

UNOFFICIAL COPY

0010792527

7245/0285 45 001 Page 1 of 33

~~2001-08-28 14:23:38~~

Cook County Recorder 85.00



7908814 DZ CA 2

DOCUMENT PREPARED BY
AND AFTER RECORDING
RETURN TO:

Marsha J. DeMay, Esq.
Piper Marbury Rudnick & Wolfe
203 N. LaSalle St
Chicago, IL 60601

This space reserved for Recorder's use only.

23

MORTGAGE (ILLINOIS FORM)

THIS MORTGAGE made this 24th day of August, 2001, by W & A Building, LLC an Illinois limited liability company (herein, whether one or more, and if more than one jointly and severally, called the "Mortgagor"), whose address is 1156 West Armitage, Chicago, Illinois, 60614, to Dr. Basil J. Photos and Mrs. Mary B. Photos, each as to an undivided Fifty Percent (50%) interest (herein, together with their successors and assigns, including each and every from time to time holder of the Note hereinafter referred to, called the "Mortgagee"), whose address is c/o Cindy Abbott, 1026 Elmdale Road, Glenview, Illinois.

WHEREAS, the Mortgagor has, concurrently herewith, executed and delivered to the Mortgagee, the Mortgagor's promissory note (herein called the "Note") dated the date hereof, in the principal sum of One Million Three Hundred Fifty Thousand and No/100 (\$1,350,000.00) bearing interest at the rate specified therein, due in installments (interest only) and in any event on February 1, 2003 payable to the order of the Mortgagee, and otherwise in the form of Note attached hereto as **Exhibit A** and incorporated herein and made a part hereof by this reference with the same effect as if set forth at length; and

WHEREAS, the indebtedness evidenced by the Note, including the principal thereof and interest and premium, if any, thereon, and any extensions and renewals thereof, in whole or in part, and any and all other sums which may be at any time due or owing or required to be paid as herein or in Note provided, are herein called the "Indebtedness Hereby Secured."

BOX 333-CTI

UNOFFICIAL COPY

Property of Cook County Clerk's Office

110-888 1107

UNOFFICIAL COPY

NOW, THEREFORE, THIS MORTGAGE WITNESSETH:

That to secure the payment of the principal of and interest and premium, if any, on the Note according to its tenor and effect and to secure the payment of all other Indebtedness Hereby Secured and the performance and observance of all the covenants, provisions and agreements herein and in the Note contained (whether or not the Mortgagor is personally liable for such payment, performance and observance) and in consideration of the premises and Ten Dollars (\$10) in hand paid by the Mortgagee to the Mortgagor, and for other good and valuable considerations, the receipt and sufficiency of all of which is hereby acknowledged by the Mortgagor, the Mortgagor does hereby GRANT, RELEASE, REMISE, ALIEN, MORTGAGE and CONVEY unto the Mortgagee all and sundry rights, interests and property hereinafter described (all herein together called the "Premises"):

- (a) All of the real estate (herein called the "Real Estate") described in **Exhibit B** attached hereto and made a part hereof;
- (b) All buildings and other improvements now or at any time hereafter constructed or erected upon or located at the Real Estate, together with and including, but not limited to, all fixtures, equipment, machinery, appliances and other articles and attachments now or hereafter forming part of, attached to or incorporated in any such buildings or improvements owned by Mortgagor (all herein generally called the "Improvements");
- (c) All privileges, reservations, allowances, hereditaments, tenements and appurtenances now or hereafter belonging or pertaining to the Real Estate or Improvements;
- (d) All leasehold estates, right, title and interest of Mortgagor in any and all leases, subleases, arrangements or agreements relating to the use and occupancy of the Real Estate and Improvements or any portion thereof, now or hereafter existing or entered into (all herein generally called "Leases"), together with all cash or security deposits, advance rentals and other deposits or payments of similar nature given in connection with any Leases;
- (e) All rents, issues, profits, royalties, income, avails and other benefits now or hereafter derived from the Real Estate and Improvements, under Leases or otherwise (all herein generally called "Rents"), subject to the right, power and authority given to the Mortgagor in the Assignment executed concurrently herewith (herein called the "Assignment"), to collect and apply the Rents;
- (f) All right, title and interest of Mortgagor now owned or hereafter acquired in and to
 - (i) any land or vaults lying within the right-of-way of any street or alley, open or proposed, adjoining the Real Estate;
 - (ii) any and all alleys, sidewalks, strips and gores of land adjacent to or used in connection with the Real Estate and Improvements;
 - (iii) any and all rights and interests of every name or nature forming part of or used in

UNOFFICIAL COPY

0225200

00465234

Property of Cook County Clerk's Office

UNOFFICIAL COPY

connection with the Real Estate and/or the operation and maintenance of the Improvements; (iv) all easements, rights-of-way and rights used in connection with the Real Estate or Improvements or as a means of access thereto, and (v) all water rights and shares of stock evidencing the same;

- (g) All right, title and interest of Mortgagor in and to all tangible personal property (herein called "Personal Property"), owned by Mortgagor and now or at any time hereafter located in, on or at the Real Estate or Improvements or used or useful in connection therewith, (whether or not affixed thereto);
- (h) All the estate, interest, right, title or other claim or demand which Mortgagor now has or may hereafter have or acquire with respect to (i) the proceeds of insurance in effect with respect to the Premises, and (ii) any and all awards, claims for damages and other compensation made for or consequent upon the taking by condemnation, eminent domain or any like proceeding, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Premises, including, without limitation, any awards and compensation resulting from a change of grade of streets and awards and compensation for severance damages (all herein generally called "Awards").

TO HAVE AND TO HOLD all and sundry the Premises hereby mortgaged and conveyed or intended so to be, together with the rents, issues and profits thereof, unto the Mortgagee forever, free from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois (which rights and benefits are hereby expressly released and waived), for the uses and purposes herein set forth, together with all right to retain possession of the Premises after any default in the payment of all or any part of the Indebtedness Hereby Secured, or the breach of any covenant or agreement herein contained, or upon the occurrence of any Event of Default as hereinafter defined.

FOR THE PURPOSE OF SECURING:

- (a) Payment of the indebtedness with interest thereon evidenced by the Note and any and all modifications, extensions and renewals thereof, and all other Indebtedness Hereby Secured;
- (b) Performance and observance by Mortgagor of all of the terms, provisions, covenants and agreements on Mortgagor's part to be performed and observed under the Assignment referred to in Section 26 hereof and under every other agreement evidencing or securing the loan evidenced by the Note (the "Loan") (such documents together with the Note, this Mortgage and the Assignment shall be referred to herein collectively as the "Loan Documents");
- (c) Performance by any guarantor or indemnitor of its obligations under any guaranty or other instrument given to further secure the payment of the Indebtedness Hereby Secured or the performance of any obligation secured hereby;

UNOFFICIAL COPY

Property of Cook County Clerk's Office

10/25/2023

UNOFFICIAL COPY

provided that the aggregate of the Indebtedness Hereby Secured shall at no time exceed \$2,700,000..

