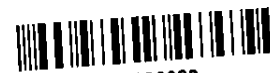


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LASALLE BANK NATIONAL ASSOCIATION,  
AS TRUSTEE UNDER A TRUST AGREEMENT, DATED MARCH 8, 1982,  
AND KNOWN AS TRUST NO. ~~391878~~ 10-39718-09  
(Mortgagor)

to

ALBANY BANK & TRUST, N.A.  
(Mortgagee)

## MORTGAGE AND ASSIGNMENT OF LEASES AND RENTS

Dated: As of <sup>MAY</sup> ~~March~~ 20, 2002

### PROPERTY LOCATION:

6840 West Touhy Avenue  
Niles, Illinois 60714

DOCUMENT PREPARED BY, AND WHEN RECORDED, RETURN TO:

Wildman, Harrold, Allen & Dixon  
225 West Wacker Drive, Suite 3000  
Chicago, Illinois 60606-1229  
Attention: Matthew B. Brotschul



LAW TITLE

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THIS MORTGAGE AND ASSIGNMENT OF LEASES AND RENTS (the "Mortgage"), made as of MAY 20, 2002, by LASALLE BANK NATIONAL ASSOCIATION, NOT PERSONALLY BUT SOLELY, AS TRUSTEE UNDER A TRUST AGREEMENT, DATED MARCH 8, 1982, AND KNOWN AS TRUST NO. <sup>10-37118-09</sup>~~391878~~, whose address is c/o Phonz Investment, LLC, 555 Skokie Boulevard, Suite 450, Northbrook, Illinois 60062 ("Mortgagor"), to ALBANY BANK & TRUST COMPANY, N.A., a national banking association, whose address is 3400 West Lawrence Avenue, Chicago, Illinois 60625 ("Mortgagee").

## WITNESSETH:

WHEREAS, Phonz Investment, LLC, a Delaware limited liability company ("Phonz"), and Mortgagee entered into that certain Secured Credit Agreement, dated September 13, 2000, as amended (the "Credit Agreement"), pursuant to which Mortgagee made a loan to Phonz; and

WHEREAS, Phonz and Mortgagee entered into that certain Line of Credit Agreement, dated March 30, 2001, which evidences an additional loan to Phonz by Mortgagee (together with the loan pursuant to the Credit Agreement, the "Loan"); and

WHEREAS, certain individuals ("Guarantors") delivered their guaranty (the "Guaranty") securing the repayment of the Loan; and

WHEREAS, certain of Guarantors possess either a direct or indirect beneficial interest in Mortgagor ("Beneficiaries"); and

WHEREAS, to secure the Guaranty and the repayment of the Loan, Beneficiaries have caused Mortgagor to enter this Mortgage to secure the payment of any and all indebtedness due to Mortgagee by Phonz or guaranteed to Mortgagee by Guarantors, including, without limitation, the indebtedness up to an aggregate THREE MILLION TWO HUNDRED THOUSAND DOLLARS (\$3,200,000.00), in lawful money of the United States of America; and

WHEREAS, Mortgagor has deeded, mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, warranted, pledged, assigned, and hypothecated and by these presents does hereby deed, mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, ~~warrant~~, pledge, assign and hypothecate unto Mortgagee, the real property described in Exhibit A attached hereto (the "Premises") and the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (collectively, the "Improvements");

TOGETHER WITH: all right, title, interest and estate of Mortgagor now owned, or hereafter acquired, in and to the following property, rights, interests and estates (the Premises, the Improvements, and such property, rights, interests and estates hereinafter described are collectively referred to herein as the "Mortgaged Property");

## GRANTING CLAUSE ONE

All easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, all

rights to oil, gas, minerals, coal and other substances of any kind or character, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road, highway, alley or avenue, opened, vacated or proposed, in front of or adjoining the Premises, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Premises and the Improvements and every part and parcel thereof, with the appurtenances thereto;

**GRANTING CLAUSE TWO**

Awards or payments, including interest thereon, that may heretofore and hereafter be made with respect to the Premises and the Improvements, whether from the exercise of the right of eminent domain or condemnation (including, without limitation, any transfer made in lieu of or in anticipation of the exercise of said rights), or for a change of grade, or for any other injury to or decrease in the value of the Premises and Improvements;

**GRANTING CLAUSE THREE**

All leases, and other agreements or arrangements heretofore or hereafter entered into affecting the use, enjoyment or occupancy of, or the conduct of any activity upon or in, the Premises and the Improvements, including any extensions, renewals, modifications or amendments thereof (collectively, the "Leases") and all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Mortgagor or its agents or employees from any and all sources arising from or attributable to the Premises and the Improvements (the "Rents"), together with all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the repayment of the Loan;

**GRANTING CLAUSE FOUR**

All proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property in accordance with the terms hereof, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property;

**GRANTING CLAUSE FIVE**

The right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Mortgagee in the Mortgaged Property;

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## GRANTING CLAUSE SIX

All proceeds, products, offspring, rents and profits from any of the foregoing, including, without limitation, those from sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the foregoing.

TO HAVE AND TO HOLD the above granted and described Mortgaged Property unto and to the use and benefit of Mortgagee, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Phonz shall well and truly repay to Mortgagee the Loan at the time and in the manner provided in the Credit Agreement and this Mortgage and shall well and truly abide by and comply with each and every covenant and condition set forth herein, in the Credit Agreement, and in the other Loan related documents in a timely manner, these presents and the estate hereby granted shall cease, terminate and be void and Mortgagee shall record a release of these presents and the estate hereby granted;

AND Mortgagor represents and warrants to and covenants and agrees with Mortgagee as follows:

### PART I

#### GENERAL PROVISIONS

1. **Repayment of Loan and Incorporation of Covenants, Conditions and Agreements.** Phonz shall repay the Loan at the time and in the manner provided in the Credit Agreement and/or any promissory notes and in this Mortgage. All the covenants, conditions and agreements contained in (a) the Credit Agreement and (b) all and any of the documents including the Credit Agreement and this Mortgage now or hereafter executed by Mortgagor, Phonz and others and by or in favor of Mortgagee, which evidences, secures or guarantees all or any portion of the payments due under the Credit Agreement or otherwise is executed and/or delivered in connection with the Credit Agreement and this Mortgage including, without limitation, any promissory notes and any guaranties (collectively, the "Loan Documents"), are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Credit Agreement.

2. **Warranty of Title.** Mortgagor warrants that Mortgagor has good, marketable and insurable title to the Mortgaged Property and has the full power, authority and right to execute, deliver and perform its obligations under this Mortgage and to deed, encumber, mortgage, give, grant, bargain, sell, alienate, enfeoff, convey, confirm, pledge, assign and hypothecate the same and that Mortgagor possesses an unencumbered fee estate in the Premises and the Improvements except for those exceptions ("Permitted Exceptions") shown in that certain title insurance policy issued by \_\_\_\_\_, dated \_\_\_\_\_, 2002, insuring the lien of this Mortgage and that this Mortgage is and will remain a valid and enforceable first lien on and security interest in the Mortgaged Property, subject only to said

Permitted Exceptions. Mortgagor shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Mortgage and shall forever warrant and defend the same to Mortgagee against the claims of all persons whomsoever.

### 3. Insurance.

(a) Mortgagor, at its sole cost and expense, for the mutual benefit of Mortgagor and Mortgagee, shall obtain and maintain during the entire term of this Mortgage (the "Term") policies of insurance against loss or damage by fire, lightning and such other perils as are included in a standard "all-risk" endorsement, and against loss or damage by all other risks and hazards covered by a standard extended coverage insurance policy including, without limitation, riot and civil commotion, vandalism, malicious mischief, burglary and theft. Such insurance shall be in an amount equal to the then full replacement cost of the Improvements. The policies of insurance carried in accordance with this paragraph shall be paid annually in advance and shall contain a "Replacement Cost Endorsement" with a waiver of depreciation, and shall have a deductible no greater than TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) unless so agreed by Mortgagee.

(b) Mortgagor, at its sole cost and expense, for the mutual benefit of Mortgagor and Mortgagee, shall also obtain and maintain during the Term the following policies of insurance:

(i) Flood insurance if any part of the Mortgaged Property is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Program in an amount at least equal to the outstanding principal amount of the Loan or the maximum limit of coverage available with respect to the Improvements under said Program, whichever is less.

(ii) Comprehensive public liability insurance, including broad form property damage, blanket contractual and personal injuries (including death resulting therefrom) coverages and containing minimum limits per occurrence of TWO MILLION DOLLARS (\$2,000,000.00) and FIVE MILLION DOLLARS (\$5,000,000.00) in the aggregate for any policy year. In addition, at least FIVE MILLION DOLLARS (\$5,000,000.00) excess and/or umbrella liability insurance shall be obtained and maintained for any and all claims generally covered under such commercial liability policies, including all legal liability imposed upon Mortgagor and all court costs and attorneys' fees incurred in connection with the ownership, operation and maintenance of the Mortgaged Property.

