

UNOFFICIAL COPY

0020426037

3115/0414 55 001 Page 1 of 27
2002-04-12 12:52:56
Cook County Recorder 73.00



0020426037

MORTGAGE

27 JW

This Mortgage ("Mortgage") is made as of this 21st day of March, 2002, by STRUBE CELERY AND VEGETABLE COMPANY, an Illinois corporation ("Mortgagor") to MB FINANCIAL BANK, N.A. ("Mortgagee"), and pertains to the real estate described in Exhibit "A," which is attached hereto and hereby made a part hereof.

ARTICLE 1 RECITALS

Mortgagor has executed and delivered to Mortgagee a Note in the principal sum of THREE MILLION ONE HUNDRED EIGHTY-SEVEN THOUSAND TWO HUNDRED AND 00/100 DOLLARS (\$3,187,200.00) ("Strube Note") of even date herewith. FIVE A DAY LLC, an Illinois limited liability company ("Company") has executed and delivered to Mortgagee a Note in the principal sum of ONE MILLION FIFTY-FIVE THOUSAND TWO HUNDRED NINETY-FOUR AND 08/100 DOLLARS (\$1,055,294.08) ("Company Note") (the Company Note and the Strube Note collectively referred to as the "Note"). The Note bears interest and is payable and due as set forth in the Note. The collective indebtedness evidenced by the Note shall be deemed the "Loan".

ARTICLE 2 THE GRANT

NOW, THEREFORE, to secure the payment of the outstanding principal indebtedness under the Note and interest and premiums, if any, on the outstanding principal indebtedness under the Note (and all replacements, renewals and extensions thereof, in whole or in part), and to secure the payment of all other sums which may be at any time due and owing or required to be paid under the Note or this Mortgage, or the Loan Agreements of an even date herewith executed in connection with the Strube Note and the Company Note (collectively "Loan Agreement") by and between Mortgagor, and/or the Company and Mortgagee and to secure the performance and observance of all the covenants, agreements and provisions contained in this Mortgage, the Note, the Loan Agreement or any other agreement made in connection with the Loan (the Mortgage, the Note, the

BOX 333-CT

7988 431022K (2)

UNOFFICIAL COPY

Loan Agreement and such other agreements are collectively the "Loan Documents"), and to secure the performance by Mortgagor under the Loan Documents, and to charge the properties, interests and rights hereinafter described with such payment, performance and observance, and for other valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the Mortgagor DOES HEREBY GRANT, REMISE, RELEASE, ALIEN, WARRANT, MORTGAGE AND CONVEY unto Mortgagee, its successors and assigns forever, the land located in the State of Illinois and legally described in Exhibit "A" attached hereto and made a part hereof (the "Premises"), and the following described property, rights and interests (which, together with the Premises, are referred to herein collectively as the "Mortgaged Property"), all of which property, rights and interests are hereby pledged primarily and on a parity with the Premises, and not secondarily:

- (a) All buildings and other improvements of every kind and description now or hereafter situated, erected or placed thereon and all Mortgagor's 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 immediately upon the delivery thereof to the Premises;
- (b) All right, title, and interest of Mortgagor, including any after-acquired title or reversion, in and to the beds of the ways, streets, avenues, sidewalks, and alleys adjoining the Premises;
- (c) Each and all of the tenements, hereditaments, easements, appurtenances, passages, waters, water courses, riparian rights, other rights, liberties, and privileges of the Premises or in any way now or hereafter appertaining thereto, including homestead and any other claim at law or in equity, as well as any after-acquired title, franchise, or license and the reversions and remainders thereof;
- (d) All rents, issues, deposits, royalties, revenues, income and profits accruing and to accrue from the Premises and the avails thereof;
- (e) All fixtures and personal property now or hereafter owned by Mortgagor, attached to or contained in and used or useful in connection with the Premises or the aforesaid improvements thereon, including without limitation any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor,

20426037

UNOFFICIAL COPY

whether or not the same be attached to such improvements, it being intended, agreed, and declared that all such property owned by Mortgagor and placed by it on the Premises and used in connection with the operation or maintenance thereof shall, so far as permitted by law, be deemed for the purpose of this Mortgage to be part of the real estate constituting and located on the Premises and covered by this Mortgage, and as to any of the aforesaid property that is not part of such real estate or does not constitute a "fixture," as such term is defined in the Uniform Commercial Code (the "Code") of the state in which the Premises are located, this Mortgage shall be deemed to be, as well, a security agreement under the Code for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to the Mortgagee as "secured party," as such term is defined in such Code;

- (f) All proceeds of the foregoing, including without limitation all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance maintained with respect to the Premises, or proceeds of any sale, option or contract to sell the Premises or any portion thereof; and, subject to the terms of this Mortgage and the other Loan Documents, Mortgagor hereby authorizes, directs and empowers Mortgagee, at its option, on behalf of Mortgagor, or the successors or assigns of Mortgagor, to adjust, compromise, claim, collect and receive such proceeds, to give proper receipts and acquittances therefor, and, after deducting expenses of collection, to apply the net proceeds as credit upon any portion, as selected by Mortgagee, of the Loan, notwithstanding the fact that the same may not be due and payable or that the Loan is otherwise adequately secured; and
- (g) All right, title and interest of Mortgagor in and to any leases now or hereafter on or affecting the Premises, whether oral or written, together with all security therefor and all monies payable thereunder, subject, however to the terms of that certain Assignment of Leases and Rents with respect to the Premises of an even date herewith ("Assignment") executed by Mortgagor to and for the benefit of Mortgagee, and to the conditional permission hereinabove given to Mortgagor to collect rentals under any lease.

To have and to hold the same unto Mortgagee and its successors and assigns forever for the purposes and uses herein set forth.

If and when the principal amount of the Note and all interest as provided thereunder and any and all other amounts required under the Loan Documents have been paid in full, and all of the agreements contained in the Loan Documents have been performed, then this Mortgage shall be released at the cost of Mortgagor, but otherwise shall remain in full force and effect.

UNOFFICIAL COPY

ARTICLE 3 GENERAL AGREEMENTS

3.1 **Principal and Interest.** Mortgagor shall pay promptly when due the principal and interest on the indebtedness evidenced by the Strube Note at the times and in the manner provided in the Strube Note, this Mortgage, or any of the other Loan Documents.

3.2 **Other Payments.** Unless waived in writing by Mortgagee, Mortgagor shall deposit with Mortgagee or a depository designated by Mortgagee, in addition to the monthly installments required by the Note, monthly until the principal indebtedness evidenced by the Note is paid:

- (a) A sum equal to all real estate taxes and assessments ("taxes") next due on the Mortgaged Property, all as reasonably estimated by Mortgagee, divided by the whole number of months to elapse before the month prior to the date when such taxes will become due and payable; and
- (b) Installments representing pro rata portions of the premium or premiums that will become due and payable to renew the insurance as required in Paragraph 3.5 hereof, each such installment to be in such an amount that the payment of approximately equal installments will result in the accumulation of a sufficient sum of money to pay renewal premiums for such insurance at least one (1) month prior to the expiration or renewal date or dates of the policy or policies to be renewed.

All such payments described in this Paragraph 3.2 shall be held by Mortgagee or a depository designated by Mortgagee, in trust. If the funds so deposited are insufficient to pay, when due, all taxes and premiums as aforesaid, Mortgagor shall, within ten (10) days after receipt of written demand therefor from Mortgagee or its agent, deposit such additional funds as may be necessary to pay such taxes and premiums. If the funds so deposited exceed the amounts required to pay such items, the excess shall be applied on a subsequent deposit or deposits or returned to Mortgagor upon payment in full of all indebtedness under the Note.