PROVIDED, NEVERTHELESS, and these presents are upon the express condition that if all of the Indebtedness Hereby Secured shall be duly and punctually paid and all the terms, provisions, conditions and agreements herein contained on the part of the Mortgagor to be performed or observed shall be strictly performed and observed, then this Mortgage and the estate, right and interest of the Mortgagee in the Premises shall cease and become void and of no effect;

AND IT IS FURTHER AGREED THAT:

1. **Payment of Indebtedness.** The Mortgagor will duly and promptly pay each and every installment of the principal of and interest and premium, if any, on the Note, and all other Indebtedness Hereby Secured, as the same become due, and will duly perform and observe all of the covenants, agreements and provisions herein or in the Note provided on the part of the Mortgagor to be performed and observed.
2. **Maintenance, Repair, Restoration, Prior Liens, Parking.** The Mortgagor will:
 - (a) Promptly repair, restore or rebuild any Improvements now or hereafter on the Premises which may become damaged or be destroyed;
 - (b) Keep the Premises in good condition and repair, without waste, and free from mechanics', materialmen's or like liens or claims or other liens or claims for lien not expressly subordinated to the lien hereof;
 - (c) Pay when due any indebtedness which may be secured by a lien or charge on the Premises on a parity with or superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such lien to the Mortgagee;
 - (d) Comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof;
 - (e) Make no material alterations in the Premises, except as required by law or municipal ordinance, without the Mortgagee's prior written consent, which shall not be unreasonably withheld;
 - (f) Suffer or permit no change in the use or general nature of the occupancy of the Premises, without the Mortgagee's prior written consent, which shall not be unreasonably withheld;
 - (g) Initiate or acquiesce in no zoning reclassification, special use or other governmental approval regarding change in use with respect to the Premises, without the Mortgagee's prior written consent, which shall not be unreasonably withheld;

10792527

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

3. **Taxes.** The Mortgagor will pay when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "Taxes"), whether or not assessed against the Mortgagor, if applicable to the Premises or any interest therein, or the Indebtedness Hereby Secured, or any obligation or agreement secured hereby; and Mortgagor will, upon written request, furnish to the Mortgagee duplicate receipts therefor; provided that (a) in the event that any law or court decree has the effect of deducting from the value of land for the purposes of taxation any lien thereon, or imposing upon the Mortgagee the payment in whole or any part of the Taxes or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the interest of the Mortgagee in the Premises or the manner of collection of Taxes, so as to affect this Mortgage or the Indebtedness Hereby Secured or the holder thereof, then, and in any such event, the Mortgagor upon demand by the Mortgagee, will pay such Taxes, or reimburse the Mortgagee therefor; and (b) nothing in this Section 3 contained shall require the Mortgagor to pay any income, franchise or excise tax imposed upon the Mortgagee, excepting only such which may be levied against such income expressly as and for a specific substitute for Taxes on the Premises, and then only in an amount computed as if the Mortgagee derived no income from any source other than its interest hereunder.

4. **Insurance Coverage.** The Mortgagor will insure and keep insured the Premises and each and every part and parcel thereof against such perils and hazards as the Mortgagee may from time to time require, and in any event including:

- (a) Insurance against loss to the Improvements and Personal Property caused by fire, lightning and risks covered by the so-called "Extended Coverage" endorsement together with "vandalism and malicious mischief" and "sprinkler leakage" endorsements, or by the so-called "all perils" endorsement and such other risks as the Mortgagee may reasonably require, in amounts (but in no event less than the initial stated principal amount of the Note) equal to the full replacement value of the Improvements and Personal Property, plus the cost of debris removal, with full replacement cost endorsement, "agreed amount" endorsement, and "contingent liability from operations of building laws" endorsement;
- (b) Commercial general public liability insurance against bodily injury and property damage in any way arising in connection with the Premises with such limits as the Mortgagee may reasonably require and in any event not less than \$3,000,000 single limit coverage (or greater if required by any lease of the Premises);
- (c) During the making of any alterations or improvements to the Premises (i) insurance covering claims based on the owner's contingent liability not covered by the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

11/22/2024

11/22/2024

UNOFFICIAL COPY

insurance provided in subsection (b) above, and (ii) Workmen's Compensation insurance covering all persons engaged in making such alterations or improvements.

5. **Insurance Policies.** All policies of insurance to be maintained and provided as required by Section 4 hereof shall:

- (a) Be in forms, companies and amounts reasonably satisfactory to Mortgagee, and all policies of casualty insurance shall have attached thereto a standard mortgagee clauses or endorsements in favor of and with loss payable to Mortgagee;
- (b) Provide for thirty (30) days' prior written notice of cancellation to Mortgagee;

and Mortgagor will deliver all policies, including additional and renewal policies, to Mortgagee, and in case of insurance policies about to expire, the Mortgagor will deliver renewal policies not less than thirty (30) days prior to the respective dates of expiration. In the event that Mortgagor, at any time, fails to provide Mortgagee with evidence of the insurance coverage as required by this Mortgage, Mortgagee may purchase the insurance at Mortgagor's expense to protect Mortgagee's interests in the Premises. Such insurance may, but need not, protect Mortgagor's interests, and Mortgagee shall be under no obligation to so protect Mortgagor's interests. The insurance that Mortgagee purchases on behalf of Mortgagor may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Premises. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that insurance has been obtained as provided for in this Mortgage. In the event Mortgagee purchases all or any portion of the insurance for the Premises or as otherwise required hereunder, Mortgagor will be responsible for all costs and expenses of such insurance, including, but not limited to, interest and any other charges imposed by Mortgagee in connection with the purchase of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs and expenses of any insurance purchased by Mortgagee, together with interest thereon at the Default Rate (as defined in the Note), shall be added to the Indebtedness Hereby Secured. Mortgagor acknowledges that the cost of the insurance purchased by Mortgagee pursuant hereto may be more than the cost of insurance Mortgagor may be able to obtain on its own.