(iii) Rental loss and/or business interruption insurance in an amount equal to the greater of (A) estimated gross revenues for six (6) months from the operations of the Mortgaged Property or (B) the projected operating expenses (including debt service) for six (6) months for the maintenance and operation of the Mortgaged Property. The amount of such insurance shall be increased from



time to time during the Term as and when new Leases and renewal Leases are entered into and the Rents increase or the estimate of (or the actual) gross revenue, as may be applicable, increases.

(iv) Insurance against loss or damage from (A) leakage of sprinkler systems and (B) explosion of steam boilers, air conditioning equipment, high pressure piping, machinery and equipment, pressure vessels or similar apparatus now or hereafter installed in the Improvements (without exclusion for explosions), to the extent that such items now or hereafter exist upon the Mortgaged Property, in an amount at least equal to the outstanding principal amount of the Credit Agreement or TWO MILLION DOLLARS (\$2,000,000.00), whichever is less.

(v) During any period of any construction, repair or restoration, builder's "all risk" insurance in an amount equal to not less than the full insurable value of the Mortgaged Property insuring against such risks (including, without limitation, fire and extended coverage and collapse of the Improvements to agreed limits) as Mortgagee may request, in form and substance acceptable to Mortgagee.

(c) All policies of insurance (the "**Policies**") required pursuant to this paragraph: (i) shall be issued by companies approved by Mortgagee and licensed to do business in the state where the Mortgaged Property is located, with a claims paying ability rating of ["AA"] or better by Standard & Poor's Rating Services, a division of the McGraw Hill Companies, Inc. and/or a rating of "A:X" or better in the current Best's Insurance Reports; (ii) shall name Mortgagee and its successors and/or assigns as their interest may appear as the beneficiary/mortgagee; (iii) shall contain a standard mortgagee clause and a lender's loss payable endorsement or their equivalents, naming Mortgagee as the person to which all payments made by such insurance company shall be paid; (iv) shall contain a waiver of subrogation against Mortgagee; (v) shall be maintained throughout the Term without cost to Mortgagee; (vi) shall be assigned and the originals delivered to Mortgagee; (vii) shall contain such provisions as Mortgagee deems reasonably necessary or desirable to protect its interest including, without limitation, endorsements providing that neither Mortgagor, Mortgagee nor any other party shall be a co-insurer under said Policies and that Mortgagee shall receive at least thirty (30) days prior written notice of any reduction or cancellation; and (viii) shall be satisfactory in form and substance to Mortgagee and shall be approved by Mortgagee as to amounts, form, risk coverage, deductibles, loss payees and insureds. Mortgagor shall pay the premiums for such Policies (the "**Insurance Premiums**") as the same become due and payable and shall furnish to Mortgagee evidence of the renewal of each of the Policies with receipts for the payment of the Insurance Premiums or other evidence of such payment reasonably satisfactory to Mortgagee (provided, however, that Mortgagor is not required to furnish such evidence of payment to Mortgagee in the event that such Insurance Premiums have been paid by Mortgagee pursuant to Paragraph 5 hereof). If Mortgagor does not furnish such evidence and receipts at least thirty (30) days prior to the expiration of any expiring Policy, then Mortgagee may procure, but shall not be obligated to procure, such insurance and pay the Insurance Premiums therefor, and

Mortgagor agrees to reimburse Mortgagee for the cost of such Insurance Premiums promptly on demand. Within thirty (30) days after written request by Mortgagee, Mortgagor shall obtain such increases in the amounts of coverage required hereunder as may be reasonably requested by Mortgagee, taking into consideration changes in the value of money over time, changes in liability laws, changes in prudent customs and practices.

**4. Casualty.**

(a) Subject to (b) below, if the Mortgaged Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (an "Insured Casualty"), Mortgagor shall give prompt notice thereof to Mortgagee. Following the occurrence of an Insured Casualty, Mortgagor, regardless of whether insurance proceeds are available, shall promptly proceed to restore, repair, replace or rebuild 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 applicable law. The expenses incurred by Mortgagee in the adjustment and collection of insurance proceeds shall become part of the Loan and be secured hereby and shall be reimbursed by Mortgagor to Mortgagee upon demand.

(b) In case of loss or damages covered by any of the Policies, the following provisions shall apply:

(i) In the event of an Insured Casualty that does not exceed the lesser of (a) ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) or (b) ten percent (10%) of the then outstanding principal balance of the Credit Agreement, Mortgagor may settle and adjust any claim without the consent of Mortgagee and agree with the insurance company or companies on the amount to be paid upon the loss; provided that such adjustment is carried out in a competent and timely manner. In such case, Mortgagor is hereby authorized to collect and receipt for any such insurance proceeds.

(ii) In the event an Insured Casualty shall exceed the lesser of (a) ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) or (b) ten percent (10%) of the then outstanding principal balance of the Credit Agreement, then and in that event, Mortgagee may settle and adjust any claim without the consent of Mortgagor and agree with the insurance company or companies on the amount to be paid on the loss and the proceeds of any such policy shall be due and payable solely to Mortgagee and held in escrow by Mortgagee in accordance with the terms of this Mortgage.

(iii) In the event of an Insured Casualty where the loss is in an aggregate amount less than fifty percent (50%) of the original principal balance of the Credit Agreement, and if, in the reasonable judgment of Mortgagee, the Mortgaged Property can be restored within nine (9) months and prior to September 30, 2006 (the "Final Maturity Date") to an economic unit not materially less valuable (including an assessment of the impact of the termination

of any Leases due to such Insured Casualty) and not less useful than the same was prior to the Insured Casualty, and after such restoration will adequately secure the outstanding balance of the Loan, then, if no Event of Default (as hereinafter defined) shall have occurred and be then continuing, the proceeds of insurance (after reimbursement of any expenses incurred by Mortgagee) shall be applied to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Mortgaged Property or part thereof subject to the Insured Casualty, in the manner set forth below. Mortgagor hereby covenants and agrees to commence and diligently to prosecute such restoring, repairing, replacing or rebuilding; provided always, that Mortgagor shall pay all costs (and if required by Mortgagee, Mortgagor shall deposit the total thereof with Mortgagee in advance) of such restoring, repairing, replacing or rebuilding in excess of the net proceeds of insurance made available pursuant to the terms hereof.

(iv) Except as provided above, the proceeds of insurance collected upon any Insured Casualty shall, at the option of Mortgagee in its sole discretion, be applied to the repayment of the Loan or applied to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Mortgaged Property or part thereof subject to the Insured Casualty, in the manner set forth below. Any such application to the Loan shall be without any prepayment penalty. Any such application to the Loan shall be applied to those payments of principal and interest last due under the Credit Agreement but shall not postpone or reduce any payments otherwise required pursuant to the Credit Agreement other than such last due payments.

(v) In the event Mortgagor is entitled to reimbursement out of insurance proceeds held by Mortgagee, such proceeds shall be disbursed from time to time upon Mortgagee being furnished with (1) evidence satisfactory to it of the estimated cost of completion of the restoration, repair, replacement and rebuilding, (2) funds or, at Mortgagee's option, assurances satisfactory to Mortgagee that such funds are available, sufficient in addition to the proceeds of insurance to complete the proposed restoration, repair, replacement and rebuilding, and (3) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats or survey and such other reasonable evidences of cost, payment and performance as Mortgagee may reasonably require and approve. Mortgagee may, in any event, require that all plans and specifications for such restoration, repair, replacement and rebuilding be submitted to and approved by Mortgagee prior to commencement of work. 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; funds other than proceeds of insurance shall be disbursed prior to disbursement of such proceeds; and at all times, the undisbursed balance of such proceeds remaining in the hands of Mortgagee, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Mortgagee by or on behalf of Mortgagor for that purpose, shall be at least sufficient in the reasonable judgment of Mortgagee to pay for the cost of completion of the restoration, repair, replacement or rebuilding, free and clear of



all liens or claims for lien. Any surplus which may remain out of insurance proceeds held by Mortgagee after payment of such costs of restoration, repair, replacement or rebuilding shall be paid to Mortgagor.

5. **Payment of Taxes, Etc.** Mortgagor shall pay all taxes, assessments, water rates and sewer rents, now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof (the "Taxes") and all ground rents, maintenance charges, other impositions, and other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Premises, now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof (the "Other Charges") as the same become due and payable. Mortgagor will deliver to Mortgagee receipts for payment or other evidence satisfactory to Mortgagee that the Taxes and Other Charges have been so paid or are not then delinquent upon written request. Mortgagor shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Mortgaged Property, and shall promptly pay for all utility services provided to the Mortgaged Property. Mortgagor shall furnish to Mortgagee receipts for the payment of the Taxes and the Other Charges (provided, however, that Mortgagor is not required to furnish such receipts for payment of Taxes in the event that such Taxes have been paid for by Mortgagee pursuant to Paragraph 6 hereof). The Mortgagor may contest Taxes to the extent provided in the Credit Agreement.