Neither Mortgagee nor any such depository shall be liable for any failure to make such payments of insurance premiums or taxes unless Mortgagor, while not in default hereunder, has requested Mortgagee or such depository, in writing, to make application of such deposits to the payment of particular insurance premiums or taxes, accompanied by the bills of such insurance premiums or taxes; provided, however, that Mortgagee may, at its option, make or cause such depository to make such application of the aforesaid deposits without any direction or request to do so by Mortgagor.

3.3 **Property Taxes.** Mortgagor shall pay immediately, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer charges, and any other charges that may be asserted against the Mortgaged Property or any part thereof or interest therein, and shall

UNOFFICIAL COPY

furnish to Mortgagee duplicate receipts therefor within ten (10) days after payment thereof. Provided, however, that if the monthly deposits required by Paragraph 3.2(a) and (b) hereof is then in effect, Mortgagee, at its option, prior to the occurrence of a Default (as defined in Paragraph 4.1) either shall make such deposits available to Mortgagor for the payments required under this Paragraph 3.3 or shall make such payments on behalf of Mortgagor. Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any such taxes or assessments, provided that:

- (a) Such contest has the effect of preventing the collection of the tax or assessment so contested and the sale or forfeiture of the Mortgaged Property or any part thereof or interest therein to satisfy the same;
- (b) Mortgagor has notified Mortgagee in writing of the intention of Mortgagor to contest the same before any tax or assessment has been increased by any interest, penalties, or costs; and
- (c) Mortgagor has deposited with Mortgagee, at such place as Mortgagee may from time to time in writing designate, a sum of money or other security reasonably acceptable to Mortgagee that, when added to the monies or other security, if any, deposited with Mortgagee pursuant to Paragraph 3.2 hereof, is sufficient, in Mortgagee's reasonable judgment, to pay in full such contested tax and assessment and all penalties and interest that might become due thereon, and shall keep on deposit an amount sufficient, in Mortgagee's reasonable judgment, to pay in full such contested tax and assessment, increasing such amount to cover additional penalties and interest whenever, in Mortgagee's reasonable judgment, such increase is advisable.

In the event Mortgagor fails to prosecute such contest with reasonable diligence or fails to maintain sufficient funds on deposit as hereinabove provided, Mortgagee may at its option, apply the monies and liquidate any securities deposited with Mortgagee in payment of or on account of, such taxes and assessments, or any portion thereof then unpaid, including all penalties and interest thereon. If the amount of money and any such security so deposited is insufficient for the payment in full of such taxes and assessments, together with all penalties and interest thereon, Mortgagor shall forthwith, upon demand, either deposit with Mortgagee a sum that, when added to such funds then on deposit, is sufficient to make such payment in full, or, if Mortgagee has applied funds on deposit on account of such taxes and assessments, restore such deposit to an amount reasonably satisfactory to Mortgagee in accordance with the terms of Paragraph 3.2 herein. Provided that Mortgagor is not then in default hereunder or under the Note, Mortgagee shall, if so requested in writing by Mortgagor, after final disposition of such contest and upon Mortgagor's delivery to Mortgagee of an official bill for such taxes, apply the money so deposited in full payment of such taxes and assessments of that part thereof then unpaid, together with all penalties and interest thereon.

20426037

UNOFFICIAL COPY

3.4 **Tax Payments by Mortgagee.** Mortgagee is hereby authorized to make or advance, in the place and stead of Mortgagor, any payment relating to taxes, assessments, water and sewer charges, and other governmental charges, fines, impositions, or liens that may be asserted against the Property, or any part thereof, and may do so according to any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy thereof or into the validity of any tax, assessment, lien, sale, forfeiture, or title or claim relating thereto. Mortgagee is further authorized to make or advance, in the place and stead of Mortgagor, any payment relating to any apparent or threatened adverse title, lien, statement of lien, encumbrance, claim, charge, or payment otherwise relating to any other purpose herein and hereby authorized, but not enumerated in this Paragraph 3.4, whenever, in its judgment and discretion, such advance seems necessary or desirable to protect the full security intended to be created by this Mortgage. In connection with any such advance, Mortgagee is further authorized, at its option, to obtain a continuation report of title or title insurance policy prepared by a title insurance company of Mortgagee's choosing. All such advances and indebtedness authorized by this Paragraph 3.4 shall constitute additional indebtedness secured hereby and shall be repayable by Mortgagor upon demand with interest at the "Default Rate" (as that term is defined in the Note).

3.5 **Insurance.** Mortgagor will insure the Mortgaged Property against such perils and hazards, and in such amounts and with such limits, as Mortgagee may from time to time require, and in any event will continuously maintain the following described policies of insurance (the "Insurance Policies"):

- (a) Casualty Insurance in an amount equal to the full replacement cost of the Mortgaged Property; and
- (b) Comprehensive public liability against death, bodily injury and property damage; and
- (c) If the Premises has been designated to be in a special flood hazard area, first and second layer flood insurance when and as available.

In the event Mortgagor has not maintained or procured the policies of insurance required above, in addition to all other remedies of Mortgagee hereunder in the event of a Default Mortgagee may, at any time thereafter and in its sole discretion, procure and substitute for any and all of the policies of insurance required above, such other policies of insurance, in such amounts and carried in such companies, as it may reasonably select, and in such event, those policies of insurance shall be included within the definition of "Insurance Policies" set forth herein.

All Insurance Policies shall be in form, companies and amounts reasonably satisfactory to Mortgagee. All Insurance Policies insuring against casualty, rent loss and business interruption and other appropriate policies shall include non-contributing mortgagee endorsements in favor of and with loss payable to Mortgagee, as well as standard waiver of subrogation endorsements, shall provide that the coverage shall not be terminated or materially modified without thirty (30) days'

UNOFFICIAL COPY

advance written notice to Mortgagee and, provided Mortgagor can obtain the same, shall provide that no material claim shall be paid thereunder without ten (10) days' advance written notice to Mortgagee. Mortgagor will deliver all Insurance Policies or certificates of insurance for Insurance Policies with premium prepaid to Mortgagee and, in case of Insurance Policies about to expire, Mortgagor will deliver renewal or replacement policies or certificates not less than thirty (30) days prior to the date of expiration. The requirements of the preceding sentence shall apply to any separate policies of insurance taken out by Mortgagor concurrent in form or contributing in the event of loss with the Insurance Policies. In the event of foreclosure of the Mortgage or assignment hereof by Mortgagee or transfer of title to the Mortgaged Property, all right, title and interest of Mortgagor in and to the policies then in force shall pass to the Mortgagee, purchaser, grantee or assignee.

(d) Upon the occurrence of a "Major Casualty" (as hereinafter defined):

(1) Full power is hereby conferred on Mortgagee:

- a. to settle and compromise all claims under all policies;
- b. to demand, receive and receipt for all monies becoming due and/or payable under all policies;
- c. to execute, in the name of Mortgagor or in the name of Mortgagee, any proofs of loss, notices or other instruments in connection with all claims under all policies; and
- d. to assign all policies in the event of the foreclosure of this Mortgage or other transfer of title to the Mortgaged Property.

(2) In the event of payment under any of the policies, the proceeds of the policies shall be paid by the insurer to Mortgagee and, Mortgagee, in its sole and absolute discretion, may apply such proceeds, wholly or partially, after deducting all costs of collection, including reasonable attorneys' fees either (i) toward the alteration, reconstruction, repair or restoration of the Mortgaged Property or any portion thereof; or (ii) as a payment on account of Mortgagor's liability under the Loan (without affecting the amount of time of subsequent payments required to be made by Mortgagor under the Note), whether or not then due and payable.

