of the provisions of this instrument, Borrower to the extent permitted by law hereby:

(a) grants to Lender a security interest in and to all Collateral, including without limitation the items referred to above, together with all additions, accessions and substitutions and all similar property hereafter acquired and used or obtained for use on or in connection with the Mortgaged Property. The proceeds of the Collateral are intended to be secured hereby; however, such intent shall never constitute an expressed or implied consent on the part of Lender to the sale of any or all Collateral;

(b) agrees that the security interest hereby granted shall secure the payment of the indebtedness specifically described herein together with payment of any future debt or advancement owing by Borrower to Lender with respect to the Mortgaged Property;

(c) except as otherwise provided herein, agrees not to remove from the Mortgaged Property, sell, convey, mortgage or grant a security interest in, or otherwise dispose of or encumber, any of the Collateral or any of the Borrower's right, title or interest therein, without first obtaining Lender's written consent; Lender shall have the right, at its sole option, to require Borrower to apply the proceeds from the disposition of Collateral in reduction of the indebtedness secured hereby;

(d) agrees that if Borrower's rights in the Collateral are voluntarily or involuntarily transferred, whether by sale, creation of a security interest, attachment, levy, garnishment or other judicial process, without the prior written consent of Lender, such transfer shall constitute an Event of Default hereunder;

UNOFFICIAL COPY

(e) agrees that upon or after the occurrence of any Event of Default, Lender shall have all rights and remedies contemplated hereunder, including, without limitation, the right to take possession of the Collateral, and for this purpose Lender shall have the right to enter upon any premises on which any or all of the Collateral is situated without being deemed guilty of trespass and without liability for damages thereby occasioned, and take possession of and operate the Collateral or remove it therefrom. Lender shall have the further right, as Lender may determine, to repair, refurbish or otherwise prepare the Collateral for sale, lease or other use or disposition, and to sell at public or private sale or otherwise dispose of, lease or utilize the Collateral and any part thereof in any manner authorized or permitted by law and to apply the proceeds thereof toward payment of any costs and expenses incurred by Lender including, to the fullest extent not prohibited by applicable law, attorneys' fees and expenses, and toward payment of the indebtedness secured hereby, in such order and manner as Lender may determine. To the fullest extent not prohibited by applicable law, Borrower expressly waives any notice of sale or other disposition of the Collateral and any other rights or remedies of a debtor or formalities prescribed by law relative to a sale or disposition of the Collateral or to exercise any other right or remedy existing after an Event of Default. To the extent any notice is required and cannot be waived, Borrower agrees that if such notice is deposited for mailing, postage prepaid, certified or registered mail, to the owner of record of the Mortgaged Property, directed to the such owner at the last address actually furnished to Lender at least five (5) days before the time of sale or disposition, such notice shall be deemed reasonable and shall fully satisfy any requirements for giving of such notice;

(f) agrees, to the extent not prohibited by law and without limiting any rights and privileges herein granted to Lender, that Lender shall have the right to dispose of any or all of the Collateral at the same time and place upon giving the same notice, if any, provided for in this Mortgage; and

(g) authorizes Lender to file, in the jurisdiction where this agreement will be given effect, financing statements covering the Collateral and the proceeds of the Collateral. At the request of Lender, Borrower will join Lender in executing one or more such financing statements pursuant to this Mortgage. To the extent permitted by law, a carbon, photographic or other reproduction of this instrument or any financing statement executed in accordance herewith shall be sufficient as a financing statement.

27. Management. Lender shall have the right to give or reasonably withhold its prior consent to any contract or other arrangement for the management of all or any part of the Mortgaged Property. Lender shall have the right, exercisable at its option upon an Event of Default or an event which, with the passage of time, the giving of notice, or both, would constitute an Event of Default, to terminate the rights of any party engaged to manage the Mortgaged Property and any and all other agreements or contracts relating to the operation or management of the Mortgaged Property, if, in Lender's sole discretion, the management and/or operation of the Mortgaged Property is unsatisfactory.

28. Notices. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given (i) if hand delivered, or if sent by telecopy, effective upon receipt, or (ii) if

UNOFFICIAL COPY

delivered by overnight courier service, effective on the day following delivery to such courier service or (iii) if mailed by United States registered or certified mail, postage prepaid, return receipt requested, effective two (2) business days after deposit in the United States mails addressed as follows:

If to Borrower:

LaSalle Bank National Association

Dennis J. O'Keefe and Mary Jo Barrett
540 Florence
Evanston, IL 60201

If to Lender:

Charter One Bank, F.S.B.
1215 Superior Avenue
Cleveland, Ohio 44114
Attention: Commercial Real Estate
Loan Department

or at such other address or to such other addressee as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice.

29. Loan Documents. The term "Loan Documents" as used herein collectively refers to (a) the Note, (b) this Mortgage, (c) the Assignment, (d) all Uniform Commercial Code Financing Statements executed by Borrower, as debtor, in favor of Lender, as secured party, in connection with the Mortgaged Property, (e) an Indemnity Agreement, (f) the Loan Commitment Letter, dated April 16, 2001 (the "Loan Commitment"), and (g) any and all other documents and/or agreements evidencing, securing or relating to the loan contemplated by the Loan Commitment.