6. **Tax and Insurance Impound Fund.**

(a) Upon the occurrence of any Event of Default, without waiving or limiting any other rights of Mortgagee as set forth herein, in any of the Loan Documents or otherwise under applicable law, in addition thereto and notwithstanding any subsequent cure thereof, at Mortgagee's sole option, upon written notice to Mortgagor, Mortgagor shall pay to Mortgagee on the first day of each calendar month (i) one-twelfth of the Taxes that Mortgagee estimates will be payable during the next ensuing twelve (12) months in order to accumulate with Mortgagee sufficient funds to pay all such Taxes at least thirty (30) days prior to their respective due dates, and (ii) one-twelfth of the Insurance Premiums that Mortgagee estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof in order to accumulate with Mortgagee sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies (said amounts in (i) and (ii) above hereinafter called the "Tax and Insurance Impound Fund"). The Tax and Insurance Impound Fund and the payments of interest or principal or both, payable pursuant to the Credit Agreement, shall be added together and shall be paid as an aggregate sum by Phonz to Mortgagee. Mortgagee will apply the Tax and Insurance Impound Fund to payments of Taxes and Insurance Premiums required to be made by Mortgagor pursuant to Paragraphs 4 and 5 hereof. In making any payment relating to the Tax and Insurance Impound Fund, Mortgagee may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) or insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Tax and Insurance Impound Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Paragraphs 4 and 5 hereof,

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Mortgagee shall, in its sole discretion, return any excess to Mortgagor or credit such excess against future payments to be made to the Tax and Insurance Impound Fund. In allocating such excess, Mortgagee may deal with the person shown on the records of Mortgagee to be the owner of the Mortgaged Property. If at any time Mortgagee determines that the Tax and Insurance Impound Fund is not or will not be sufficient to pay the items set forth in (i) and (ii) above, Mortgagee shall notify Mortgagor of such determination and Mortgagor shall increase its monthly payments to Mortgagee by the amount that Mortgagee estimates is sufficient to make up the deficiency at least thirty (30) days prior to delinquency of the Taxes and/or expiration of the Policies, as the case may be. Until expended or applied as above provided, any amounts in the Tax and Insurance Impound Fund shall constitute additional security for the Loan. The Tax and Insurance Impound Fund shall not constitute a trust fund and may be commingled with other monies held by Mortgagee. No earnings or interest on the Tax and Insurance Impound Fund shall be payable to Mortgagor. If Mortgagee so elects at any time, Mortgagor shall provide, at Mortgagor's expense, a tax service contract for the Term issued by a tax reporting agency acceptable to Mortgagee. If Mortgagee does not so elect, Mortgagor shall reimburse Mortgagee for the cost of making annual tax searches throughout the Term.

(b) Mortgagor hereby pledges to Mortgagee and grants to Mortgagee a security interest in any and all monies now or hereafter deposited in the Tax and Insurance Impound Fund, as additional security for the repayment of the Loan. Upon the occurrence of an Event of Default, Mortgagee may apply any sums then present in the Tax and Insurance Impound Fund, to the repayment of the Loan in any order in its sole discretion.

7. **Condemnation.** Mortgagor shall promptly give Mortgagee written notice of the actual or threatened commencement of any condemnation or eminent domain proceeding (a "Condemnation") and shall deliver to Mortgagee copies of any and all papers served in connection with such Condemnation. Following the occurrence of a Condemnation, Mortgagor, regardless of whether an Award (hereinafter defined) is available, shall, subject to (b), (c) and (d) below, promptly proceed to restore, repair, replace or rebuild the same to the extent practicable to be of at least equal value and of substantially the same character as prior to such Condemnation, all to be effected in accordance with applicable law.

(a) Mortgagee is hereby irrevocably appointed as Mortgagor's attorney-in-fact, coupled with an interest, with exclusive power to collect, receive and retain any award or payment ("Award") for any taking accomplished through a Condemnation (a "Taking") and to make any compromise or settlement in connection with such Condemnation, subject to the provisions of this Mortgage. Notwithstanding any Taking by any public or quasi-public authority (including, without limitation, any transfer made in lieu of or in anticipation of such a Taking), Phonz shall continue to repay the Loan at the time and in the manner provided for in the Credit Agreement, in this Mortgage and the other Loan Documents and the Loan shall not be reduced unless and until any Award shall have been actually received and applied by Mortgagee to expenses of collecting the Award and to discharge of the Loan. Mortgagee shall not be limited to the interest paid on the Award by the condemning authority but shall be entitled to receive out of the

Award interest at the rate or rates provided in the Credit Agreement. Mortgagor shall cause any Award that is payable to Mortgagor to be paid directly to Mortgagee.

(b) In the event of any Condemnation where the Award is in an aggregate amount less than the lesser of (i) ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) or (ii) ten percent (10%) of the then outstanding principal balance of the Credit Agreement, and if, in the reasonable judgment of Mortgagee, the Mortgaged Property can be restored within nine (9) months and prior to the Final Maturity Date to an economic unit not less valuable (including an assessment of the impact of the termination of any Leases due to such Condemnation) and not less useful than the same was prior to the Condemnation, and after such restoration will adequately secure the outstanding balance of the Loan, then, if no Event of Default shall have occurred and be then continuing, the proceeds of the Award (after reimbursement of any expenses incurred by Mortgagee) shall be applied to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Mortgaged Property or part thereof subject to Condemnation, in the manner set forth below. Mortgagor hereby covenants and agrees to commence and diligently to prosecute such restoring, repairing, replacing or rebuilding; provided always, that Mortgagor shall pay all costs (and if required by Mortgagee, Mortgagor shall deposit the total thereof with Mortgagee in advance) of such restoring, repairing, replacing or rebuilding in excess of the Award made available pursuant to the terms hereof.

(c) Except as provided above, the Award collected upon any Condemnation shall, at the option of Mortgagee in its sole discretion, be applied to the repayment of the Loan or applied to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Mortgaged Property or part thereof subject to the Condemnation, in the manner set forth below. Any such application to the Loan shall be without any prepayment penalty. Any such application to the Loan shall be applied to those payments of principal and interest last due under the Credit Agreement but shall not postpone or reduce any payments otherwise required pursuant to the Credit Agreement other than such last due payments. If the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by Mortgagee of such Award, Mortgagee shall have the right, whether or not a deficiency judgment on the Credit Agreement shall be recoverable or shall have been sought, recovered or denied, to receive all or a portion of said Award sufficient to repay the Loan.

(d) In the event Mortgagor is entitled to reimbursement out of the Award received by Mortgagee, such proceeds shall be disbursed from time to time upon Mortgagee being furnished with (1) evidence satisfactory to it of the estimated cost of completion of the restoration, repair, replacement and rebuilding resulting from such condemnation, (2) funds or, at Mortgagee's option, assurances satisfactory to Mortgagee that such funds are available, sufficient in addition to the proceeds of the Award to complete the proposed restoration, repair, replacement and rebuilding, and (3) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats of survey and such other evidences of costs, payment and performance as Mortgagee may unreasonably require and approve; and Mortgagee may, in any event, require that all plans and specifications for such restoration, repair, replacement and rebuilding be submitted to and approved by Mortgagee prior to

commencement of work. 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; funds other than proceeds of the Award shall be disbursed prior to disbursement of such proceeds; and at all times, the undisbursed balance of such proceeds remaining in hands of Mortgagee, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Mortgagee by or on behalf of Mortgagor for that purpose, shall be at least sufficient in the reasonable judgment of Mortgagee to pay for the costs of completion of the restoration, repair, replacement or rebuilding, free and clear of all liens or claims for lien. Any surplus which may remain out of the Award received by Mortgagee after payment of such costs of restoration, repair, replacement or rebuilding shall, in the absence of any Default under any of the Loan Documents, be distributed to the Mortgagor.

**8. Leases and Rents.**

(a) Mortgagor does hereby absolutely and unconditionally assign to Mortgagee, all of Mortgagor's right, title and interest in and to all current and future Leases and Rents, it being intended by Mortgagor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Such assignment to Mortgagee shall not be construed to bind Mortgagee to the performance of any of the covenants, conditions or provisions contained in any such Lease or otherwise impose any obligation upon Mortgagee. Mortgagor agrees to execute and deliver to Mortgagee such additional instruments, in form and substance satisfactory to Mortgagee, as may hereafter be requested by Mortgagee to further evidence and confirm such assignment. Nevertheless, subject to the terms of this paragraph, Mortgagee grants to Mortgagor a revocable license to operate and manage the Mortgaged Property and to collect the Rents. Mortgagor shall hold the Rents, or a portion thereof, sufficient to discharge all current sums due on the Loan, in trust for the benefit of Mortgagee for use in the payment of such sums. Upon an Event of Default, without the need for notice or demand, the license granted to Mortgagor herein shall automatically be revoked, and Mortgagee shall immediately be entitled to possession of all Rents, whether or not Mortgagee enters upon or takes control of the Mortgaged Property. Mortgagee is hereby granted and assigned by Mortgagor the right, at its option, upon revocation of the license granted herein, to enter upon the Mortgaged Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of the license may be applied toward repayment of the Loan in such priority and proportions as Mortgagee in its sole discretion shall deem proper.