(e) Upon the occurrence of a fire or other casualty to the Mortgaged Property, whether or not such fire or other occurrence shall constitute a Major Casualty, and notwithstanding any provision to the contrary contained in this Mortgage, Mortgagor shall restore the improvements on the Mortgaged Property provided Mortgagee applies the proceeds as set forth in Paragraph 3.5(a)(2)(i) above, whereupon all

20426037

UNOFFICIAL COPY

proceeds for rebuilding or restoring the improvements shall be deposited by the insurance carrier into an account (the "Escrow") at a title insurance and escrow company acceptable to Mortgagee (the "Title Company") pursuant to an Escrow Trust Agreement between Mortgagor, Mortgagee, and the Title Company which insures that the proceeds are disbursed only as work is completed to the Mortgaged Property and only after a review of the condition of title to the Property by the Title Company verifying that (i) the title policy issued to Mortgagee in connection with the Loan is continued through the date of such disbursement with certification over mechanic lien claims in the amount of the proceeds disbursed to date and (ii) no exceptions to title arise that are asserted to be superior to the lien of this Mortgage.

- (f) No payment made prior to the final completion of the restoration, repair, replacement and rebuilding shall exceed ninety percent (90%) of the value of the work performed from time to time, as such value shall be determined by Mortgagee in its sole and exclusive judgment. The funds deposited into the Escrow shall be sufficient at all times to complete the restoration. If the funds become insufficient during the course of the reconstruction to complete the restoration, Mortgagor shall within ten (10) days of notice from the Title Company or Mortgagee of the deficiency, deposit the amount of the deficiency into the Escrow. The provisions of the Escrow shall require that all costs associated with the Escrow, including, without limitation, examination of title and issuance of title policy endorsements, shall be paid by the Mortgagor. To the extent otherwise required under this Paragraph 3.5, the Mortgaged Property shall be restored and reconstructed to substantially the same condition and value as before the casualty loss. The reconstruction and rebuilding shall be in compliance with all applicable building codes, environmental obligations and zoning ordinances.

For purposes of this Agreement, a "Major Casualty" shall be deemed to consist of the following: (i) a fire or other casualty loss to the Mortgaged Property, if hereafter improved, that results in damage to the Mortgaged Property of \$50,000.00 or more in the opinion of a licensed architect or engineer reasonably acceptable to Mortgagee; or (ii) a fire or other casualty loss to the Mortgaged Property necessitating reconstruction or rebuilding that (a) in the opinion of a licensed architect or engineer reasonably acceptable to Mortgagee cannot be completed within three (3) months from the date of such casualty loss, or (b) the repair of which will result in a material alteration in the configuration, design or appearance of the Mortgaged Property.

3.6 Condemnation and Eminent Domain. Any and all awards heretofore or hereafter made or to be made to the present, or any subsequent, owner of the Mortgaged Property, by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Mortgaged Property, any improvement located thereon, or any easement thereon or appurtenance thereof (including any award from the United States Government at any time after the allowance of a claim therefor, the ascertainment of the amount thereof, and the issuance of a warrant for payment thereof), are hereby assigned by Mortgagor to Mortgagee, which awards

UNOFFICIAL COPY

Mortgagee is hereby authorized to collect and receive from the condemnation authorities, and Mortgagee is hereby authorized to give appropriate receipts and acquittances therefor. Mortgagor shall give Mortgagee immediate notice of the actual or threatened commencement of any condemnation or eminent domain proceedings affecting all or any part of the Premises, or any easement thereon or appurtenance thereof (including severance of, consequential damage to, or change in grade of streets), and shall deliver to Mortgagee copies of any and all papers served in connection with any such proceedings. Mortgagor further agrees to make, execute, and deliver to Mortgagee, at any time upon request, free, clear, and discharged of any encumbrance of any kind whatsoever, any and all further assignments and other instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning all awards and other compensation heretofore and hereafter made to Mortgagor for any taking, either permanent or temporary, under any such proceeding. At Mortgagee's option, reasonably exercised, any such award may be applied to restoring the improvements, in which event the same shall be paid out in the same manner as is provided with respect to insurance proceeds in Paragraph 3.5.

3.7 Maintenance of Property. Subject in all instances to the terms of Paragraphs 3.5 and 3.6 hereof, Mortgagor shall promptly repair, restore, or rebuild any building or other improvement now or hereafter situated on the Premises that may become damaged or destroyed. Any such building or other improvement shall be so repaired, restored, or rebuilt so as to be of at least equal value and of substantially the same character as prior to such damage or destruction.

Mortgagor further agrees to permit, commit, or suffer no waste, impairment, or deterioration of the Mortgaged Property or any part thereof other than ordinary wear and tear repaired in accordance with the terms hereof; to keep and maintain the Mortgaged Property and every part thereof in good repair and condition; to effect such repairs as Mortgagee may reasonably require, and, from time to time, to make all necessary and proper replacements thereof and additions thereto so that all of the Premises and such buildings, other improvements, fixtures, chattels, and articles of personal property will, at all times, be in good condition, fit and proper for the respective purposes for which they were originally erected or installed.

3.8 Compliance with Laws. Mortgagor shall comply with all statutes, ordinances, regulations, rules, orders, decrees, and other requirements relating to the Mortgaged Property or any part thereof by any federal, state, or local authority; and shall observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including without limitation zoning variances, special exceptions, nonconforming uses, environmental and pollution laws, statutes, ordinances and regulations), privileges, franchises, and concessions that are applicable to the Mortgaged Property or that have been granted to or contracted for by Mortgagor in connection with any existing or presently contemplated use of the Property.

3.9 Liens and Transfers. Without Mortgagee's prior written consent, Mortgagor shall not create, suffer, or permit to be created or filed against the Mortgaged Property or any part thereof, any mortgage lien or other lien superior or inferior to the lien of this Mortgage, provided that

UNOFFICIAL COPY

Mortgagor may, within ten (10) days after the filing thereof, contest any lien claim arising from any work performed, material furnished, or obligation incurred by Mortgagor upon furnishing Mortgagee security and indemnification reasonably satisfactory to Mortgagee for the final payment and discharge thereof. In the event Mortgagor hereafter otherwise suffers or permits any superior or inferior lien to be attached to the Mortgaged Property or any part thereof without Mortgagee's consent, Mortgagee shall have the unqualified right, at its option, to accelerate the maturity of the Note, causing the entire principal balance thereof and all interest accrued thereon to be immediately due and payable, without notice to Mortgagor.

Mortgagor shall not, without the prior written consent of Mortgagee, create, effect, consent to, suffer or permit any "Prohibited Transfer" (as defined herein). Any conveyance, sale, assignment, lease, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties, rights or interests which occurs, is granted, accomplished, attempted or effectuated without the prior written consent of Mortgagee shall constitute a "Prohibited Transfer":

- (a) The Mortgaged Property;
- (b) All or any portion of the beneficial interest or power of direction in or to the trust under which Mortgagor is acting if Mortgagor is a land trust;
- (c) A controlling interest of capital stock of Mortgagor if Mortgagor is a corporation except a transfer to a trust of which the Transferor is trustee and beneficiary during his lifetime;
- (d) All or any part of any general partnership or joint venture interest or membership interest, as the case may be, of Mortgagor if Mortgagor is a partnership or a joint venture or a limited liability company;

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.

Any waiver by Mortgagee of the provisions of this Paragraph 3.9 shall not be deemed to be a waiver of the right of Mortgagee in the future to insist upon strict compliance with the provisions hereof.