6. **Intentionally Omitted.**

7. **Proceeds of Insurance.** The Mortgagor will give the Mortgagee prompt notice after Mortgagor becomes aware of any damage to or destruction of the Premises, and:

- (a) In the event of any insured damage to or destruction of the Premises or any part thereof (herein called an "Insured Casualty") and if, in the reasonable judgment of the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

UNOFFICIAL COPY

Mortgagee, the Premises can be restored prior to Loan maturity, to an economic unit not less valuable than the same was prior to the Insured Casualty, and adequately securing the outstanding balance of the Indebtedness Hereby Secured, and the insurers do not deny liability to the insureds, then, if none of the Leases are subject to termination on account of such casualty and if no Monetary Event of Default, as hereinafter defined, shall have occurred and be then continuing, the proceeds of insurance shall be applied to reimburse the Mortgagor for the cost of restoring, repairing, replacing or rebuilding (herein generally called "Restoring") the Premises or any part thereof subject to Insured Casualty, as provided for in Section 9 hereof,

- (b) If, in the reasonable judgment of Mortgagee, the Premises cannot be restored to an economic unit as provided for in Subsection (a) above, then at any time from and after the Insured Casualty, upon thirty (30) days' written notice to Mortgagor, Mortgagee may declare the entire balance of the Indebtedness Hereby Secured to be, and at the expiration of such thirty (30) day period the Indebtedness Hereby Secured shall be and become, immediately due and payable;
- (c) In the event that proceeds of insurance, if any, shall be made available to the Mortgagor for the Restoring of the Premises, Mortgagor hereby covenants to Restore the same to be of at least equal value and of substantially the same character as prior to such damage or destruction; all to be effected in accordance with plans and specifications to be first submitted to and reasonably approved by the Mortgagee;
- (d) Any portion of insurance proceeds remaining after payment in full of the Indebtedness Hereby Secured shall be paid to Mortgagor or as ordered by a court of competent jurisdiction;
- (e) Nothing contained in this Mortgage shall create any responsibility or liability upon the Mortgagee to (i) collect any proceeds of any policies of insurance, or (ii) Restore any portion of the Premises damaged or destroyed through any cause.

8. **Condemnation.** The Mortgagor will give Mortgagee prompt notice of any proceedings, instituted or threatened, seeking condemnation or taking by eminent domain or any like process (herein generally called a "Taking"), of all or any part of the Premises, including damages to grade, and;

- (a) Mortgagor hereby assigns, transfers and sets over unto Mortgagee the entire proceeds of any Award, up to the amount of the Indebtedness hereby secured, consequent upon any Taking;
- (b) If, in the reasonable judgment of the Mortgagee, the Premises can be restored to an architectural and economic unit of the same character and not less valuable than the Premises prior to such Taking and adequately securing the outstanding balance of the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

10120251

UNOFFICIAL COPY

Indebtedness Hereby Secured, then, if no Monetary Event of Default, as hereinafter defined, shall have occurred and be then continuing, the Award shall be applied to reimburse Mortgagor for the cost of Restoring the portion of the Premises remaining after such Taking as provided for in Section 9 hereof;

- (c) Except as provided for in Subsection (b) of this Section 8, Mortgagee shall apply any Award (including the amount not required for Restoration effected in accordance with Subsection (b) above) upon the Indebtedness Hereby Secured in such order or manner as the Mortgagee may elect; provided that no premium or penalty shall be payable in connection with any prepayment of the Indebtedness Hereby Secured made out of any Award as aforesaid;
- (d) In the event that any Award shall be made available to the Mortgagor for Restoring the portion of the Premises remaining after a Taking, Mortgagor hereby covenants to Restore the remaining portion of the Premises to be of at least equal value and of substantially the same character as prior to such Taking, all to be effected in accordance with plans and specifications to be first submitted to and reasonably approved by the Mortgagee;
- (e) Any portion of any Award remaining after payment in full of the Indebtedness Hereby Secured shall be paid to Mortgagor or as ordered by a court of competent jurisdiction;
- (f) No interest shall be payable by Mortgagee on account of any Award at any time held by Mortgagee.

9. **Disbursement of Insurance Proceeds and Condemnation Awards.** In the event the Mortgagor is entitled to reimbursement out of insurance proceeds or any Award held by the Mortgagee, such proceeds shall be disbursed from time to time upon the Mortgagee being furnished with satisfactory evidence of the estimated cost of completion of the Restoring, with funds (or assurances satisfactory to the Mortgagee that such funds are available) sufficient in addition to the proceeds of insurance or Award, to complete the proposed Restoring, and with such architect's certificates, waivers of lien, contractor's sworn statements and such other evidence of costs and payments as the Mortgagee may reasonably require and approve; and the Mortgagee may, in any event, require that all plans and specifications for such Restoring be submitted to and approved by the Mortgagee prior to commencement of work: and in each case:

- (a) No payment made prior to the final completion of the Restoring shall exceed ninety percent (90%) of the value of the work performed from time to time;
- (b) Funds other than proceeds of insurance or the Award shall be disbursed prior to disbursement of such proceeds or Award; and

UNOFFICIAL COPY

Property of Cook County Clerk's Office

312-398-2555

UNOFFICIAL COPY

- (c) At all times the undisbursed balance of such proceeds or Award remaining in the hands of the Mortgagee, together with funds deposited for the purpose or irrevocably committed to the satisfaction of the Mortgagee by or on behalf of the Mortgagor for the purpose, shall be at least sufficient in the reasonable judgment of the Mortgagee to pay for the cost of completion of the Restoring, free and clear of all liens or claims for lien.

10. **Stamp Tax.** If, by the laws of the United States of America, or of any state having jurisdiction over the Mortgagor, any tax is due or becomes due in respect of the issuance of the Note, the Mortgagor shall pay such tax in the manner required by such law.

11. **Prepayment Privilege.** The Mortgagor shall have the absolute right of making prepayments on the principal of the Note (in addition to the required payments thereunder) in accordance with the terms and conditions, if any, set forth in the Note, but not otherwise.

12. **Effect of Extensions of Time, Amendments on Junior Liens and Others.** Mortgagor covenants and agrees that:

- (a) If the payment of the Indebtedness Hereby Secured, or any part thereof, be extended or varied, or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability, if any, and the lien and all provisions hereof shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding any such extension, variation or release;
- (b) Any person, firm or corporation taking a junior mortgage or other lien upon the Premises or any interest therein, shall take such lien, subject to the rights of the Mortgagee to amend, modify and supplement this Mortgage, the Note, the Assignment, or any of the other Loan Documents and to vary the rate of interest and the method of computing the same, and to impose additional fees and other charges, and to extend the maturity of the Indebtedness Hereby Secured, in each and every case without giving notice to, or obtaining the consent of, the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien;
- (c) Nothing in this Section contained shall be construed as waiving any provision of Section 17 hereof which provides, among other things, that it shall constitute an Event of Default if the Premises be sold, conveyed or encumbered without Mortgagee's consent, which shall not be unreasonably withheld or delayed.