(b) Each Lease shall be subordinated to this Mortgage and that the tenant thereunder agrees to attorn to Mortgagee. Leases executed after the date hereof shall not contain any provisions which adversely affect the Mortgaged Property or which might adversely affect the rights of any holder of the Loans without the prior written consent of Mortgagee. Each tenant shall conduct business only in that portion of the Mortgaged Property covered by its Lease. Upon request, Mortgagor shall furnish Mortgagee with executed copies of all Leases.



(c) Mortgagor shall not, without the prior consent of Mortgagee (i) enter into any Lease of all or any part of the Mortgaged Property with any Person other than an Affiliate in excess of five percent (5%) of gross leasable area rentable square feet (a "Major Lease"), (ii) cancel, terminate, abridge or otherwise modify the terms of any Major Lease, or accept a surrender thereof, (iii) consent to any assignment of or subletting under any Major Lease not in accordance with its terms, (iv) cancel, terminate, abridge or otherwise modify any guaranty of any Major Lease or the terms thereof, (v) accept prepayments of installments of Rents for a period of more than one (1) month in advance or (vi) further assign the whole or any part of the Leases or the Rents. In addition to the foregoing, Mortgagor shall not (A) lease all or any part of the Mortgaged Property, (B) cancel, terminate, abridge or otherwise modify the terms of any Lease, or accept a surrender thereof, (C) consent to any assignment of or subletting under any Lease not in accordance with its terms or (D) cancel, terminate, abridge or otherwise modify any guaranty of any Lease or the terms thereof unless such actions are exercised for a commercially reasonable purpose in an arms-length transaction.

(d) Mortgagor (i) shall observe and perform all the obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to impair the value of the Leases as security for the Loan; (ii) shall promptly send copies to Mortgagee of all notices of default which Mortgagor shall send or receive thereunder; (iii) shall enforce all the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed, short of termination thereof, (iv) shall not collect any of the Rents more than one (1) month in advance; (v) shall not execute any other assignment of the lessor's interest in the Leases or the Rents; (vi) shall deliver to Mortgagee, upon request, tenant estoppel certificates from each commercial tenant at the Mortgaged Property in form and substance reasonably satisfactory to Mortgagee; and (vii) shall execute and deliver at the request of Mortgagee all such further assurances, confirmations and assignments in connection with the Mortgaged Property as Mortgagee shall from time to time require.

(e) All security deposits of tenants, whether held in cash or any other form, shall not be commingled with any other funds of Mortgagor and, if cash, shall be deposited by Mortgagor at such commercial or savings bank or banks, or otherwise held in compliance with applicable law, as may be reasonably satisfactory to Mortgagee. Any bond or other instrument which Mortgagor is permitted to hold in lieu of cash security deposits under any applicable legal requirements shall be maintained in full force and effect in the full amount of such deposits unless replaced by cash deposits as hereinabove described, shall be issued by an institution reasonably satisfactory to Mortgagee, shall, if permitted pursuant to any legal requirements, name Mortgagee as payee or mortgagee thereunder (or at Mortgagee's option, be fully assignable to Mortgagee) and shall, in all respects, comply with any applicable legal requirements and otherwise be reasonably satisfactory to Mortgagee. Mortgagor shall, upon request, provide Mortgagee with evidence reasonably satisfactory to Mortgagee of Mortgagor's compliance with the foregoing. Following the occurrence and during the continuance of any Event of Default, Mortgagor shall, upon Mortgagee's request, if permitted by any applicable legal requirements, turn over to Mortgagee the security deposits (and any interest theretofore



earned thereon) with respect to all or any portion of the Mortgaged Property, to be held by Mortgagee subject to the terms of the Leases.

9. **Maintenance and Use of Mortgaged Property.** Mortgagor shall cause the Mortgaged Property to be maintained in a good and safe condition and repair. The Improvements shall not be removed, demolished or materially altered without the consent of Mortgagee which consent shall not be unreasonably withheld. Mortgagor shall promptly comply with all laws, orders and ordinances affecting the Mortgaged Property, or the use thereof. In addition to and not in limitation of its obligations as set forth in Paragraphs 4 and 7 hereof, Mortgagor shall promptly repair, replace or rebuild any part of the Mortgaged Property that becomes damaged, worn or dilapidated and shall complete and pay for any structure at any time in the process of construction or repair on the Premises. Mortgagor shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting the uses which may be made of the Mortgaged Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Mortgaged Property is or shall become a nonconforming use, Mortgagor will not cause or permit such nonconforming use to be discontinued or abandoned without the express written consent of Mortgagee. Mortgagor shall not change the use of the Mortgaged Property except to the extent such change in use is consistent with Mortgagor's current business, permit or suffer to occur any waste on or to the Mortgaged Property or to any portion thereof or take any steps whatsoever to convert the Mortgaged Property, or any portion thereof, to a condominium or cooperative form of management. Mortgagor will not install or permit to be installed on the Premises any underground storage tank.

10. **Transfer or Encumbrance of the Mortgaged Property.**

(a) Mortgagor acknowledges that Mortgagee has examined and relied on the creditworthiness and experience of Mortgagor in owning and operating properties such as the Mortgaged Property in agreeing to make the Loans, and that Mortgagee will continue to rely on Mortgagor's ownership of the Mortgaged Property as a means of maintaining the value of the Mortgaged Property as security for repayment of the Loan. Mortgagor acknowledges that Mortgagee has a valid interest in maintaining the value of the Mortgaged Property so as to ensure that, should Phonz default in the repayment of the Loan, Mortgagee can recover the Loan by a sale of the Mortgaged Property. Mortgagor shall not sell, convey, alienate, mortgage, encumber, pledge or otherwise transfer the Mortgaged Property or any part thereof, or permit the Mortgaged Property or any part thereof to be sold, conveyed, alienated, mortgaged, encumbered, pledged or otherwise transferred.

(b) Except as otherwise permitted in the Credit Agreement, a sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer within the meaning of this Paragraph 10 shall be deemed to include (i) an installment sales agreement wherein Mortgagor agrees to sell the Mortgaged Property or any part thereof for a price to be paid in installments; (ii) an agreement by Mortgagor leasing all or a substantial part of the Mortgaged Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgagor's right, title and interest in and to any Leases or any Rents; (iii) if Mortgagor, or any

general partner or managing member of Mortgagor is a corporation, the voluntary or involuntary sale, conveyance or transfer of such corporation's stock (or the stock of any corporation directly or indirectly controlling such corporation by operation of law or otherwise); (iv) if Mortgagor, or any general partner of Mortgagor is a limited or general partnership, joint venture or limited liability company, the change, removal, resignation or addition of a general partner, managing partner, or joint venturer or the transfer of any ownership interest of any general partner, managing partner or joint venturer or the transfer, assignment or pledge of any ownership interest of any general partner, managing partner or joint venturer; (v) if Mortgagor is a limited partnership, the voluntary or involuntary sale, conveyance, transfer or pledge of any limited partnership interests or the creation or issuance of new limited partnership interests, by which an aggregate of more than forty-nine percent (49%) of such limited partnership interests are held by parties who are not currently limited partners; or (vi) if Mortgagor is a limited liability company, the voluntary or involuntary sale, conveyance or transfer of a member's interest.

(c) Mortgagee shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Loan immediately due and payable upon Mortgagor's sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property. This provision shall apply to every sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property regardless of whether voluntary or not, or whether or not Mortgagee has consented to any previous sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property.

(d) Mortgagee's consent to one sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property shall not be deemed to be a waiver of Mortgagee's right to require such consent to any future occurrence of same. Any sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property made in contravention of this paragraph shall be null and void and of no force and effect.

**11. Representations and Covenants Concerning Loans.** Mortgagor represents, warrants and covenants as follows:

(a) Except as specifically disclosed in writing to Mortgagee, all material certifications, permits, licenses and approvals, including, without limitation, certificates of completion and occupancy permits required for the legal use, occupancy and operation of the Mortgaged Property, have been obtained and are in full force and effect. Except as specifically disclosed in writing to Mortgagee, the Mortgaged Property is free of material damage and is in good repair, and there is no proceeding pending for the total or partial condemnation of, or affecting, the Mortgaged Property.

(b) Except as specifically disclosed in writing to Mortgagee, the Mortgaged Property is not subject to any Leases, and no person has any possessory interest in the Mortgaged Property or right to occupy the same other than Mortgagor.

(c) Except as specifically disclosed in writing to Mortgagee, the Mortgaged Property is and shall at all times remain in all material respects in compliance with all statutes, ordinances, regulations and other governmental or quasi-governmental requirements and private covenants now or hereafter relating to the ownership, construction, use or operation of the Mortgaged Property.