Notwithstanding anything to the contrary contained herein, any "Permitted Transfer" (as defined in the Loan Agreement) shall not be deemed a Prohibited Transfer herein.

3.10 Subrogation to Prior Lienholder's Rights. If the proceeds of the Loan secured hereby, any part thereof, or any amount paid out or advanced by Mortgagee are used directly or

UNOFFICIAL COPY

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 Mortgagee shall be subrogated to the rights of the holder thereof in and to such other lien or encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.

3.11 Mortgagee's Dealings with Transferee. In the event of the sale or transfer, by operation of law, voluntarily, or otherwise, of all or any part of the Mortgaged Property, Mortgagee shall be authorized and empowered to deal with the vendee or transferee with regard to the Mortgaged Property, the indebtedness secured hereby, and any of the terms or conditions hereof as fully and to the same extent as it might with Mortgagor, without in any way releasing or discharging Mortgagor from its covenants hereunder, specifically including those contained in Paragraph 3.9 hereof, and without waiving Mortgagee's right of acceleration pursuant to Paragraph 3.9 hereof.

3.12 Stamp Taxes. If at any time the United States Government, or any federal, state, or municipal governmental subdivision, requires Internal Revenue or other documentary stamps, levies, or any tax on this Mortgage or on the Note, or requires payment of the United States Interest Equalization Tax on any of the indebtedness secured hereby, then such indebtedness and all interest accrued thereon shall be and become due and payable, at the election of the Mortgagee, thirty (30) days after the mailing by Mortgagee of notice of such election to Mortgagor, provided, however, that such election shall be unavailing, and this Mortgage and the Note shall be and remain in effect, if Mortgagor lawfully pays for such stamps or such tax, including interest and penalties thereon, to or on behalf of Mortgagee and Mortgagor does in fact pay, when payable, for all such stamps or such tax, as the case may be, including interest and any penalties thereon.

3.13 Change in Tax Laws. In the event of the enactment, after the date of this Mortgage, of any law of the state in which the Premises are located deducting from the value of the Premises, for the purpose of taxation, the amount of any lien thereon, or imposing upon Mortgagee the payment of all or any part of the taxes, assessments, charges, or liens hereby 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 Mortgagor's interest in the Mortgaged Property, or the manner of collection of taxes, so as to adversely affect this Mortgage or the indebtedness secured hereby or the holder thereof, then Mortgagor, upon demand by Mortgagee, shall pay such taxes, assessments, charges, or liens or reimburse Mortgagee therefor. Provided, however, that if, in the reasonable opinion of counsel for Mortgagee, it might be unlawful to require Mortgagor to make such payment, or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then Mortgagee may elect to declare all of the indebtedness secured hereby to become due and payable. Provided, further, that nothing contained in this Paragraph 3.13 shall be construed as obligating Mortgagee to pay any portion of Mortgagor's federal or state income tax.

3.14 Inspection of Property. Mortgagor shall permit Mortgagee and its representatives and agents to inspect the Mortgaged Property from time to time during normal business hours and as frequently as Mortgagee considers reasonable.

UNOFFICIAL COPY

3.15 Acknowledgment of Debt. Mortgagor shall furnish from time to time, within fifteen (15) days after Mortgagee's request, a written statement, duly acknowledged, specifying the amount due under the Note and this Mortgage.

3.16 Other Amounts Secured. At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures in addition to any loan proceeds disbursed from time to time, and in addition to any advances pursuant to Paragraphs 3.4, 3.6 and 3.9 hereof, litigation and other expenses pursuant to Paragraphs 4.4 and 4.5 hereof, and any other amounts as provided herein, the payment of any and all loan commissions, service charges, liquidated damages, expenses, and advances due to or paid or incurred by Mortgagee in connection with the loan commitment issued in connection with this transaction, if any, and the other Loan Documents.

3.17 Assignments of Rents and Leases. As additional security hereunder, Mortgagor hereby assigns to Mortgagee the rents of the Property subject to the terms of the Assignment, provided the Mortgagor, prior to Default, shall have the right to collect and retain such rents as they become due and payable.

3.18 Security Instruments. Mortgagor shall execute, acknowledge, and deliver to Mortgagee, within ten (10) days after request by Mortgagee, a security agreement, financing statements, and any other similar security instrument required by Mortgagee, in form and content satisfactory to Mortgagee, covering all property of any kind whatsoever owned by Mortgagor that, in the sole opinion of Mortgagee, is essential to the operation of the Mortgaged Property and concerning which there may be any doubt whether title thereto has been conveyed, or a security interest therein perfected, by this Mortgage under the laws of the state in which the Premises are located. Mortgagor shall further execute, acknowledge, and deliver any financing statement, affidavit, continuation statement, certificate, or other document as Mortgagee may request in order to perfect, preserve, maintain, continue, and extend such security instruments. Mortgagor further agrees to pay to Mortgagee all reasonable costs and expenses incurred by Mortgagee in connection with the preparation, execution, recording, filing, and refile of any such document.

3.19 Releases. Mortgagee, without notice and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens thereon, may release from the lien created hereby all or any part of the Mortgaged Property, or release from liability any person obligated to repay any indebtedness secured hereby, without in any way affecting the liability of any party to the Note, this Mortgage, or any of the other Loan Documents, including without limitation any guaranty given as additional security for the indebtedness secured hereby, and without in any way affecting the priority of the lien of this Mortgage, and may agree with any party liable therefor to extend the time for payment of any part or all of such indebtedness. Any such agreement shall not in any way release or impair the lien created by this Mortgage or reduce or modify the liability of any person or entity obligated personally to repay the indebtedness secured hereby.

UNOFFICIAL COPY

3.20 **Anti-forfeiture.** Mortgagor hereby represents and warrants to Mortgagee that there has not been committed by Mortgagor or, to the best of Mortgagor's knowledge, by any other person involved with the Premises any act or omission affording the federal government or any state or local government the right of forfeiture as against the Premises or any part thereof or any monies paid in performance of Mortgagor's obligations under the Note or under any of the other Loan Documents. Mortgagor hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture. In furtherance thereof, Mortgagor hereby indemnifies Mortgagee and agrees to defend and hold Mortgagee harmless from and against any loss, damage or injury by reason of the breach of the covenants and agreements or the warranties and representations set forth in this Paragraph 3.20. Without limiting the generality of the foregoing, the filing of formal charges or the commencement of proceedings against Mortgagor, Mortgagee or all or any part of the Premises under any federal or state law for which forfeiture of the Premises or any part thereof or of any monies paid in performance of Mortgagor's obligations under the Loan Documents is a potential result, shall, at the election of Mortgagee, constitute a Default hereunder without notice or opportunity to cure.

3.21 **Intentionally Deleted.**

3.22 **Interest Laws.** It is agreed that notwithstanding any provision to the contrary in the Note, this Mortgage, or any of the other Loan Documents, no such provision shall require the payment or permit the collection of any amount ("Excess Interest") in excess of the maximum amount of interest permitted by law to be charged for the use or detention, or the forbearance in the collection, of all or any portion of the indebtedness evidenced by the Note. If any Excess Interest is provided for, or is adjudicated to be provided for, in the Note, this Mortgage, or any of the other Loan Documents, then in such event (a) the provisions of this Paragraph 3.22 shall govern and control; (b) Mortgagor shall not be obligated to pay any Excess Interest; (c) any Excess Interest that Mortgagee may have received hereunder shall, at the option of Mortgagee, be (i) applied as a credit against the then unpaid principal balance under the Note, 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 rate of interest under the Note shall be subject to automatic reduction to the maximum lawful contract rate allowed under the applicable usury laws of the aforesaid State, and the Note, this Mortgage, and the other Loan Documents shall be deemed to have been, and shall be, reformed and modified to reflect such reduction in the rate of interest; and (e) provided Mortgagee complies with the terms of this Paragraph 3.22, Mortgagor shall not have any action against Mortgagee for any damages whatsoever arising out of the payment or collection of any Excess Interest.