30. Year 2000 Compliance. All software, equipment and other systems (collectively, the "System") required in connection with preparing any and all financial statements, operating statements and other reports required hereunder or under the terms of any of the other Loan Documents will be Year 2000 Compliant. For the purposes of this subsection, "Year 2000 Compliant" shall mean that the System will accurately and completely process, recognize, calculate and store all day, date, time and year related data and will not produce abnormally ending or incorrect results involving such data in any forward or regression functions.

31. Survival and Conflicts. The execution and delivery of this Mortgage and the other Loan Documents shall in no way merge or extinguish the Loan Commitment or the terms and conditions set forth therein, which shall survive the closing of the loan and delivery of this Mortgage.

UNOFFICIAL COPY

In the event of any inconsistency or conflict between any provisions of the Loan Commitment and the other Loan Documents, the provisions of the other Loan Documents shall prevail and apply.

32. Anti-Forfeiture. Borrower hereby further expressly represents and warrants to Lender that to the best of Borrower's knowledge there has not been committed by Borrower or any other person involved with the Mortgaged Property or the Borrower any act or omission affording the federal government or any state or local government the right and/or remedy of forfeiture as against the Mortgaged Property or any part thereof or any monies paid in performance of its obligations under the Note or under any of the other Loan Documents, and Borrower hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right and/or remedy of forfeiture. In furtherance thereof, Borrower hereby indemnifies Lender and agrees to defend and hold Lender harmless from and against any loss, damage or other injury, including without limitation, attorneys' fees and expenses, to the fullest extent not prohibited by applicable law, and all other costs and expenses incurred by Lender in preserving its lien, security interest and other rights and interests in the Mortgaged Property and any additional collateral under any of the Loan Documents in any proceeding or other governmental action asserting forfeiture thereof, by reason of, or in any manner resulting from, the breach of the covenants and agreements or the warranties and representations set forth in the preceding sentence. Without limiting the generality of the foregoing, the filing of formal charges or the commencement of proceedings against Borrower, Lender, any guarantor, any additional collateral under any of the Loan Documents or all or any part of the Mortgaged Property under any federal or state law in respect of which forfeiture of the Mortgaged Property or any part thereof or of any monies paid in performance of Borrower's obligations under the Loan Documents is a potential result shall, at the election of the Lender in its absolute discretion, constitute an Event of Default hereunder without notice or opportunity to cure.

33. Miscellaneous. The Mortgaged Property is located in the State of Illinois, and this Mortgage and the rights and indebtedness secured hereby shall, without regard to the place of contract or payment, be construed and enforced according to the laws of Illinois. Nothing herein contained nor any transaction related hereto shall be construed or so operate as to require Borrower to do any act contrary to law, and if any clauses or provisions herein contained operate or would prospectively operate to invalidate this Mortgage, in whole or in part, or any of the Borrower's obligations hereunder, such clauses and provisions only shall be held void and of no force or effect as though not herein contained, and the remainder of this Mortgage shall remain operative and in full force and effect. All of the obligations, rights and covenants herein contained shall run with the land, and shall bind and inure to the benefit of Borrower, its successors and permitted assigns, and Lender and any subsequent holder of the Note. Whenever used, the singular number shall include the plural and the plural numbers shall include the singular, and the use of any gender shall include all genders, all as the context may reasonably require.

34. Waiver of Jury Trial. BORROWER HEREBY, AND LENDER BY ITS ACCEPTANCE HEREOF, EACH WAIVES THE RIGHT OF A JURY TRIAL IN EACH AND EVERY ACTION ON THIS MORTGAGE OR ANY OF THE OTHER LOAN DOCUMENTS, IT BEING ACKNOWLEDGED AND AGREED THAT ANY ISSUES OF FACT IN ANY SUCH ACTION ARE MORE APPROPRIATELY DETERMINED BY THE COURTS; FURTHER, BORROWER HEREBY CONSENTS AND SUBJECTS ITSELF TO THE JURISDICTION OF

UNOFFICIAL COPY

COURTS OF THE STATE OF ILLINOIS AND, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, TO THE VENUE OF SUCH COURTS IN THE COUNTY IN WHICH THE MORTGAGED PROPERTY IS LOCATED.


35. Defeasance. PROVIDED, THAT THE CONDITION OF THIS MORTGAGE IS SUCH that if Borrower shall pay all of the indebtedness secured hereby, then thereupon this Mortgage shall be released of record by Lender, at the cost and expense of Borrower, and thereafter the Mortgage shall be void. The foregoing shall not affect the covenants, agreements, indemnifications and warranties in this Mortgage which expressly survive the release hereof, which shall remain in full force and effect.