(d) There shall never be, and, to Mortgagor's knowledge and except as specifically disclosed in writing to Mortgagee, there has not been committed by Mortgagor or any other person in occupancy of or involved with the operation or use of the Mortgaged Property any act or omission affording the federal government or any state or local government the right of forfeiture as against the Mortgaged Property or any part thereof or any monies paid in performance of Mortgagor's obligations under any of the Loan Documents.

12. **Changes in Laws Regarding Taxation.** If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Loan from the value of the Mortgaged Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Loan or Mortgagee's interest in the Mortgaged Property, Mortgagor will pay such tax, with interest and penalties thereon, if any. In the event Mortgagee is advised by counsel chosen by it that the payment of such tax or interest and penalties by Mortgagor would be unlawful or taxable to Mortgagee or unenforceable or provide the basis for a defense of usury, then in any such event, Mortgagee shall have the option, by written notice of not less than ninety (90) days, to declare the Loan immediately due and payable.

13. **No Credits on Account of the Loan.** Mortgagor will not claim or demand or be entitled to any credit or credits on account of the Loan for any part of the Taxes or Other Charges assessed against the Mortgaged Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Mortgaged Property, or any part thereof, for real estate tax purposes by reason of this Mortgage or the Loan. In the event such claim, credit or deduction shall be required by law, Mortgagee shall have the option, by written notice of not less than ninety (90) days, to declare the Loan immediately due and payable.

14. **Documentary Stamps.** If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Credit Agreement or this Mortgage, or impose any other tax or charge on the same, Mortgagor will pay for the same, with interest and penalties thereon, if any.

15. **Inspection.** Mortgagor will permit Mortgagee by its representatives and agents, to inspect any of the Mortgaged Property at such reasonable times and intervals as the Mortgagee may designate.

16. **Performance of Other Agreements.** Mortgagor shall observe and perform each and every term to be observed or performed by Mortgagor pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Mortgaged Property.

17. **Further Acts, Etc.** Mortgagor will, at the cost of Mortgagor, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such reasonable

further acts, deeds, conveyances, mortgages, assignments, notices of assignment, financing statements or continuation statements, transfers and assurances as Mortgagee shall, from time to time, require, for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee the property and rights hereby deeded, mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage or for facilitating the sale of the Loan and the Loan Documents as provided in the Credit Agreement. Mortgagor, within ten (10) business days of written demand therefor, will execute and deliver and hereby authorizes Mortgagee to execute, upon Mortgagor's failure to do so within the then (10) business day period set forth herein, in the name of Mortgagor or without the signature of Mortgagor to the extent Mortgagee may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Mortgagee in the Mortgaged Property. Upon foreclosure, the appointment of a receiver or any other relevant action, Mortgagor will, at the cost of Mortgagor and without expense to Mortgagee, cooperate fully and completely to effect the assignment or transfer of any license, permit, agreement or any other right necessary or useful to the operation of or the Mortgaged Property. Mortgagor grants to Mortgagee upon Default an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting, any and all rights and remedies available to Mortgagee at law and in equity, including, without limitation, such rights and remedies available to Mortgagee pursuant to this paragraph.

**18. Recording of Mortgage, Etc.** Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this Mortgage, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interest of Mortgagee in, the Mortgaged Property. Mortgagor will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any deed of trust supplemental hereto, any security instrument with respect to the Mortgaged Property and any instrument of further assurance, and all federal, state, county and municipal, taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any deed of trust supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance, except where prohibited by law so to do. Mortgagor shall hold harmless and indemnify Mortgagee, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Mortgage.

**19. Reporting Requirements.** Mortgagor agrees to give prompt notice to Mortgagee of the insolvency or bankruptcy filing of Mortgagor or the death, insolvency or bankruptcy filing of any guarantor hereof.

**20. Events of Default.** The Loan shall become immediately due and payable at the option of Mortgagee upon the happening of any one or more of the following events of default (each an "Event of Default"):



- (a) The occurrence of any Default as defined in the Credit Agreement.
- (b) The breach by Mortgagor (other than a breach which constitutes an Event of Default under another subsection of this Section 20) of any of the terms or provisions of this Mortgage which is not remedied within five days after written notice from the Mortgagor.
- (c) subject to Phonz's right to contest as provided in the Credit Agreement, if any of the Taxes or Other Charges are not paid when the same are due and payable;
- (d) if the Policies are not kept in full force and effect, or if the Policies are not delivered to Mortgagee upon request;
- (e) if Mortgagor transfers or encumbers any portion of the Mortgaged Property in violation hereof;
- (f) if Mortgagor shall be in default under any other deed of trust or security agreement covering any part of the Mortgaged Property whether it be superior or junior in lien to this Mortgage;
- (g) if Mortgagor fails to cure properly any violations of laws or ordinances affecting or which may be interpreted to affect the Mortgaged Property within thirty (30) days after Mortgagor first receives notice of any such violations, except that as long as Mortgagor has commenced to cure the same and continues to diligently prosecute the same to cure, such thirty (30) day period shall be extended until the cure is effected; provided, however, that in no event shall such thirty (30) day period be extended such that a failure to cure causes this Mortgage to be subordinate to any lien or interest of any third party;
- (h) except as disclosed to Mortgagee as of the date hereof or as otherwise permitted in this Mortgage, the alteration, improvement, demolition or removal of any of the Improvements without the prior consent of Mortgagee;
- (i) if Mortgagor ceases to continuously operate the Mortgaged Property or any material portion thereof for any reason whatsoever (other than temporary cessation in connection with any repair or renovation thereof undertaken with the consent of Mortgagee).

**21. Right To Cure Defaults.** Upon the occurrence of any Event of Default or if Mortgagor or Phonz fails to make any payment or to do any act as herein provided, Mortgagee may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee is authorized reasonable entry of and upon the Mortgaged Property for such purposes or appear in, defend, or bring any action or proceeding to protect its interest in the Mortgaged Property or to foreclose this Mortgage or collect the Loan, and the cost and expense thereof (including reasonable attorneys' fees and disbursements to the extent permitted by law), with interest at the applicable rate as set forth in the Credit Agreement for the period after notice from



Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee, shall constitute a portion of the Loan, shall be secured by this Mortgage and the other Loan Documents and shall be due and payable to Mortgagee upon demand.

## 22. Additional Remedies.

(a) Upon the occurrence of any Event of Default, Mortgagee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and, in and to the Mortgaged Property by Mortgagee itself, including, without limitation, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

- (i) declare the entire Loan to be immediately due and payable;
- (ii) institute a proceeding or proceedings for the complete foreclosure of this Mortgage in which case the Mortgaged Property or any interest therein may be sold for cash, or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (iii) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Loan then due and payable, subject to the continuing lien of this Mortgage for the balance of the Loan not then due;
- (iv) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, or in any of the other Loan Documents;
- (v) recover judgment on the Credit Agreement either before, during or after any proceedings for the enforcement of this Mortgage;
- (vi) apply for the appointment of a trustee, receiver, liquidator or conservator of the Mortgaged Property, without notice and without regard for the adequacy of the security for the Loan and without regard for the solvency of Phonz, Mortgagor, any guarantors or of any person, firm or other entity liable for the repayment of the Loan;
- (vii) enforce Mortgagee's interest in the Leases and Rents and enter into or upon the Mortgaged Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, and thereupon Mortgagee may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Mortgaged Property and conduct the business thereat; (B) complete any construction on the Mortgaged Property in such manner and form as Mortgagee deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or

on the Mortgaged Property; (D) exercise all rights and powers of Mortgagor with respect to the Mortgaged Property, whether in the name of Mortgagor or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents; and (E) apply the receipts from the Mortgaged Property to the repayment of the Loan, after deducting therefrom all expenses (including reasonable attorneys' fees and disbursements) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments insurance and other charges in connection with the Mortgaged Property, as well as just and reasonable compensation for the services of Mortgagee, its counsel, agents and employees;

(viii) require Mortgagor to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of any portion of the Mortgaged Property occupied by Mortgagor and require Mortgagor to vacate and surrender possession to Mortgagee of the Mortgaged Property or to such receiver and, in default thereof, evict Mortgagor by summary proceedings or otherwise; or

(ix) pursue such other rights and remedies as may be available at law or in equity.

(b) In the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this Mortgage shall continue as a lien on the remaining portion of the Mortgaged Property.

(c) The proceeds of any sale made under or by virtue of this Paragraph, together with any other sums which then may be held by Mortgagee under this Mortgage, whether under the provisions of this paragraph or otherwise, shall be applied by Mortgagee to the repayment of the Loan in such priority and proportion as Mortgagee in its sole discretion shall deem proper.

(d) Mortgagee may adjourn from time to time any foreclosure sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(e) Upon any sale made under or by virtue of this Paragraph 22, Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Loan the net sales price after deducting therefrom the expenses of the sale and costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage.