20426037

UNOFFICIAL COPY

ARTICLE 4 DEFAULTS AND REMEDIES

4.1 **Defaults.** If one or more of the following events (hereinafter called "Defaults") shall occur:

- (a) If any default be made by Mortgagor or any other party in the due and punctual payment of monies due under the Note, this Mortgage, or under any of the Loan Documents, as and when the same is due and payable and the default remains uncured for ten (10) days;
- (b) If any other default shall exist under any of the Loan Documents after the expiration of any applicable cure periods;
- (c) The occurrence of a Prohibited Transfer;
- (d) If default shall be made in the due and punctual performance or observance of any other agreement or condition herein contained and said default continues for thirty (30) days after written notice from Mortgagee to Mortgagor;
- (e) If (and for the purpose of this Subparagraph 4.1(e) only, the term Mortgagor shall mean and include not only Mortgagor, but also the shareholders of Mortgagor:
 - (1) Mortgagor shall file a voluntary petition in bankruptcy or for arrangement, reorganization or other relief under any chapter of the Federal Bankruptcy Act or any similar law, state or federal, now or hereafter in effect;
 - (2) Mortgagor shall file an answer or other pleading in any proceeding admitting insolvency, bankruptcy, or inability to pay its debts as they mature;
 - (3) Within sixty (60) days after the filing against Mortgagor of any involuntary proceeding under the Federal Bankruptcy Act or similar law, state or federal, now or hereafter in effect, such proceedings shall not have been vacated;
 - (4) All or a substantial part of any Mortgagor's assets are attached, seized, subjected to a writ or distress warrant, or are levied upon;
 - (5) Mortgagor shall be adjudicated a bankrupt;
 - (6) Mortgagor shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due or

20426037

UNOFFICIAL COPY

shall consent to the appointment of a receiver or trustee or liquidator of all or the major part of its property, or the Premises;

- (7) Any order appointing a receiver, trustee or liquidator of any Mortgagor or a major part of Mortgagor's property or the Premises;
- (8) Any individual Mortgagor shall die, be adjudicated as incompetent, or any Mortgagor shall be dissolved, terminated or merged;

then Mortgagee is hereby authorized and empowered, at its option and without affecting the lien hereby created or the priority of said lien or any other right of Mortgagee hereunder, to declare, without further notice, the Loan hereby secured to be immediately due and payable with interest thereon at the Default Rate (as defined in the Note), whether or not such Default be thereafter remedied by Mortgagor, and Mortgagee may immediately proceed to foreclose this Mortgage and/or to exercise any right, power or remedy provided by law or in equity, or by this Mortgage, the Note, the Loan Agreement or any other document or instrument regulating, evidencing, securing or guarantying the Loan hereby secured.

4.2 Foreclosure of Mortgage. Upon the occurrence of any Default, or at any time thereafter, Mortgagee may, at its option, proceed to foreclose the lien of this Mortgage by judicial proceedings in accordance with the laws of the state in which the Premises are located. Any failure by Mortgagee to exercise such option shall not constitute a waiver of its right to exercise the same at any other time.

4.3 Mortgagee's Continuing Options. The failure of Mortgagee to exercise either or both of its options to accelerate the maturity of the indebtedness secured hereby and to foreclose the lien hereof following any Default as aforesaid, or to exercise any other option granted to Mortgagee hereunder in any one or more instances, or the acceptance by Mortgagee of partial payments of such indebtedness, shall neither constitute a waiver of any such Default or of Mortgagee's options hereunder nor establish, extend, or affect any grace period for payments due under the Note, but such options shall remain continuously in force. Acceleration of maturity, once claimed hereunder by Mortgagee, may at Mortgagee's option be rescinded by written acknowledgment to that effect by Mortgagee and shall not affect Mortgagee's right to accelerate maturity upon or after any future Default.

4.4 Litigation Expenses. In any proceedings to foreclose the lien of this Mortgage or enforce any other remedy of Mortgagee under the Note, this Mortgage, and the other Loan Documents, or in any other proceeding whatsoever in connection with any of the Loan Documents or any of the Mortgaged Property in which Mortgagee is named as a party, there shall be allowed and included, as additional indebtedness in the judgment or decree resulting therefrom, all reasonable expenses paid or incurred in connection with such proceeding by or on behalf of Mortgagee, including without limitation, reasonable attorney's fees, appraiser's fees, outlays for documentary

UNOFFICIAL COPY

evidence and expert advice, stenographers' charges, publication costs, survey costs, and costs (which may be estimated as to items to be expended after entry of such judgment or decree) of procuring all abstracts of title, title searches and examinations, title insurance policies, and any similar data and assurances with respect to title to the Mortgaged Property as Mortgagee may deem reasonably necessary either to prosecute or defend in such proceeding or to evidence to bidders at any sale pursuant to such decree the true condition of the title to or value of the Premises or the Mortgaged Property. All expenses of the foregoing nature, and such expenses as may be incurred in the protection of any of the Mortgaged Property and the maintenance of the lien of this Mortgage thereon, including without limitation the reasonable fees of any attorney employed by Mortgagee in any litigation affecting the Note, this Mortgage, or any of the Mortgaged Property, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding in connection therewith, shall be immediately due and payable by Mortgagor with interest thereon at the Default Rate.

4.5 Performance by Mortgagee. In the event of any Default, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient by Mortgagee, and Mortgagee may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any; purchase, discharge, compromise, or settle any tax lien or other prior or junior lien or title or claim thereof; redeem from any tax sale or forfeiture affecting the Mortgaged Property; or contest any tax or assessment thereon. All monies paid for any of the purposes authorized herein and all reasonable expenses paid or incurred in connection therewith, including reasonable attorney's fees, and any other monies advanced by Mortgagee to protect the Property and the lien of this Mortgage, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Mortgagor to Mortgagee without notice and with interest thereon at the Default Rate. Inaction of Mortgagee shall never be construed to be a waiver of any right accruing to Mortgagee by reason of any default by Mortgagor.

4.6 Right of Possession. In any case in which, under the provisions of this Mortgage or the other Loan Documents, Mortgagee has a right to institute foreclosure proceedings, whether or not the entire principal sum secured hereby becomes immediately due and payable as aforesaid, or whether before or after sale thereunder, Mortgagor shall, forthwith upon demand of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled, subject to any rights of tenants in possession, to take actual possession of, the Mortgaged Property or any part thereof, personally or by its agent or attorneys, and Mortgagee, in its discretion, may enter upon and take and maintain possession of all or any part of the Mortgaged Property, together with all documents, books, records, papers, and accounts of Mortgagor or the then owners of the Mortgaged Property relating thereto, and may exclude Mortgagor, such owner, and any agents and servants thereof wholly therefrom and may, as attorney-in-fact or agent of Mortgagor or such owner, or in its own name as Mortgagee and under the powers herein granted:

- (a) Hold, operate, manage, and control all or any part of the Mortgaged Property and conduct the business, if any, thereof, either personally or by its agents, with full

UNOFFICIAL COPY

power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Mortgaged Property, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Mortgagor;

- (b) Cancel or terminate any lease or sublease of all or any part of the Mortgaged Property for any cause or on any ground that would entitle Mortgagor to cancel the same;
- (c) Elect to disaffirm any lease or sublease of all or any part of the Mortgaged Property made subsequent to this Mortgage or subordinated to the lien thereof;
- (d) Extend or modify any then existing leases and make new leases of all or any part of the Mortgaged Property, which extensions, modifications, and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the loan evidenced by the Note and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor, all persons whose interest in the Mortgaged Property are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the indebtedness secured hereby, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser; and
- (e) Make all necessary or proper repairs, complete construction of all or any part of the Mortgaged Property (as defined in the Loan Agreement), decoration, renewals, replacements, alterations, additions, betterments and improvements in connection with the Mortgaged Property as may seem judicious to Mortgagee, to insure and reinsure the Mortgaged Property and all risks incidental to Mortgagee's possession, operation, and management thereof, and to receive all rents, issues, deposits, profits, and avails therefrom.