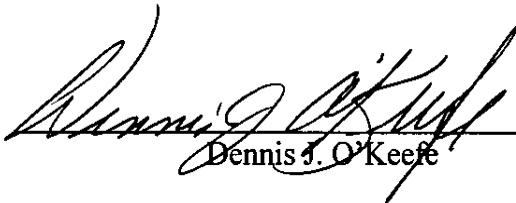
36. Subordination. The Loan Amount and this grant and the liens and security interests created hereby, as well as all rights and remedies set forth herein, are subordinated to the prior payment in full of the indebtedness evidenced and secured by those certain loan documents evidencing and/or securing the loan made by St. Paul Federal Bank For Savings to Borrower in the original stated amount of \$420,000.00.

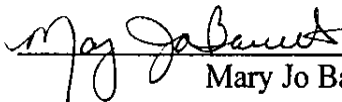
IN WITNESS WHEREOF Borrower has caused this Mortgage to be duly executed and delivered as of the date first above written.

BORROWER: Trustee's Exoneration under attached hereto and made a part thereof. —

LaSalle Bank National Association (as successor to Bank One Trust Co., N.A. f/k/a Bank One Chicago, N.A., as successor to First Illinois Bank of Wilmette), not personally but as trustee under Trust Agreement dated February 8, 1990 and known as Trust No. TWB-0867

By: 
Name: Deborah Berg
Title: ASST. VICE PRESIDENT


Dennis J. O'Keefe


Mary Jo Barrett

UNOFFICIAL COPY

STATE OF Illinois)
)
COUNTY OF Cook) SS.

I, the undersigned, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Dobrosz Berg, personally known to me to be the ASST. VICE PRESIDENT of LaSalle Bank National Association and personally known to me to be the same person whose name is subscribed to in the foregoing instrument, appeared before me this day in person and severally acknowledged that as the ASST. VICE PRESIDENT of such LaSalle Bank National Association, (he) (she) signed and delivered the said instrument pursuant to authority, as the free and voluntary act and deed of said LaSalle Bank National Association for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 25th day of April, 2001.

[Handwritten Signature]

Notary Public [SEAL]
My Commission expires: 6-21-03



Notary

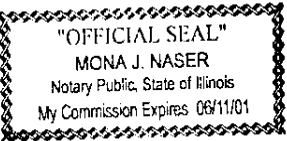
STATE OF ILLINOIS)
)
COUNTY OF COOK) SS.

I, MONA J. NASER, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Dennis J. O'Keefe, personally known to me to be the same person whose name is subscribed to in the foregoing instrument, appeared before me this day in person and severally acknowledged that he signed and delivered the said instrument as his free and voluntary act and deed for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 24th day of April, 2001.

[Handwritten Signature]

Notary Public [SEAL]
My Commission expires: 6/11/01



UNOFFICIAL COPY

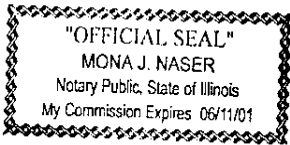
STATE OF ILLINOIS)
COUNTY OF COOK) SS.

I, MONA J. NASER, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Mary Jo Barrett, personally known to me to be the same person whose name is subscribed to in the foregoing instrument, appeared before me this day in person and severally acknowledged that she signed and delivered the said instrument as her free and voluntary act and deed for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 24th day of APRIL, 2001.

Mona J. Naser

Notary Public [SEAL]
My Commission expires: 06/11/01



Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

Legal Description

LOT 10 AND 11 (EXCEPT THE EAST 10 FEET THEREOF) IN BLOCK 2 IN ADAM AND BROWN'S ADDITION TO EVANSTON SAID ADDITION BEING A SUBDIVISION OF THAT PART OF THE NORTH ½ OF THE NORTH ½ OF THE SOUTHWEST ¼ LYING EAST OF RIDGE ROAD OF SECTION 19, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN:

11-19-302-014

11-19-302-015

Common Address:

821-27 Elmwood, Evanston, Illinois

CH01/12146545.2

UNOFFICIAL COPY

RIDER ATTACHED TO AND MADE A PART OF THE TRUST DEED OR MORTGAGE DATED April 25, 2001 UNDER TRUST NO. TWB-0867

This Mortgage or Trust Deed in the nature of a mortgage is executed by LaSalle Bank National Association, not personally, but as trustee under Trust No. TWB-0867, in the exercise of the power and authority conferred upon and vested in it as such trustee (and said LaSalle Bank National Association hereby warrants that it possesses full power and authority to execute the instrument) and it is expressly understood and agreed that nothing contained herein or in the note, or in any other instrument given to evidence the indebtedness secured hereby shall be construed as creating any liability on the part of said mortgagor or grantor, or on said LaSalle Bank National Association, personally to pay said note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant, either impress or implied, herein contained, all such liability, if any, being hereby expressly waived by the mortgage or trustee under said Trust Deed, the legal owners or holders of the note, and by every person now or hereafter claiming any right or security hereunder, and that so far as the mortgagor or grantor and said LaSalle Bank National Association personally are concerned, the legal holders of the note and the owner or owners of any indebtedness accruing hereunder shall look solely to the premises hereby mortgaged or conveyed for the payment thereof by the enforcement of the lien created in the manner herein and in said note provided or by action to enforce the personal liability of the guarantor or guarantors, if any. Trustee does not warrant, indemnify, defend title nor is it responsible for any environmental damage.