(f) No recovery of any judgment by Mortgagee and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of

Mortgagor shall affect in any manner or to any extent the lien of this Mortgage upon the Mortgaged Property or any part thereof, or any liens, rights, powers or remedies of Mortgagee hereunder, but such liens, rights, powers and remedies of Mortgagee shall continue unimpaired as before, provided, however, that in the event that Mortgagee is under no further obligation to advance funds and there has been a full recovery of any judgment by Mortgagee, the Mortgagee shall release the lien of this Mortgage.

(g) Mortgagee may terminate or rescind any proceeding or other action brought in connection with its exercise of the remedies provided in this Paragraph 22 at any time before the conclusion thereof, as determined in Mortgagee's sole discretion and without prejudice to Mortgagee.

(h) Mortgagee may resort to any remedies and the security given by the Credit Agreement, this Mortgage or the Loan Documents in whole or in part, and in such portions and in such order as determined by Mortgagee's sole discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by the Credit Agreement, this Mortgage or any of the other Loan Documents. The failure of Mortgagee to exercise any right, remedy or option provided in the Credit Agreement, this Mortgage or any of the other Loan Documents shall not be deemed a waiver of such right, remedy or option or of any covenant or obligation secured by the Credit Agreement, this Mortgage or the other Loan Documents. No acceptance by Mortgagee of any payment after the occurrence of any Event of Default and no payment by Mortgagee of any obligation for which Mortgagor or Phonz is liable hereunder shall be deemed to waive or cure any Event of Default with respect to Mortgagor or Phonz, or Mortgagor's and/or Phonz's liability to pay such obligation. No sale of all or any portion of the Mortgaged Property, no forbearance on the part of Mortgagee, and no extension of time for the repayment of the whole or any portion of the Loan or any other indulgence given by Mortgagee to Mortgagor, shall operate to release or in any manner affect the interest of Mortgagee in the remaining Mortgaged Property or the liability of Phonz to repay the Loan. No waiver by Mortgagee shall be effective unless it is in writing and then only to the extent specifically stated. All costs and expenses of Mortgagee in exercising the rights and remedies under this Paragraph 22 (including reasonable attorneys' fees and disbursements to the extent permitted by law), shall be paid by Mortgagor immediately upon notice from Mortgagee, with interest at the applicable rate as set forth in the Credit Agreement for the period after notice from Mortgagee and such costs and expenses shall constitute a portion of the Loan and shall be secured by this Mortgage.

(i) The interests and rights of Mortgagee under the Credit Agreement, this Mortgage or in any of the other Loan Documents shall not be impaired by any indulgence, including (i) any renewal, extension or modification which Mortgagee may grant with respect to any of the Loan, (ii) any surrender, compromise, release, renewal, extension, exchange or substitution which Mortgagee may grant with respect to the Mortgaged Property or any portion thereof; or (iii) any release or indulgence granted to any maker, endorser, guarantor or surety of any of the Loan.

23. **Right of Entry.** In addition to any other rights or remedies granted under this Mortgage, Mortgagee and its agents, during the Term, shall have the right to enter and inspect the Mortgaged Property during normal business hours. The cost of such inspections or audits shall be borne by Mortgagor should Mortgagee determine that an Event of Default exists, including the cost of all follow up or additional investigations or inquiries deemed reasonably necessary by Mortgagee. The cost of such inspections, if not paid for by Mortgagor following demand, may be added to the principal balance of the sums due under the Credit Agreement and this Mortgage and shall bear interest thereafter until paid at the applicable rate as set forth in the Credit Agreement.

24. **Actions and Proceedings.** Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Mortgagee, in its sole discretion, decides should be brought to protect their interest in the Mortgaged Property. Mortgagee shall, at its option, be subrogated to the lien of any deed of trust or other security instrument discharged in whole or in part by the Loan, and any such subrogation rights shall constitute additional security for the repayment of the Loan.

25. **Waiver of Setoff and Counterclaim.** All amounts due under this Mortgage, the Credit Agreement and the other Loan Documents shall be payable without setoff, counterclaim or any deduction whatsoever. Mortgagor hereby waives the right to assert a setoff, counterclaim (other than a mandatory or compulsory counterclaim) or deduction in any action or proceeding in which Mortgagee is a participant, or arising out of or in any way connected with this Mortgage, the Credit Agreement, any of the other Loan Documents, or the Loan.

26. **Contest of Certain Claims.** Notwithstanding the provisions of Paragraphs 5 and 20 hereof, Mortgagor shall not be in default for failure to pay or discharge Taxes, Other Charges or mechanic's or materialman's lien asserted against the Mortgaged Property if, and so long as, (a) Mortgagor shall have notified Mortgagee of same within five (5) business days of obtaining knowledge thereof, (b) Mortgagor shall diligently and in good faith contest the same by appropriate legal proceedings which shall operate to prevent the enforcement or collection of the same and the sale of the Mortgaged Property or any part thereof to satisfy the same; (c) Mortgagor shall have furnished to Mortgagee a cash deposit, or an indemnity bond satisfactory to Mortgagee with a surety reasonably satisfactory to Mortgagee, in the amount of the Taxes, Other Charges or mechanic's or materialman's lien claim, plus a reasonable additional sum to pay all costs, interest and penalties that may be imposed or incurred in connection therewith, to assure payment of the matters under contest and to prevent any sale or foreclosure of the Mortgaged Property or any part thereof; (d) Mortgagor shall promptly upon, final determination thereof pay the amount of any such Taxes, Other Charges or claim so determined, together with all costs, interest and penalties which may be payable in connection therewith; (e) the failure to pay the Taxes, Other Charges or mechanic's or materialman's lien claim does not constitute a default under any other deed of trust, mortgage or security interest covering or affecting any part of the Mortgaged Property; and (f) notwithstanding the foregoing, Mortgagor shall immediately upon request of Mortgagee pay (and if Mortgagor shall fail so to do, Mortgagee may, but shall not be required to, pay or cause to be discharged or bonded against) any such Taxes, Other Charges or claim notwithstanding such contest, if in the opinion of Mortgagee, the Mortgaged Property or any part thereof or interest therein may be in danger of



being sold, forfeited, foreclosed, terminated, canceled or lost. Mortgagee may pay over any such cash deposit or part thereof to the claimant entitled thereto at any time when, in the judgment of Mortgagee, the entitlement of such claimant is established.

27. **Recovery of Sums Required to be Paid.** Mortgagee shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Loan as the same become due, without regard to whether or not the balance of the Loan shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Mortgagor or Phonz existing at the time such earlier action was commenced.

28. **Marshaling and Other Matters.** Mortgagor hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshaling in the event of any sale hereunder of the Mortgaged Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor, and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage and on behalf of all persons to the extent permitted by applicable law.

29. **Environmental Monitoring.** Mortgagor shall give prompt written notices to Mortgagee of: (a) any proceeding or written inquiry by any party with respect to the presence of any Hazardous Materials on, under, from or about the Mortgaged Property, (b) all claims made or threatened in writing by any third party against Mortgagor or the Mortgaged Property relating to any loss or injury resulting from any Hazardous Materials, and (c) Mortgagor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Mortgaged Property that could cause the Mortgaged Property to be subject to any investigation or cleanup pursuant to any Environmental Law. Mortgagor shall permit Mortgagee to join and participate in, as a party if it so elects, any legal proceedings or actions initiated with respect to the Mortgaged Property in connection with any Environmental Laws or Hazardous Materials, and Mortgagor shall pay all attorneys' fees and disbursements incurred by Mortgagee in connection therewith. Upon Mortgagee's request, at any time and from time to time while this Mortgage is in effect but not more frequently than once per calendar year, unless Mortgagee has determined (in the exercise of its good faith judgment) that reasonable cause exists for the performance of an environmental inspection or audit of the Mortgaged Property, Mortgagor shall provide at Mortgagor's sole expense, (i) an inspection or audit of the Mortgaged Property prepared by a licensed hydrogeologist or licensed environmental engineer approved by Mortgagee indicating the presence or absence of Hazardous Materials on, in or near the Mortgaged Property, and (ii) an inspection or audit of the Mortgaged Property prepared by a duly qualified engineering or consulting firm approved by Mortgagee, indicating the presence or absence of asbestos on the Mortgaged Property; provided, however, any such inspection or audit requested by Mortgagee, during the Term, in excess of one (1) inspection during each five (5) year period commencing upon the date hereof, shall be performed at Mortgagee's expense unless an Event of Default exists or Mortgagee has determined (in the exercise of its good faith and judgment) that reasonable cause exists for the performance of an environmental inspection or audit. If Mortgagor fails to provide such inspection or audit, within thirty (30) days after such request Mortgagee may order same, and Mortgagor hereby grants to Mortgagee and its employees and



agents access to the Mortgaged Property and a license to undertake such inspection or audit. The cost of such inspection or audit may be added to the Loan and shall bear interest thereafter until paid at the applicable rate set forth the Credit Agreement. In the event that any environmental site assessment report prepared in connection with such inspection or audit recommends that an operations and maintenance plan be implemented for any Hazardous Material, Mortgagor shall cause such operations and maintenance plan to be prepared and implemented at Mortgagor's expense upon request of Mortgagee. In the event that any investigation, site monitoring, containment cleanup, removal, restoration, or other work of any kind is reasonably necessary or desirable under an applicable Environmental Law (the "**Remedial Work**"), Mortgagor shall commence and thereafter diligently prosecute to completion all such Remedial Work within thirty (30) days after written demand by Mortgagee for performance thereof (or any such shorter period of time as may be required under applicable law.) All Remedial Work shall be performed by contractors approved in advance by Mortgagee, and under the supervision of a consulting engineer approved by Mortgagee. All costs and expenses of such Remedial Work shall be paid by Mortgagor including, without limitation, Mortgagee's reasonable attorneys' fees and disbursements incurred in connection with monitoring or review of such Remedial Work. In the event Mortgagor shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Mortgagee may, but shall not be required to, cause such Remedial Work to be performed, and all costs and expenses thereof, or incurred in connection therewith, may be added to the Loan and, shall bear interest thereafter until paid at the applicable rate set forth in the Credit Agreement.