4.7 Priority of Payments. Any rents, revenues, issues, deposits, profits, and avails of the Mortgaged Property received by Mortgagee after taking possession of all or any part of the Mortgaged Property, or pursuant to any assignment thereof to Mortgagee under the provisions of this Mortgage or any of the other Loan Documents, shall be applied in payment of or on account of the following, in such order as Mortgagee or, in case of a receivership, as the court, may determine:

- (a) Operating expenses of the Mortgaged Property (including reasonable compensation to Mortgagee, any receiver of the Mortgaged Property, any agent or agents to whom management of the Mortgaged Property has been delegated, and also including sale commissions and other compensation for and expenses of seeking and procuring

UNOFFICIAL COPY

tenants and entering into leases, establishing claims for damages, if any, and paying premiums on insurance hereinabove authorized);

- (b) Taxes, special assessments, and water and sewer charges now due or that may hereafter become due on the Mortgaged Property, or that may become a lien thereon prior to the lien of this Mortgage;
- (c) Any and all repairs and the initiation or completion of construction, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Mortgaged Property (including without limitation the cost, from time to time, of placing the Mortgaged Property in such condition as will, in the judgment of Mortgagee or any receiver thereof, make it readily rentable or salable);
- (d) Any indebtedness secured by this Mortgage or any deficiency that may result from any foreclosure sale pursuant hereto; and
- (e) Any remaining funds to Mortgagor or its successors or assigns, as their interests and rights may appear

4.8 **Receiver.** Upon the filing of any complaint to foreclose this Mortgage or at any time thereafter, the court in which such complaint is filed may appoint a receiver of the Mortgaged Property. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of any Mortgagor 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 Mortgagee hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have the power to collect the rents, revenues, issues and profits of the Mortgaged Property during the pendency of any foreclosure suit and, in case of a sale and 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 Mortgagor, except for the intervention of such receiver, would be entitled to collection of such rents, revenues, issues and profits, and such receiver shall have 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 any such period. The court may, from time to time, authorize the receiver to apply the net income from the Mortgaged Property in payment in whole or in part of: (a) the Loan hereby secured or the indebtedness secured by a 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 the foreclosure sale; or (b) the deficiency in case of a sale or deficiency.

4.9 **Foreclosure Sale.** In the event of any foreclosure sale of the Mortgaged Property, the same may be sold in one or more parcels. Mortgagee may be the purchaser at any foreclosure sale of the Mortgaged Property or any part thereof.

UNOFFICIAL COPY

4.10 Application of Proceeds. The proceeds of any foreclosure sale of the Mortgaged Property, or any part thereof, shall be distributed and applied in the following order of priority: (a) on account of all costs and expenses incidental to the foreclosure proceedings, including all such items as are mentioned in Paragraphs 4.4 and 4.5 hereof; (b) all other items that, under the terms of this Mortgage, constitute secured indebtedness additional to that evidenced by the Note, with interest thereon at the Default Rate; (c) all interest remaining unpaid under the Note; (d) all principal remaining unpaid under the Note; and (e) any overplus to Mortgagor, or its successors or assigns, as their interests and rights may appear.

4.11 Application of Deposits. In the event of any Default, Mortgagee may, at its option, without being required to do so, apply any monies or securities that constitute deposits made to or held by Mortgagee or any depository pursuant to any of the provisions of this Mortgage toward payment of Mortgagor's obligations under the Note, this Mortgage, or any of the other Loan Documents, in such order and manner as Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the Mortgaged Property. Such deposits are hereby pledged as additional security for the prompt payment of the indebtedness evidenced by the Note and any other indebtedness secured hereby and shall be held to be applied irrevocably by such depository for the purposes for which made hereunder and shall not be subject to the direction or control of Mortgagor.

4.12 Waiver of Right of Redemption or Other Rights. Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead any stay, exemption or extension law or any so-called "Moratorium Laws" now or at any time hereafter in force, nor claim, take or insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale or sales claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshaling thereof, upon foreclosure sale or other enforcement hereof. Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage, and any and all rights to reinstate the Loan subsequent to the commencement of any foreclosure proceeding, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor, and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption and reinstatement of Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by applicable law. Mortgagor agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Mortgagee, but will suffer and permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note.

UNOFFICIAL COPY

4.13 Hazardous Waste.

- (a) Mortgagor represents, warrants, covenants and agrees that the Mortgaged Property is in compliance with all "Environmental Laws" (as hereinafter defined); that, to the best of its knowledge, there are no conditions existing currently or likely to exist during the term of the Note that require or are likely to require cleanup, removal or other remedial action pursuant to any Environmental Laws; that Mortgagor is not a party to any litigation or administrative proceeding, nor is there any litigation or administrative proceeding contemplated or threatened which would assert or allege any violation of any Environmental Laws; that neither the Mortgaged Property nor Mortgagor is subject to any judgment, decree, order or citation related to or arising out of any Environmental Laws; and that no permits or licenses are required under any Environmental Laws regarding the Mortgaged Property. The term "Environmental Laws" shall mean any and all federal, state and local laws, statutes, regulations, ordinances, codes, rules and other governmental restrictions or requirements relating to the environment or hazardous substances, including, without limitation, the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Federal Resource Conservation and Recovery Act of 1976 and the Federal Comprehensive Environmental Responsibility, Cleanup and Liability Act of 1980, as well as all regulations of the Environmental Protection Agency, the Nuclear Regulatory Agency and any state department of natural resources or state environmental protection agency now or at any time hereafter in effect. Mortgagor covenants and agrees to: (i) comply or cause compliance with all applicable Environmental Laws; (ii) provide to Mortgagee immediately upon receipt copies of any correspondence, notice, pleading, citation, indictment, complaint, order or other document received by Mortgagor asserting or alleging a circumstance or condition that requires or may require a cleanup, removal or other remedial action under any Environmental Laws, or that seeks criminal or punitive penalties for an alleged violation of any Environmental Laws; and (iii) advise Mortgagee in writing as soon as Mortgagor becomes aware of any condition or circumstance which makes any of the representations or statements contained in this Paragraph 4.13(a) incomplete or inaccurate. In the event Mortgagee determines in its sole and absolute discretion that there is any evidence that any such circumstance might exist, whether or not described in any communication or notice to either Mortgagor or Mortgagee, Mortgagor agrees, at its own expense and at the request of Mortgagee, to permit an environmental audit to be conducted by Mortgagee or an independent agent reasonably selected by Mortgagee. This provision shall not relieve Mortgagor from conducting its own environmental audits or taking any other steps necessary to comply with any Environmental Laws. If, in the opinion of Mortgagee, there exists any uncorrected violation by Mortgagor of an Environmental Law or any condition which requires or may require any cleanup, removal or other remedial action under

20426037

UNOFFICIAL COPY

any Environmental Laws, and such cleanup, removal or other remedial action is not completed within the time required by the applicable Environmental Law, the same shall, at the option of Mortgagee, constitute a default hereunder, without further notice or cure period.