13. **Intentionally Omitted.**

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

14. **Mortgagee's Performance of Mortgagor's Obligations.** In case of an Event of Default, the Mortgagee, either before or after acceleration of the Indebtedness Hereby Secured or the foreclosure of the lien hereof, and during the period of redemption, if any, may, but shall not be required to, make any payment or perform any act herein or in any other Loan Documents, required of the Mortgagor (whether or not the Mortgagor is personally liable therefor) in any reasonable form and manner deemed expedient to the Mortgagee; and in connection therewith:

- (a) The Mortgagee may, but shall not be required to, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien, title, or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises, or contest any tax, assessment, lien or claim;
- (b) All monies paid for any of the purposes herein authorized or authorized by any other instrument evidencing or securing the Indebtedness Hereby Secured, and all expenses paid or incurred in connection therewith, including attorneys fees and any other monies advanced by the Mortgagee to protect the Premises and the lien hereof, or to complete construction, furnishing and equipping, or to rent, operate and manage the Premises and such Improvements, or to pay any such operating costs and expenses thereof, or to keep the Premises, Improvements and Personal Property operational and usable for their intended purposes, shall be so much additional Indebtedness Hereby Secured, whether or not they exceed the amount of the Note, and shall become immediately due and payable without notice, and with interest thereon at the Default Rate;
- (c) Inaction of the Mortgagee shall never be considered a waiver of any right accruing to it on account of any default on the part of the Mortgagor;
- (d) The Mortgagee, in making any payment hereby authorized (i) relating to taxes and assessments, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof, or (ii) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

15. **Inspection of Premises.** Subject to the rights of tenants under the Leases, the Mortgagee shall have the right to inspect the Premises at all reasonable times and upon prior notice to Mortgagor, and access thereto shall be permitted for that purpose.

16. **Intentionally Omitted.**

UNOFFICIAL COPY

Property of Cook County Clerk's Office

COOK COUNTY CLERK'S OFFICE

UNOFFICIAL COPY

17. **Restrictions on Transfer.** Subject to the provisions of Section 18 hereof, it shall be an Event of Default hereunder if, without the prior written consent of the Mortgagee, any of the following shall occur:

- (a) If the Mortgagor shall create, effect, contract for, commit to or consent to or shall suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of the Premises or any part thereof, or interest therein (whether legal or equitable), excepting only sales or other dispositions of Collateral as defined in Section 19 (herein called "Obsolete Collateral") no longer useful in connection with the operation of the Premises; provided that prior to the sale or other disposition thereof, such Obsolete Collateral shall have been replaced by Collateral, subject to the first and prior lien hereof, of at least equal value and utility; or
- (b) If there shall be any change in control (by way of transfers of stock ownership, partnership interests or otherwise) in Borrower or any manager thereof;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided that provisions of this Section 17 shall be operative with respect to, and shall be binding upon, any persons who, in accordance with the terms hereof or otherwise, shall acquire any part of or interest in or encumbrance upon the Premises, or such beneficial interest in, share of stock of or partnership, membership or joint venture interest in the Mortgagor or any beneficiary of a Trustee Mortgagor; and provided further that no consent by Mortgagee to, or any waiver of, any event or condition which would otherwise constitute an Event of Default under this Section 17, shall constitute a consent to or a waiver of any other or subsequent such event or condition or a waiver of any right, remedy or power of Mortgagee consequent thereon.

18. **Permitted Transfers.** The provisions of Section 17 hereof shall not apply to any of the following:

- (a) Liens securing the Indebtedness Hereby Secured.
- (b) The lien of current real estate taxes and assessments not in default.
- (c) Transfers of the Premises, or part thereof, or interest therein or any beneficial interests, shares of stock, or partnership, joint venture or membership interests, as the case may be, in the Mortgagor, or any beneficiary of a Trustee Mortgagor by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate, personal representatives and/or committee.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

10120155

UNOFFICIAL COPY

- (d) Transfers of interests in the Mortgagor for estate planning purposes (i) by or among the members/limited partners and general partners; (ii) between the general partners or (iii) to either (x) the partner's/member's spouse, parents or lineal descendants or (y) to a trust established for such spouse, parents or lineal descendants.

19. **Uniform Commercial Code.** This Mortgage constitutes a Security Agreement under the Uniform Commercial Code of the State in which the Premises is located (herein called the "Code") with respect to, and Mortgagor hereby grants to Mortgagee a security interest in, any part of the Premises which may or might now or hereafter be or be deemed to be personal property, fixtures or property other than real estate (all herein called "Collateral"); all of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises.

- (a) No Financing Statement covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor will at its own cost and expense, upon demand, furnish to the Mortgagee such further information and will execute and deliver to the Mortgagee such financing statement and other documents in form satisfactory to the Mortgagee, and will do all such acts and things as the Mortgagee may at any time or from time to time reasonably request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness Hereby Secured, subject to no adverse liens or encumbrances; and the Mortgagor will pay the cost of filing the same or filing or recording such financing statements or other documents, and this instrument, in all public offices whenever filing or recording is deemed by the Mortgagee to be necessary or desirable;
- (b) Upon the occurrence of a Monetary Event of Default (hereinafter defined) hereunder (regardless of whether the Code has been enacted in the jurisdiction where rights or remedies are asserted) and at any time thereafter (such Monetary Event of Default not having previously been cured), the Mortgagee at its option may declare the Indebtedness Hereby Secured immediately due and payable, all as more fully set forth in Section 20 hereof, and thereupon Mortgagee shall have the remedies of a secured party under the Code, including without limitation the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as the Mortgagor can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code);
- (c) The Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral, subject to the Mortgagor's right of redemption, if any, in satisfaction of the Mortgagor's obligations

UNOFFICIAL COPY

Property of Cook County Clerk's Office

10305253

UNOFFICIAL COPY

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

- (d) The Mortgagee will give Mortgagor at least five (5) days' notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is made and the requirements of reasonable notice shall be met if such notice is mailed, by certified mail or equivalent, postage prepaid, to the address of the Mortgagor determined as provided in Section 42 hereof, at least five (5) days before the time of the sale or disposition;
- (e) The Mortgagee may buy at any public sale, and if the Collateral is a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, Mortgagee may buy at any private sale, and any such sale may be held as part of and in conjunction with any foreclosure sale of the Real Estate comprised within the Premises, the Collateral and Real Estate to be sold as one lot if Mortgagee so elects;
- (f) The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling or the like, and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied in satisfaction of the Indebtedness Hereby Secured; and the Mortgagee will account to the Mortgagor for any surplus realized on such disposition;
- (g) The remedies of the Mortgagee hereunder are cumulative and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of any of the other remedies of the Mortgagee, including having the Collateral deemed part of the realty upon any foreclosure hereof, so long as any part of the Indebtedness Hereby Secured remains unsatisfied; and
- (h) The Mortgagor represents that the exact legal name is set forth in the first paragraph of this Mortgage.
- (i) The Mortgagor's federal employee identification number has been applied for.
- (j) Mortgagor authorizes Mortgagee to sign any financing statements describing the Collateral.
- (k) Mortgagor will not change its place of formation or its entity name without providing Mortgagee with sixty (60) days prior written notice.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

11
11
11

301050101

UNOFFICIAL COPY

- (l) The terms and provisions contained in this Section 19 shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

20. **Events of Default.** If one or more of the following events (herein called "Events of Default") shall occur:

- (a) If default is made in the due and punctual payment of the Note or any installment thereof, either principal or interest, as and when the same is due and payable, or if default is made in the making of any payment of any other monies required to be made hereunder or under the Note, and, in either event, any applicable period of grace specified in the Note shall have elapsed (a "Monetary Default"); or
- (b) If an Event of Default pursuant to Section 17 hereof shall occur and be continuing; or
- (c) If default shall continue for 30 days after notice thereof by Mortgagee to Mortgagor in the due and punctual performance or observance of any other agreement or condition herein or in the Note contained; provided that if such default is not susceptible of cure within such 30-day period, such 30-day period shall be extended to the extent necessary to permit such cure if Mortgagor shall commence such cure within such 30-day period and shall thereafter prosecute such cure to completion, diligently and without delay.

then, in the event of a Monetary Default only, the Mortgagee is hereby authorized and empowered, at its option, and without affecting the lien hereby created or the priority of said lien or any right of the Mortgagee hereunder, to declare, without further notice all Indebtedness Hereby Secured to be immediately due and payable, whether or not such default is thereafter remedied by the Mortgagor, and the Mortgagee may immediately proceed to foreclose this mortgage and/or exercise any right, power or remedy provided by this Mortgage, the Note, the Assignment or any of the other Loan Documents or by law or in equity conferred. In the event of any Event of Default which is not a Monetary Event of Default, Mortgagee may exercise any right, power or remedy provided by this Mortgage, the Note, the Assignment or any other Loan Documents, or by law or in equity conferred, including without limitation the right of specific performance.

21. **Foreclosure.** Upon the occurrence of a Monetary Event of Default, when the Indebtedness Hereby Secured, or any part thereof, shall become due, whether by acceleration or otherwise, the Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof and:

- (a) In any suit or proceeding 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 the Mortgagee for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to

UNOFFICIAL COPY

Property of Cook County Clerk's Office

70502255

UNOFFICIAL COPY

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 the Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Premises; and

- (b) 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 Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by the Mortgagee in any litigation or proceedings affecting this Mortgage, the Note or the Premises or the rights of Mortgagee hereunder or as to which Mortgagee may be made a party by virtue of its interest in the Premises pursuant to this Mortgage or otherwise, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall constitute so much additional Indebtedness Hereby Secured, and shall be immediately due and payable by, the Mortgagor, with interest thereon at the Default Rate.

22. **Proceeds of Foreclosure Sale.** The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority. First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Section 21 hereof. Second, all other items which, under the terms hereof, constitute Indebtedness Hereby Secured additional to that evidenced by the Note, with interest on such items as herein provided. Third, to interest remaining unpaid upon the Note; Fourth, to the principal remaining unpaid upon the Note; and lastly, any overplus to the Mortgagor, and its successors or assigns, as their rights may appear.

23. **Receiver.** Mortgagor consents and agrees that:

- (a) Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises;
- (b) Such appointment may be made either before or after sale, without notice, without regard to solvency or insolvency of the Mortgagor at the time of application for such receiver, and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not; and the Mortgagee hereunder, or any holder of the Note, may be appointed as such receiver;
- (c) Such receiver shall have the power to collect the Rents during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when the Mortgagor, except for the intervention of such receiver, would

UNOFFICIAL COPY

Property of Cook County Clerk's Office

50588888

UNOFFICIAL COPY

be entitled to collection of such Rents and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period;

(d) The court may, from time to time, authorize the receiver to apply the net income from the Premises in his hands in payment in whole or in part of:

(i) The Indebtedness Hereby Secured or the indebtedness secured 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 such decree, provided such application is made prior to the foreclosure sale: or

(ii) The deficiency in case of a sale and deficiency.

24. **Insurance Upon Foreclosure.** In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in Restoring the Improvements, as aforesaid, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct; and:

(a) In the case of foreclosure of this Mortgage, the court, in its decree, may provide that the Mortgagee's clause attached to each of the casualty insurance policies may be canceled and that the purchaser at foreclosure sale may cause a new loss clause to be attached to each of said casualty insurance policies making the loss thereunder payable to said purchaser and any such foreclosure decree may further provide that in case of a redemption under said decree as provided by statute, such redeмпtor may cause the preceding loss clause attached to each casualty insurance policy to be canceled and a new loss clause to be attached thereto, making the loss thereunder payable to such redeмпtor; and

(b) In the event of foreclosure sale, the Mortgagee is hereby authorized, without the consent of the Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as the Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies.

25. **Intentionally Omitted.**

26. **Intentionally Omitted.**

27. **Priorities With Respect to Leases.** If the Mortgagee shall execute and record (or register) in the public office wherein this Mortgage was recorded (or registered) a unilateral declaration that this Mortgage shall be subject and subordinate, in whole or in part, to any Lease, then upon such recordation (or registration), this Mortgage shall become subject and subordinate to such Lease to

UNOFFICIAL COPY

Property of Cook County Clerk's Office

101032263

UNOFFICIAL COPY

the extent set forth in such instrument; provided that such subordination shall not extend to or affect the priority of entitlement to insurance proceeds or any Award unless such instrument shall specifically so provide.

28. **Mortgagee in Possession.** Nothing herein contained shall be construed as constituting the Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises by the Mortgagee.

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

30. **Intentionally Omitted.**

31. **Contests.** Notwithstanding anything to the contrary herein contained, Mortgagor shall have the right to contest by appropriate legal proceedings diligently prosecuted any Taxes imposed or assessed upon the Premises or which may be or become a lien thereon and any mechanics', materialmen's or other liens or claims for lien upon the Premises (all herein called "Contested Liens"), and no Contested Lien shall constitute an Event of Default hereunder, if, provided that:

- (a) Mortgagor shall forthwith give notice of any Contested Lien to Mortgagee at the time the same shall be asserted;
- (b) Mortgagor shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Premises, and shall permit Mortgagee to be represented in any such contest;
- (c) Mortgagor shall pay such Contested Lien and all Lien Amounts together with interest and penalties thereon (i) if and to the extent that any such Contested Lien shall be determined adverse to Mortgagor, or (ii) forthwith upon demand by Mortgagee if, in the opinion of Mortgagee, and notwithstanding any such contest, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed; provided that if Mortgagor shall fail so to do, Mortgagee may, but shall not be required to, pay all such Contested Liens and Lien Amounts and interest and penalties thereon and such other sums as may be necessary in the judgment of the Mortgagee to obtain the release and discharge of such liens; and any amount expended by Mortgagee in so doing shall be so much additional Indebtedness Hereby Secured bearing interest at the Default Rate until paid, and payable upon demand;

UNOFFICIAL COPY

Property of Cook County Clerk's Office

RESERVED

UNOFFICIAL COPY

32. **Indemnification.** Mortgagor does hereby covenant and agree that:

- (a) Mortgagee shall have no responsibility for the control, care, management or repair of the Premises from and after the date hereof, and shall not be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Premises resulting in loss, injury or death to any tenant, licensee, immediate stranger or other person;
- (b) No liability shall be asserted or enforced against Mortgagee in the exercise of the rights and powers hereby granted to the Mortgagee; and Mortgagor hereby expressly waives and releases any such liability;
- (c) Mortgagor shall and does hereby indemnify and hold Mortgagee harmless from any liability, loss or damage which Mortgagee may or might incur by reason of (i) exercise by Mortgagee of any right hereunder, and (ii) any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of any violation of, or liability under any Environmental Regulation (other than due solely to an act or omission of Mortgagee after obtaining possession or control of the Premises) or of any alleged obligation or undertaking on Mortgagee's part to perform or discharge any of the terms, covenants or agreements contained herein or in any instrument evidencing, securing or relating to the Indebtedness Hereby Secured or in any contracts, agreements or other instruments relating to or affecting the Premises; any and all such liability, loss or damage incurred by the Mortgagee, together with the costs and expenses, including reasonable attorneys' fees incurred by Mortgagee in the defense (including preparation for defense) of any claims or demands therefor (whether successful or not) shall be so much additional Indebtedness Hereby Secured, and the Mortgagor shall reimburse the Mortgagee therefor on demand, together with interest thereon at the Default Rate from the date of demand to the date of payment. The provisions of this subsection 32(c) shall not apply to any liability, loss or damage incurred by Mortgagee as a result of its status as a previous owner of the Premises.