30. **Indemnification.** In addition to any other indemnifications provided herein or in the other Loan Documents, Mortgagor shall protect, defend, indemnify and save harmless Mortgagee from and against all liabilities, obligations, claims, demands, damages, penalties, causes of action, losses, fines, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements), imposed upon or incurred by or asserted against Mortgagee except to the extent that the circumstances giving rise to such liabilities, obligations, claims, demands, damages, penalties, causes of action, losses, fines, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) are caused by the gross negligence or willful misconduct of Mortgagee or its agents by reason of (a) ownership of this Mortgage, the Mortgaged Property or any interest therein or receipt of any Rents; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Mortgaged Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) any use, nonuse or condition in, on or about the Mortgaged Property or any part thereof or on adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (d) any failure on the part of Mortgagor to perform or comply with any of the terms of this Mortgage; (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof; (f) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Material on, from, or affecting the Mortgaged Property; (g) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Material; (h) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Material; (i) any violation of the Environmental Laws, which are based upon or in any way related to such Hazardous Material including, without limitation, the costs and expenses of any Remedial Work relating thereto, attorney and consultant fees and disbursements, investigation and laboratory

fees, court costs, and litigation expenses; (j) brokers, finders or similar persons claiming to be entitled to a commission in connection with the Loan, any Lease or other transaction involving the Mortgaged Property or any part thereof under any legal requirement or any liability asserted against Mortgagee with respect thereto; and (k) the claims of any lessee of any or any portion of the Mortgaged Property or any person acting through or under any lessee or otherwise arising under or as a consequence of any Lease unless the circumstance giving rise to such liabilities, obligations, claims, demands, damages, penalties, causes of action, losses, fines, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) occur during a period of time when Mortgagee has assumed the role of Landlord. Any amounts payable to Mortgagee by reason of the application of this Paragraph 30 shall be secured by this Mortgage and shall become immediately due and payable and shall bear interest at the applicable rate as set forth in the Credit Agreement from the date loss or damage is sustained by Mortgagee until paid. The obligations and liabilities of Mortgagor under this Paragraph 30 shall survive and termination, satisfaction, or assignment of this Mortgage and the exercise by Mortgagee of any of its rights or remedies hereunder, including, but not limited to, the acquisition of the Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure.

31. **Notices.** Any notice, demand, statement, request or consent made hereunder shall be provided as set forth in the Credit Agreement.

32. **Authority.**

(a) Mortgagor (and the undersigned representative of Mortgagor, if any) represent and warrant that it (or they, as the case may be) has full power, authority and right to execute, deliver and perform its obligations pursuant to this Mortgage, and to deed, mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, warrant, pledge, hypothecate and assign the Mortgaged Property pursuant to the terms hereof and to keep and observe all of the terms of this Mortgage on Mortgagor's part to be performed.

(b) Mortgagor represents and warrants that Mortgagor is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended and the related Treasury Department regulations, including temporary regulations.

33. **Waiver of Notice.** Mortgagor shall not be entitled to any notices of any nature whatsoever from Mortgagee except with respect to matters for which this Mortgage specifically and expressly provides for the giving of notice by Mortgagee to Mortgagor and except with respect to matters for which Mortgagee is required by applicable law to give notice, and Mortgagor hereby expressly waives the right to receive any notice from Mortgagee with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by Mortgagee to Mortgagor.

34. **Reasonable Discretion of Mortgagee.** Wherever pursuant to this Mortgage, Mortgagee exercises any right given to it to consent or not consent or approve or disapprove, or any arrangement or term is to be satisfactory to Mortgagee, the decision of Mortgagee to consent or not consent, to approve or disapprove or to decide that arrangements or terms are satisfactory

or not satisfactory shall be in the reasonable discretion of Mortgagee and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

35. **Non-Waiver.** The failure of Mortgagee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (a) the failure of Mortgagee to comply with any request of Mortgagor, Phonz or any guarantor to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the Credit Agreement, or the other Loan Documents, (b) the release, regardless of consideration, of the whole or any part of the Mortgaged Property, or of any person liable for the Loan or any portion thereof, or (c) any agreement or stipulation by Mortgagee extending the time of payment or otherwise modifying or supplementing the terms of the Credit Agreement, this Mortgage or any of the other Loan Documents. Mortgagee may resort for the repayment of the Loan to any other security held by Mortgagee in such order and manner as Mortgagee, in its sole discretion, may elect. Mortgagee may take action to recover the Loan, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose this Mortgage. The rights and remedies of Mortgagee under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Mortgagee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

36. **No Oral Change.** This Mortgage, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Mortgagor or Mortgagee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

37. **Liability.** If Mortgagor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. Subject to the provisions hereof requiring Mortgagee's consent to any transfer of the Mortgaged Property, this Mortgage shall be binding upon and inure to the benefit of Mortgagor and Mortgagee and their respective successors and assigns forever.

38. **Inapplicable Provisions.** If any term, covenant or condition of the Credit Agreement or this Mortgage is held to be invalid, illegal or unenforceable in any respect, the Credit Agreement and this Mortgage shall be construed without such provision.

39. **Headings, Etc.** The headings and captions of various paragraphs of this Mortgage are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

40. **Definition.** Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage may be used interchangeably in singular or plural form and the word "Mortgagor" shall mean "each Mortgagor and any subsequent owner or owners of the Mortgaged Property or any part thereof or any interest therein," the word "Mortgagee" shall mean "Mortgagee and any subsequent holder

of the Credit Agreement or the Notes, if any," the word "Credit Agreement" shall mean "the Credit Agreement and any other evidence of indebtedness secured by this Mortgage, including without limitation, the Notes, if any," the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, and any other entity, and the words "Mortgaged Property" shall include any portion of the Mortgaged Property and any interest therein and the words "attorneys' fees" shall include any and all attorneys' fees, paralegal and law clerk fees, including, without limitation, fees at the pre-trial, trial and appellate levels incurred or paid by Mortgagee in protecting its interest in the Mortgaged Property and enforcing its rights hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

41. **Assignments.** Mortgagee shall have the right to assign or transfer its rights under this Mortgage without limitation. Any assignee or transferee shall be entitled to all the benefits afforded Mortgagee under this Mortgage.

42. **Additional Agreements.**

(a) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon an Event of Default which are more limited than the rights that would otherwise be vested in Mortgagee under the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et seq. ("IMFL") in the absence of such provision, Mortgagee shall be vested with the rights granted in the IMFL to the full extent permitted by law.

(b) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 15-1510 and 15-1512 of the IMFL, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

(c) Without limiting the generality of the foregoing, this Mortgage also secures all future advances made pursuant to the terms of this Mortgage or the other Loan Documents made after this Mortgage is recorded, including but not limited to all monies so advanced by Mortgagee in accordance with the terms of this Mortgage to (A) preserve or restore the Mortgaged Property, (B) preserve the lien of this Mortgage or the priority thereof or (C) enforce this Mortgage, and, to the full extent permitted by Subsection (b)(5) of Section 15-1302 of the IMFL or other law, shall be a lien from the time this Mortgage is recorded.

(d) Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the IMFL), or residential real estate (as defined in Section 15-1219 of the IMFL), and to the full extent permitted by law, voluntarily and knowingly waives Mortgagor's rights to reinstatement and redemption as allowed under Section 15-1601(b) of the IMFL, and to the full extent permitted by law, the benefits of all present and future valuation, appraisal, homestead, exemption, stay, redemption and moratorium laws under any state or federal law.



(e) In the event Mortgagee makes advances pursuant to and subject to the terms of this Mortgage, Mortgagor hereby acknowledges and intends that all such advances, including future advances whenever hereafter made, shall be a lien from the time this Mortgage is recorded, as provided in Section 15-1302(b)(1) of the IMFL.