- (b) Mortgagor hereby represents, warrants and certifies to Mortgagee that: (i) there are no underground storage tanks located on, under or about the Mortgaged Property which are subject to the notification requirements under §9002 of the Solid Waste Disposal Act, as amended (42 U.S.C. §6991); and (ii) there is no "facility" located on or at the Mortgaged property which is subject to the reporting requirements of §312 of the Federal Emergency Planning and Community Right to Know Act of 1986, as amended, and the federal regulations promulgated thereunder (42 U.S.C. §11022).
- (c) Mortgagor agrees to indemnify, defend and hold Mortgagee and its officers, directors, employees and agents harmless from and against any and all losses, damages, liabilities, obligations, claims, costs and expenses, unless caused by an act of Mortgagee, its agents or employees or occurring after the date title to the Premises has passed to Mortgagee, whether prior to or after the date hereof and whether direct, indirect or consequential, as a result of or arising from any suit, investigation, action or proceeding, whether threatened or initiated, asserting a claim for any legal or equitable remedy under any Environmental Law. Any and all amounts owed by Mortgagor to Mortgagee under this Paragraph 4.13(c) shall constitute additional indebtedness secured by this Mortgage. Any provisions of this Mortgage to the contrary notwithstanding, the representations, warranties, covenants, agreements and indemnification obligations contained in this Paragraph 4.13 shall survive all indicia of termination of the relationship between Mortgagor and Mortgagee, including, without limitation, the repayment of all amounts due under the Loan evidenced by the Note, the cancellation of the Note, satisfaction of any guaranty, and the release of this Mortgage.

ARTICLE 5 MISCELLANEOUS

5.1 **Notices.** Any and all notices given in connection with this Mortgage shall be deemed adequately given only if in writing and addressed to the party for whom such notices are intended at the address set forth below. All notices shall be sent by personal delivery, Federal Express or other over-night messenger service, first class registered or certified mail, postage prepaid, return receipt requested. A written notice shall be deemed to have been given to the recipient party on the earlier of (a) the date it shall be delivered to the address required by this Mortgage; (b) the date delivery shall have been refused at the address required by this Mortgage; or (c) with respect to notices sent by mail, the date as of which the postal service shall have indicated

20426037

UNOFFICIAL COPY

such notice to be undeliverable at the address required by this Mortgage. Any and all notices referred to in this Mortgage, or which either party desires to give to the other, shall be addressed as follows:

If to Mortgagee: MB FINANCIAL BANK, N.A.
1200 North Ashland Avenue
Chicago, Illinois 60622
ATTN: JOHN SASSARIS

with a copy to: ROBBINS, SALOMON & PATT, LTD.
25 East Washington Street
Suite 1000
Chicago, Illinois 60602
ATTN: ALAN J. WOLF, ESQ.

If to Mortgagor: STRUBE CELERY AND VEGETABLE COMPANY
5 West South Water Market
Chicago, Illinois 60608
ATTN: ROBERT W. STRUBE, JR.

with a copy to: PIPER, MARBURY, RUDNICK & WOLFE
203 North LaSalle Street, Suite 1800
Chicago, Illinois 60601
ATTN: JASON W. LEVIN, ESQ.

5.2 Time of Essence. It is specifically agreed that time is of the essence of this Mortgage.

5.3 Covenants Run With Land, Successor Owners. All of the covenants of this Mortgage shall run with the land and be binding on any successor owners of the Premises. In the event that the ownership of the Premises or any portion thereof becomes vested in a person or persons other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest of Mortgagor with reference to this Mortgage and the Loan hereby secured in the same manner as with Mortgagor without in any way releasing or discharging Mortgagor from its obligations hereunder. Mortgagor will give immediate written notice to Mortgagee of any conveyance, transfer or change of ownership of the Premises, but nothing in this Paragraph shall vary or negate the provisions of Paragraph 3.9 hereof.

5.4 Governing Law. Mortgagee acknowledges that (i) this Mortgage and the other Loan Documents have been negotiated and executed in Illinois and (ii) the Loan Documents contemplate the making of advances and payment of indebtedness in Illinois. Therefore, Mortgagee hereby agrees that the documents, including the provisions with respect to the making of any disbursements, the creation of any monetary obligations and the rights accruing in connection with

UNOFFICIAL COPY

the Loan and obligations shall be governed by and construed in accordance with the laws of the State of Illinois.

5.5 Rights and Remedies Cumulative. All rights and remedies set forth in this Mortgage are cumulative, and the holder of the Note and of every other obligation secured hereby may recover judgment hereon, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security of any right or remedy afforded hereby.

5.6 Severability. If any provision of this Mortgage, or any paragraph, sentence, clause, phrase, or word, or the application thereof, in any circumstance, is held invalid, the validity of the remainder of this Mortgage shall be construed as if such invalid part were never included herein.

5.7 Non-Waiver. Unless expressly provided in this Mortgage to the contrary, no consent or waiver, express or implied, by any interested party referred to herein, to or of any breach or default by any other interested party referred to herein, in the performance by such party of any obligations contained herein shall be deemed a consent to or waiver of the party of any obligations contained herein or shall be deemed a consent to or waiver of the performance by such party of any other obligations hereunder or the performance by any other interested party referred to herein of the same, or of any other, obligations hereunder.

5.8 Headings. The headings of sections and paragraphs in this Mortgage are for convenience of reference only and shall not be construed in any way to limit or define the content, scope, or intent of the provisions hereof.

5.9 Grammar. As used in this Mortgage, the singular shall include the plural, and masculine, feminine, and neuter pronouns shall be fully interchangeable, where the context so requires.

5.10 Deed in Trust. If title to the Mortgaged Property or any part thereof is now or hereafter becomes vested in a trustee, any prohibition or restriction contained herein against the creation of any lien on the Mortgaged Property shall be construed as a similar prohibition or restriction against the creation of any lien on or security interest in the beneficial interest of such trust.

5.11 Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon Mortgagor, its successors, assigns, legal representatives, and all other persons or entities claiming under or through Mortgagor, and the word "Mortgagor," when used in this Paragraph 5.11, shall include all such persons and entities and any others liable for the payment of the indebtedness secured hereby or any part thereof, whether or not they have executed the Note or this Mortgage. The word "Mortgagee," when used herein, shall include Mortgagee's successors, assigns, and legal representatives, including all other holders, from time to time, of the Note.

UNOFFICIAL COPY

5.12 **Advances.** This Mortgage is given to secure not only present indebtedness under the Note, but also such future advances as are made under the terms of the Note and the Loan Documents whether such advances are obligatory or to be made at the option of the Mortgagee, to the same extent as if such future advances were made on the date of the execution of this Mortgage, although there may be no advances made at the time of execution of this Mortgage, and although there may be no indebtedness secured hereby outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to all indebtedness secured hereby, including future advances. The total amount of indebtedness secured hereby may increase or decrease from time to time, but the total unpaid balance of indebtedness secured hereby (including disbursements which the Mortgagee may make under this Mortgage, the Note or any other document with respect thereto) at any one time outstanding shall not exceed \$9,000,000.00, plus interest thereon, and all costs of collection and enforcement of the Loan Documents, including attorneys' fees (all such indebtedness being hereinafter referred to as the "Maximum Amount Secured Hereby"). This Mortgage shall be valid and have priority over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Mortgaged Property, to the extent of the Maximum Amount Secured Hereby.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

20426037

UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed as of the date hereinabove first written.