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

34. **Intentionally Omitted.**

35. **Title In Mortgagor's Successors.** In the event that the ownership of the Premises or any part thereof becomes vested in a person or persons other than the Mortgagor (a) the Mortgagee may,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

RESECTOR

UNOFFICIAL COPY

without notice to the Mortgagor, deal with such successor or successors in interest of the Mortgagor with reference to this Mortgage and the Indebtedness Hereby Secured in the same manner as with the Mortgagor; and (b) the Mortgagor will give immediate written notice to the Mortgagee of any conveyance, transfer or change of ownership of the Premises; but nothing in this Section 35 contained shall vary or negate the provisions of Section 17 hereof.

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

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

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

39. **Intentionally Omitted.**

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

41. **Intentionally Omitted.**

42. **Addresses and Notices.** Any notice which any party hereto may desire or may be required to give to any other party shall be in writing, and the personal delivery thereof or electronic, facsimile

UNOFFICIAL COPY

Property of Cook County Clerk's Office

11 11 11 11 11 11

11 11 11 11 11 11

UNOFFICIAL COPY

transmission thereof, or the passage of three days after the mailing thereof by registered or certified mail, return receipt requested, or upon the next business day after timely and proper deposit, charges paid, with any overnight carrier with respect to next day service, to the addresses initially specified in the introductory paragraph hereof, or to such other place or places as any party hereto may by notice in writing designate, shall constitute service of notice hereunder.

43. **Intentionally Omitted.**

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

45. **Time.** Time is of the essence hereof and of the Note, Assignment, and all other instruments or Loan Documents delivered in connection with the Indebtedness Hereby Secured.

46. **Applicable Law.** This Document shall be construed in accordance with the laws of the State in which the Premises are located.

[signature follows]

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00000000

UNOFFICIAL COPY

IN WITNESS WHEREOF, the undersigned has caused this Mortgage to be dully executed as of the day, month and year first above written.

W & A BUILDING LLC an Illinois limited liability company

By: **W & A Baker Building Trust**, a general partnership

(As: *Manager*

By: 

Name: Warren H. Baker

Title: Authorized Agent

Property of Cook County Clerk's Office

10792527

UNOFFICIAL COPY

Property of Cook County Clerk's Office

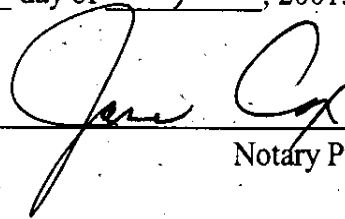
11/15/2011

UNOFFICIAL COPY

STATE OF IL)
COUNTY OF COOK)SS.

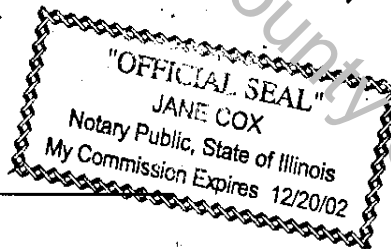
I, JANE COX, a Notary Public in and for said County in the State aforesaid, do hereby certificate that Warren Baker, the authorized agent of the manager of W & A Building, LLC, personally known to me to be the same person whose name is subscribed to the foregoing instrument in such capacity, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act, and as the free and voluntary act of said MANAGER for the uses and purposes therein set forth.

Given under my hand and notarial seal this 24th day of August, 2001.



Notary Public

My Commission Expires:



UNOFFICIAL COPY

Property of Cook County Clerk's Office

ASSISTANT
CLERK

PROMISSORY NOTE
(ILLINOIS FORM)

\$1,350,000

Date: August 24, 2001

1. **Definitions.** For the purposes hereof, the following terms shall have the following meanings:

(a) "*Borrower*" shall mean W & A Building LLC, an Illinois limited liability company and shall include its successors and assigns.

(b) "*Holder*" shall mean Dr. Basil J. Photos and Mrs. Mary B. Photos, each as to an undivided fifty percent (50%) interest and any successive owners and holders of this Note.

(c) "*Commencement Date*" shall mean August 24, 2001.

(d) "*Loan Amount*" shall mean One Million Three Hundred Fifty Thousand and No/100 (\$1,350,000.00).

(e) "*Regular Rate*" shall mean an annual rate of interest of eight percent (8%).

(f) "*Default Rate*" shall mean an annual interest rate equal to the Regular Rate plus five percent (5%).

(g) "*Premises*" shall mean certain real property and improvements thereon located in and more fully described in the Mortgage hereinafter referred to.

(h) "*Maturity Date*" shall mean February 1, 2003.

(i) "*Governing State*" shall mean Illinois.

and other terms herein defined shall have the meanings as so defined.

2. **Agreement to Pay.** FOR VALUE RECEIVED, The Borrower hereby promises to pay to the order of the Holder, in the manner provided for herein and in the Mortgage hereinafter referred to, a principal sum equal to the Loan Amount, together with interest thereon at the rates provided for in Sections 3 and 5 hereof.

3. **Interest Rate Prior to Default.** Outstanding principal balances hereof prior to default or maturity shall bear interest at the Regular Rate, in each case calculated daily on the basis

UNOFFICIAL COPY

Property of Cook County Clerk's Office

10/20/2024

UNOFFICIAL COPY

of a 360-day year for each day all or any part of the principal balance hereof shall remain outstanding.

4. INTENTIONALLY OMITTED.

5. **Default Rate.** In the event that there shall occur any default specified in Sections 10(a) and/or 10(b) hereof, then and in any such event the entire principal balance hereof and all indebtedness secured by the Mortgage shall thereafter bear interest at the Default Rate; and interest at the Default Rate as provided for in this Section shall be immediately due and payable to Holder and shall constitute additional indebtedness evidenced by this Note and secured by the Loan Documents.

6. **Quarterly Payments.** Principal and interest on this Note shall be paid in installments (herein generally called "Quarterly Payments") as follows:

(a) On the first day of the calendar year quarter next following the date hereof (October 1, 2001), and on the first day of each and every quarter (i.e., January 1st, April 1st, July 1st and October 1st) thereafter to and including the first day of the quarter preceding the Commencement Date, interest only at the Regular Rate shall be paid on the outstanding principal balance hereof. Notwithstanding the foregoing, interest at the rate of five percent (5%) shall be paid as aforesaid, while interest at the rate of three percent (3%) shall accrue but shall be due and payable upon the Maturity Date.

(b) In all events, the entire principal balance hereof, together with all accrued and unpaid interest thereon, shall be due and payable on the Maturity Date.

THIS IS A BALLOON NOTE and on the Maturity Date the entire principal amount of this Note and a portion of the interest will remain unpaid by the Quarterly Payments above required.

7. **Application of Payments.** All payments on account of the indebtedness evidenced hereby shall be applied as follows:

(a) First, to amounts payable to the Holder pursuant to or secured by the Mortgage or other Loan Documents, other than principal and interest upon this Note;

(b) Second, to interest on the unpaid principal balance hereof at the applicable rate specified in Sections 3 and 5 hereof; and

(c) The remainder shall be applied to principal;

provided that from and after the occurrence of a default as specified in Sections 10(a) and/or 10(b) hereof, the Holder shall have the right, and shall be authorized, to apply payments made hereunder

UNOFFICIAL COPY

Property of Cook County Clerk's Office

3012225A

UNOFFICIAL COPY

against any or all amounts payable hereunder or under the Mortgage or any of the Loan Documents, in such order or manner as the Holder may in its sole discretion elect.

8. **Method and Place of Payment.** Payments upon this Note shall be made:

(a) In lawful money of the United States of America which shall be legal tender for public and private debts at the time of payment and in immediately available funds; and

(b) At such place as the Holder may from time to time in writing appoint, provided that in the absence of such appointment, all payments hereon shall be made to the Holder at 1026 Elmdale Road, Glenview, Illinois 60025.

9. **Security.** This Note is the Note referred to in and secured by:

(a) A Mortgage (herein called the "Mortgage") from Borrower, as mortgagor, to the Holder, as mortgagee, bearing even date herewith, encumbering the Premises; and

(b) An Assignment of Rents and Leases (herein called the "Assignment") bearing even date herewith, made by Borrower, as assignor, to the Holder, as assignee, assigning to the Holder all of the rents, issues and profits of and from the Premises and the leases thereof;

(this Note, the Mortgage, the Assignment and any guaranty and any other agreements in effect with respect to the indebtedness evidenced hereby and other instruments governing, securing or guaranteeing the indebtedness evidenced hereby or now or hereafter delivered to the Holder in connection therewith, being herein generally called the "Loan Documents"); and reference is hereby made to the Loan Documents, which are hereby incorporated herein by this reference as fully and with the same effect as if set forth herein at length, for a description of the Premises, a statement of the covenants and agreements of the Borrower, as mortgagor and assignor, a statement of the rights, remedies and security afforded thereby, and all other matters therein contained.

10. **Default and Acceleration.** At the election of the Holder and upon seven (7) days notice to Borrower, the outstanding principal balance hereof, together with accrued interest thereon, shall be and become at once due and payable at the place herein provided for payment:

(a) In the case default shall occur in the payment of principal or interest seven (7) days past when due in accordance with the terms and provisions hereof; or

(b) Upon the occurrence of any Event of Default (as such term is defined in the Mortgage) under the Mortgage or the occurrence of any Event of Default under any of the other Loan Documents;

whereupon the Holder may proceed to foreclose the Mortgage, to exercise any other rights and remedies available to the Holder under any of the Loan Documents and to exercise any other rights

UNOFFICIAL COPY

Property of Cook County Clerk's Office

ASSESSOR

UNOFFICIAL COPY

and remedies against Borrower or the Premises or with respect to this Note or the other Loan Documents which the Holder may have at law, in equity or otherwise.

11. Prepayment Privilege. Borrower shall have the right to prepay the Loan Amount at any time.

12. INTENTIONALLY OMITTED.

13. Business Loan. Borrower represents that the indebtedness evidenced hereby is a business loan within the purview and intent of the Illinois Interest Act (815 ILCS 205/4), transacted solely for the purpose of owning and operating the business of the Borrower or the beneficiary of the Borrower as contemplated by said Act.

14. Costs of Enforcement. In the event that this Note is placed in the hands of an attorney-at-law for collection after maturity or upon default or to enforce any of the rights, requirements or remedies contained herein or in the other Loan Documents, then and in any such event the Borrower hereby agrees to pay within thirty (30) days after demand all reasonable costs of collecting or attempting to collect this Note, or protecting or enforcing such rights, or evaluating, prosecuting or defending any such proceedings, including, without limitation, reasonable attorneys' fees (whether or not suit is brought), in addition to all principal, interest and other amounts payable hereunder; all of which shall be secured by the Loan Documents only if Holder is determined by a court of competent jurisdiction to have been victorious.

15. Notices. All notices required or permitted to be given hereunder to the Borrower shall be given in the manner and to the place provided in the Mortgage for notices to Mortgagor.

16. Time. Time is of the essence of this Note and each of the provisions hereof and of the Mortgage and other Loan Documents.

17. No Usury. It is the intent of the Borrower and the Holder to comply with the laws of the Governing State with regard to the rate of interest charged hereunder, and accordingly, notwithstanding any provision to the contrary in this Note, the Mortgage, or any of the Loan Documents, no such provision in any such instrument, including without limitation any provision of this Note providing for the payment of interest or other charges and any provision of the Loan Documents providing for the payment of interest, fees, costs or other charges, shall require the payment or permit the collection of any amount (herein called "Excess Interest") in excess of the maximum amount of interest permitted by law to be charged for the use, detention, or forbearance in the collection, of all or any portion of the indebtedness evidenced by this Note; provided that if any Excess Interest is provided for, or is adjudicated as being provided for, in this Note, the Mortgage or any of the Loan Documents, then in such event:

(a) The provisions of this Section shall govern and control;

10792527

UNOFFICIAL COPY

Property of Cook County Clerk's Office

RESERVED

UNOFFICIAL COPY

(b) Borrower shall not be obligated to pay any Excess Interest;

(c) Any Excess Interest that the Holder may have received hereunder shall, at the option of the Holder be (i) applied as a credit against the then outstanding principal balance due under this Note, or accrued and unpaid interest thereon, not to exceed the maximum amount permitted by law, or both, (ii) refunded to the payor thereof, or (iii) any combination of the foregoing;

(d) The applicable interest rate or rates shall be automatically subject to reduction to the maximum lawful rate allowed to be contracted for in writing under the applicable usury laws of the Governing State as at the date of disbursement of the indebtedness evidenced hereby; and this Note and all other Loan Documents shall be deemed to have been, and shall be reformed and modified to reflect such reduction in such interest rate or rates; and

(e) Neither the Borrower nor any other person shall have any action or remedy against the Holder for any damages whatsoever or any defense to enforcement of any of the Loan Documents arising out of the payment or collection of any Excess Interest.