MORTGAGOR:

**STRUBE CELERY AND VEGETABLE
COMPANY**, an Illinois corporation

By: *Susan J. Strube*
Its: *Vice President*

This instrument was prepared by and after recording return to:

Barry Glazer, Esq.
ROBBINS, SALOMON & PATT, LTD.
25 East Washington Street
Suite 1000
Chicago, Illinois 60602
(312) 782-9000

UNOFFICIAL COPY

STATE OF ILLINOIS)

COUNTY OF COOK) SS

I, NANCY R. CASTRO
SUSAN J. STRUBE, a Notary Public, in and for and residing in said County, in the State aforesaid, DO HEREBY CERTIFY that SUSAN J. STRUBE, the EXECUTIVE VICE PRES of the STRUBE CELERY AND VEGETABLE COMPANY ("Strube"), an Illinois corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such EX. VICE PRES. appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of Strube, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 21st day of March, 2002.

Nancy R. Castro
NOTARY PUBLIC

My commission expires: _____



Property of Cook County Clerk's Office

20426037

UNOFFICIAL COPY

EXHIBIT "A" LEGAL DESCRIPTION

PARCEL 1:

UNITS 19 AND 20 IN CHICAGO INTERNATIONAL PRODUCE MARKET CONDOMINIUM AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED REAL ESTATE:

PARCEL A:

LOTS 1 THROUGH 15 BOTH INCLUSIVE, (EXCEPTING THEREFROM THE WEST 65 FEET OF THE SOUTH 15 FEET OF LOT 2 AND THE WEST 15 FEET OF LOTS 3 THROUGH 15, BOTH INCLUSIVE), AND LOTS 16, 17, AND 18 (EXCEPTING THEREFROM THE WEST 100 FEET THEREOF), ALL IN BLOCK 13; AND LOTS 19 TO 34 BOTH INCLUSIVE, AND LOT 35 (EXCEPTING THEREFROM THE NORTH 80.4 FEET OF THE EAST 30 FEET THEREOF) AND LOT 36 (EXCEPTING THEREFROM THE EAST 80 FEET THEREOF) ALL IN BLOCK 12, ALL SAID LOTS AND BLOCKS BEING IN S. J. WALKER'S DOCK ADDITION TO CHICAGO BEING A SUBDIVISION OF THAT PART OF THE EAST 1/2 OF SECTION 30, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, WHICH LIES NORTH OF THE WEST BRANCH OF THE SOUTH BRANCH OF THE CHICAGO RIVER, IN COOK COUNTY, ILLINOIS.

PARCEL B:

THE WESTERLY 1/2 OF CANAL "C" LYING EAST OF AND ADJOINING LOTS 19 TO 35, BOTH INCLUSIVE, (EXCEPTING THEREFROM THE NORTH 80.4 FEET OF THE WESTERLY 1/2 OF CANAL "C" LYING EAST OF AND ADJOINING THE NORTH 80.4 FEET OF LOT 35), ALL IN BLOCK 12 IN S. J. WALKER'S DOCK ADDITION TO CHICAGO, BEING A SUBDIVISION OF THE EAST 1/2 NORTH OF RIVER OF SECTION 30, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL C:

ALL THAT PART OF VACATED SOUTH WOLCOTT AVENUE DESCRIBED AS FOLLOWS:
LYING WEST OF THE WEST LINE OF LOTS 19 TO 36, BOTH INCLUSIVE, IN BLOCK 12 AFORESAID; LYING EAST OF THE EAST LINE OF LOTS 1 TO 18, BOTH INCLUSIVE, IN BLOCK 13 AFORESAID, LYING SOUTH OF A LINE DRAWN AT RIGHT ANGLES TO THE WEST LINE OF LOT 36 IN BLOCK 12 FROM A POINT WHICH IS 38.89 FEET SOUTH OF THE NORTHWEST CORNER OF SAID LOT 36 AS MEASURED ALONG THE WEST LINE OF SAID LOT 36, SAID RIGHT ANGLE LINE EXTENDED WEST TO THE EAST LINE OF LOT 1 IN BLOCK 13 AND LYING NORTH AND NORTHERLY OF A LINE DRAWN FROM THE SOUTHWEST CORNER OF LOT 19 IN BLOCK 12 TO THE SOUTHEAST CORNER OF LOT 18 IN BLOCK 13 AFORESAID; SAID VACATED STREET BEING FURTHER DESCRIBED AS THAT PART OF SOUTH WOLCOTT AVENUE LYING BETWEEN A RIGHT ANGLE LINE DRAWN FROM THE EAST LINE OF SOUTH WOLCOTT AVENUE FROM A POINT 38.89 FEET SOUTH OF THE SOUTHEASTERLY LINE OF THE BURLINGTON NORTHERN AND SANTA FE RAILROAD AND THE NORTHWESTERLY LINE OF THE WEST FORK OF THE SOUTH BRANCH OF THE CHICAGO RIVER, AS VACATED BY VACATION ORDINANCE RECORDED OCTOBER 4, 2000 AS DOCUMENT 00778090.

WHICH SURVEY IS ATTACHED AS EXHIBIT "C" TO THE DECLARATION OF CONDOMINIUM RECORDED AS DOCUMENT 0020271499 TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS, ALL IN COOK COUNTY, ILLINOIS.

PARCEL 2:

20426037

UNOFFICIAL COPY

EXHIBIT "A" LEGAL DESCRIPTION (CONTINUED)

THE RIGHT TO USE OF U19-A AND U20-A, EXCLUSIVE LIMITED COMMON ELEMENTS AS DELINEATED ON THE SURVEY ATTACHED TO THE DECLARATION AFORESAID RECORDED AS DOCUMENT 0020271499.

PARCEL 3:

EASEMENT FOR THE BENEFIT OF PARCELS 1 AND 2 AS CREATED BY AGREEMENT RECORDED OCTOBER 19, 1979 AS DOCUMENT 25201753 AS CREATED BY EASEMENT AGREEMENT MADE BY AND BETWEEN LA SALLE NATIONAL BANK, UNDER TRUST NO. 44760, AND EDWARD HINBS LUMBER CO., A CORPORATION OF DELAWARE, OVER THE FOLLOWING DESCRIBED PROPERTY:

AN EASEMENT 22 FEET IN WIDTH LYING 11 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTER LINE; BEING THAT PART OF LOTS 16, 17 AND 18 IN BLOCK 13 IN S. J. WALKER'S DOCK ADDITION TO CHICAGO, BEING A SUBDIVISION OF THAT PART OF THE EAST 1/2 OF SECTION 30, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN WHICH LIES NORTH OF THE WEST BRANCH OF THE SOUTH BRANCH OF THE CHICAGO RIVER DESCRIBED AS FOLLOWS::

NOTE: THE WEST LINE OF AFORESAID LOTS 16, 17 AND 18 IS CONSIDERED AS BEARING DUE NORTH FOR THE FOLLOWING COURSES: COMMENCING AT THE NORTHWEST CORNER OF AFORESAID LOT 16, THENCE NORTH 89 DEGREES 54 MINUTES WEST IN ITS NORTH LINE, A DISTANCE OF 35 FEET TO THE POINT OF BEGINNING OF THE AFORESAID CENTER LINE; THENCE SOUTH IN AFORESAID CENTER LINE A DISTANCE OF 347.0 FEET TO MANHOLE; THENCE SOUTH 28 DEGREES 49 MINUTES WEST IN AFORESAID CENTER LINE A DISTANCE OF 77.50 FEET TO THE END OF THE SEWER BEING IN THE WESTERLY FACE OF STEEL SHEETING, IN COOK COUNTY, ILLINOIS.

17-30-208-012

209-015

2404 S. Wolcott

Chgo Ill

20426037