18. INTENTIONALLY OMITTED.

19. **Waivers.** The Borrower, each endorser, surety or guarantor hereof, and any and all others who are now or may become liable for all or part of the obligations of the Borrower under this Note or any of the Loan Documents (all of the foregoing being herein collectively called "Obligors") agree to be jointly and severally bound hereby and jointly and severally, to the fullest extent permitted by law:

(a) Waive all notices in connection with the delivery and acceptance hereof and all other notices in connection with the performance, default or enforcement of the payment hereof or hereunder;

(b) Agree that the liability of each or any Obligor shall be unconditional and without regard to the liability of any other person or entity for the payment hereof, and shall not in any manner be affected by any indulgence or forbearance granted or consented to by the Holder to any of them with respect hereto;

(c) Consent to any and all extensions of time, renewals, waivers, or modifications that may be granted by the Holder with respect to the payment or other provisions hereof, and to the release of any security at any time given for the payment hereof, or any part thereof, with or without substitution, and to the release of any person or entity liable for the payment hereof; and

UNOFFICIAL COPY

Property of Cook County Clerk's Office

ASSESSOR

UNOFFICIAL COPY

(d) Consent to the addition of any and all other makers, endorsers, guarantors and other Obligors for the payment hereof, and to the acceptance of any and all other security for the payment hereof, and agree that the addition of any such Obligors or security shall not affect the liability of any of the Obligors for the payment hereof.

20. Holder's Actions. The remedies of the Holder upon an Event of Default as provided herein or in any of the Loan Documents shall be cumulative and concurrent, and may be pursued singularly, successively or together, at the sole discretion of the Holder, and may be exercised as often as occasion therefor shall arise; and in connection therewith:

(a) Failure of the Holder, for any period of time or on more than one occasion, to exercise its option to accelerate the Maturity Date of this Note shall not constitute a waiver of the right to exercise the same at any time thereafter or in the event of any subsequent default;

(b) No act of omission or commission of the Holder, including specifically and without limitation any failure to exercise any right, remedy or recourse, shall be deemed to be a waiver or release of the same and any such waiver or release may be effected only through a written document executed by the Holder and then only to the extent specifically recited therein;

(c) A waiver or release with reference to any one event shall not be construed as a waiver or release of any subsequent event, similar or dissimilar, or as a bar to any subsequent exercise of the Holder's rights or remedies hereunder; and

(d) Except as otherwise specifically required herein, no notice to the Borrower or any other person of the exercise of any right or remedy granted to the Holder by this Note shall be required.

21. Severability. The unenforceability or invalidity of any provision or provisions hereof shall not render any other provision or provisions hereof unenforceable or invalid.

22. Captions. The captions to the Sections of this Note are for convenience only and shall not be deemed part of the text of the respective Sections and shall not vary, by implication or otherwise, any of the provisions of this Note.

23. Governing Law. This Note shall be governed by the laws of the Governing State.

24. Registered Owner/Transferability. This Note is transferable by the Holder only through an entry in the record of ownership maintained by the Borrower (or its agent) to identify the registered owner hereof. Any transfer that is not reflected in the record of ownership maintained by the Borrower (or its agent) shall not be effective against the Borrower.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

30128954

UNOFFICIAL COPY

The Borrower (or its agent) shall treat the person in whose name this Note is registered as the absolute owner of this Note (whether or not this Note is overdue and notwithstanding any other notation of ownership or other writing made by anyone other than Borrower (or its agent) on this Note) for purposes of receiving payment of both principal and interest due hereon (subject to the appointment of a payment agent pursuant to Section 8(b) hereof) and for all other purposes, and neither the Borrower (nor its agent) shall be affected by any other notice to the contrary.

[signature follows]

Property of Cook County Clerk's Office

10792527

UNOFFICIAL COPY

Property of Cook County Clerk's Office

RESERVED

UNOFFICIAL COPY

IN WITNESS WHEREOF, the undersigned has caused this Promissory Note to be duly executed of the day, month and year first above written.

W & A BUILDING LLC, an Illinois limited liability company

By: **W & A Baker Building Trust**, a general partnership

By: _____
Name: _____
Title: _____

Property of Cook County Clerk's Office

10792527

UNOFFICIAL COPY

Property of Cook County Clerk's Office

REC'D

REGISTER

UNOFFICIAL COPY

August 24, 2001

W & A Building LLC
1156 West Armitage
Chicago, Illinois 60614

Re: Mortgage ("Mortgage") dated August 24, 2001 made by W & A Building LLC ("Mortgagor") and Dr. Basil J. Photos and Mrs. Mary B. Photos (collectively, "Mortgagee") with respect to property commonly known as 1700-1412 West Fullerton, Chicago, Illinois

Dear Sirs:

In connection with the above referenced matter, Mortgagor and Mortgagee would like to memorialize certain amendments to the Mortgage, as follows:

1. Mortgagor shall have thirty (30) days from the date hereof to satisfy the requirements of Section 5 of the Mortgage (the "Insurance Requirements"). Mortgagor shall have the option, so long as that certain lease dated August 21, 1972 between National Bank of Austin solely as Trustee u/t/n dated August 7, 1972 and Shell Oil Company ("Shell") (as amended, the "Shell Lease") is in effect, of satisfying the Insurance Requirements by providing Mortgagee with a certificate of insurance from a Shell naming Mortgagee as an additional insured and showing insurance coverage that meets the Insurance Requirements.
2. So long as the Shell Lease is in effect, Mortgagee's obligations with respect to Section 2 (the "Repair Obligations") of the Mortgage shall be limited to enforcing Mortgagee's rights under the Shell Lease with respect to the Repair Obligations.

Please indicate your acceptance of the terms of this letter by executing below and returning a copy of this letter to the undersigned.

Basil J. Photos

Mary B. Photos

UNOFFICIAL COPY

Property of Cook County Clerk's Office

40152525

UNOFFICIAL COPY

Agreed and Accepted this 24th day of August, 2001.

W & A BUILDING LLC, an Illinois
limited liability company

By: **W & A Baker Building Trust**, a
general partnership

By: _____

Name: _____

Title: _____

Property of Cook County Clerk's Office

10792527

UNOFFICIAL COPY

Property of Cook County Clerk's Office

30485254

UNOFFICIAL COPY

EXHIBIT B

LEGAL DESCRIPTION

Lots 19 to 24 in Block 1 in Hahnes' Subdivision of the Southeast 1/4 of the Southwest 1/4 of the Southwest 1/4 of Section 29, Township 40 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois

PIN: 14-29-320-038
14-29-320-039
14-29-320-040
14-29-320-041
14-29-320-042

Address: 1400-1412 West Fullerton, Chicago, Illinois 60614

Property of Cook County Clerk's Office

10792527

UNOFFICIAL COPY

Property of Cook County Clerk's Office

192502