(f) Mortgagor represents and agrees that the obligations secured hereby constitute a business loan within the purview of such paragraph 1(c) of Section 4 of the Illinois Interest Act, 815 ILCS 205/1 et seq. (1992 State Bar Edition) (or any substitute, amended or replacement statutes) transacted solely for the purpose of carrying on or acquiring the business of Mortgagor, and also constitutes a loan secured by a mortgage which comes within the purview of subparagraph 1(l) of said Section.

**43. Maximum Amount Secured.** Mortgagor and Mortgagee intend that this Mortgage shall secure not only sums advanced as of the date hereof but also all advances provided for in the Loan Documents; provided however that the maximum amount secured by this Mortgage shall in no event exceed Two Million Five Hundred Thousand Dollars (\$2,500,000.00).

**44. Variable Rate.** Mortgagor acknowledges and agrees that the Credit Agreement provides for changes in the interest rates of the not only presently existing indebtedness under the Credit Agreement but also future advances, whether such advances are obligations or to be made at the option of Mortgagee or otherwise, 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 indebtedness outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to the total Loan, including future advances, from the time of its recording in the Recorder's Office of the county in which the Mortgaged Property is located. The total amount of Loan may increase or decrease from time to time. This Mortgage shall be valid and have priority to the extent of the Loan over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Mortgaged Property given priority by law.

**48. Discharge of Lien.** Should the proceeds of the Credit Agreement or any part thereof, or any amount paid out or advanced by Mortgagee hereunder or pursuant to any agreement executed by Mortgagor or Phonz in connection with this Mortgage be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any mortgage, lien, charge or encumbrance upon the Mortgaged Property or any part thereof, then as additional security hereunder, Mortgagee shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding mortgage liens, charges and indebtedness, however remote, regardless of whether said mortgages, liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

**49. Extension; Renewal; Modification.** If the time of repayment of the Loan secured hereby or any part thereof be extended at any time or times, if the Credit Agreement be renewed, modified or replaced, or if any security for the Credit Agreement be released, Mortgagor, Phonz and any other parties now or hereafter liable for repayment of the Loan in whole or in part or any parties interested in the Mortgaged Property shall be held to consent and take subject to such extensions, renewals, modifications, replacements and releases, and their



liability and the lien hereof and the Loan Documents and the rights created hereby and thereby shall continue in full force, the right of recourse against all such parties being reserved by Mortgagee.

50. Waiver of Jury Trial. MORTGAGOR HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE CREDIT AGREEMENT, THIS MORTGAGE, OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY MORTGAGOR, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. MORTGAGEE IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY MORTGAGOR.

51. Consent to Jurisdiction. MORTGAGOR HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR ILLINOIS STATE COURT SITTING IN CHICAGO, ILLINOIS IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS MORTGAGE OR ANY OTHER LOAN DOCUMENTS, AND MORTGAGOR HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT AND IRREVOCABLY WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM. NOTHING HEREIN SHALL LIMIT THE RIGHT OF MORTGAGEE OR ANY LENDER TO BRING PROCEEDINGS AGAINST MORTGAGOR IN THE COURTS OF ANY OTHER JURISDICTION. ANY JUDICIAL PROCEEDING BY MORTGAGOR AGAINST MORTGAGEE OR ANY LENDER OR ANY AFFILIATE OF MORTGAGEE OR ANY LENDER INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS MORTGAGE OR ANY OTHER LOAN DOCUMENTS SHALL BE BROUGHT ONLY IN A COURT IN CHICAGO, ILLINOIS.

52. Miscellaneous.

(a) Any consent or approval by Mortgagee in any single instance shall not be deemed or construed to be Mortgagee's consent or approval in any like matter arising at a subsequent date, and the failure of Mortgagee to promptly exercise any right, power, remedy, consent or approval provided herein or at law or in equity shall not constitute or be construed as a waiver of the same nor shall Mortgagee be estopped from exercising such right, power, remedy, consent or approval at a later date. Any consent or approval requested of and granted by Mortgagee pursuant hereto shall be narrowly construed to be applicable only to Mortgagor and the matter identified in such consent or approval and no

third party shall claim any benefit by reason thereof, and any such consent or approval shall not be deemed to constitute Mortgagee a venturer or partner with Mortgagor nor shall privity of contract be presumed to have been established with any such third party. If Mortgagee deems it to be in its best interest to retain assistance of persons, firms or corporations (including, without limitation, attorneys, title insurance companies, appraisers, engineers and surveyors) with respect to a request for consent or approval, Mortgagor shall reimburse Mortgagee for all costs reasonably incurred in connection with the employment of such persons, firms or corporations.

(b) If there is more than one party comprising Mortgagor then the obligations and liabilities of each party under this Mortgage shall be joint and several.

(c) The Loan Documents contain the entire agreement between Mortgagor, Phonz and Mortgagee relating to or connected with the Loan. Any other agreements relating to or connected with the Loan not expressly set forth in the Loan Documents are null and void and superseded in their entirety by the provisions of the Loan Documents.

(d) Mortgagor hereby covenants and agrees not to commit, permit or suffer to exist any act, omission or circumstance 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 representations and warranties set forth in this Paragraph 52. Without limiting the generality of the foregoing, the filing of formal charges or the commencement of proceedings against Mortgagor or all or any part of the Mortgaged Property under any federal or state law for which forfeiture of the Mortgaged Property 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 an Event of Default hereunder without notice or opportunity to cure.

(e) Mortgagor acknowledges that, with respect to this Mortgage, Mortgagor is relying solely on its own judgment and advisors in entering into this Mortgage without relying in any manner on any statements, representations or recommendations of Mortgagee or any parent, subsidiary or affiliate of Mortgagee. Mortgagor acknowledges that it is represented by competent counsel and has consulted counsel before executing this Mortgage.

(f) Mortgagor covenants and agrees to pay Mortgagee upon receipt of written notice from Mortgagee, all reasonable costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Mortgagee in connection with (i) the preparation, negotiation, execution and delivery of this Mortgage and the other Loan Documents; (ii) Mortgagor's performance of and compliance with Mortgagor's respective agreements and covenants contained in this Mortgage and the other Loan Documents on its part to be performed or complied with after the date hereof; (iii) Mortgagee's performance and compliance with all agreements and conditions contained in this Mortgage and the other Loan Documents on its part to be performed or complied with after the date hereof; (iv) the negotiation, preparation, execution, delivery

and administration of any consents, amendments, waivers or other modifications to this Mortgage and the other Loan Documents; and (v) the filing and recording fees and expenses, title insurance fees and expenses, and other similar expenses incurred in creating and perfecting the lien in favor of Mortgagee pursuant to this Mortgage and the other Loan Documents.

(g) This Mortgage shall be governed by and construed in accordance with the laws of the State in which the Premises are located and the applicable laws of the United States of America.

**53. Trustee's Exculpation.** It is expressly understood and agreed by and between the parties hereto, anything to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by, nor shall at any time be asserted or enforceable against, LaSalle Bank National Association, on account of this instrument or on account of any warranty, indemnity, representation, covenant or agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, Mortgagor has executed this instrument the day and year first above written.

**Mortgagor:**

LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE UNDER A TRUST AGREEMENT, DATED MARCH 8, 1982, AND KNOWN AS TRUST NO. ~~391878~~ 10-39718-09

By: Deborah Berg, V.P.  
Name: DEBORAH BERG, Vice President

ACKNOWLEDGEMENT

State of Illinois )  
County of Cook ) SS.

I, the undersigned, a Notary Public in and for said County and the State aforesaid, do hereby certify that DEBORAH BERG, Vice President, of LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE UNDER A TRUST AGREEMENT DATED MARCH 8, 1982 AND KNOWN AS TRUST NO. ~~391878~~ 10-39718-09, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such, appeared before me this day in person and severally acknowledged that (s)he signed, sealed, and delivered the said instrument of writing as his free and voluntary act, and as the free and voluntary act of said Land Trust for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 16<sup>th</sup> day of April, 2002.

SEAL



Christine C Young  
Notary Public



# UNOFFICIAL COPY

20686083

## EXHIBIT A

### LEGAL DESCRIPTION

✓

THAT PART OF LOT 5 LYING SOUTH WESTERLY OF A LINE DESCRIBED AS BEGINNING 140 FEET SOUTH OF THE NORTH WEST CORNER OF SAID LOT 5 AND RUNNING SOUTH EASTERLY TO A POINT IN THE SOUTHERLY LINE OF SAID LOT, 350.15 FEET EASTERLY OF THE INTERSECTION OF THE SOUTHERLY LINE PRODUCED WESTERLY TO THE WEST LINE OF SAID LOT 5, IN THE CIRCUIT COURT PARTITION OF LOT 2 IN THE WILLIAM WEST AND OTHERS' SUBDIVISION OF PART OF LOT 1 AND LOT 18 OF THE ASSESSOR'S DIVISION OF THE SOUTH WEST 1/4 OF SECTION 30 AND LOT 8 OF THE ASSESSOR'S DIVISION OF JANE MIRANDA'S RESERVE, ALSO LOT 11 OF THE ASSESSOR'S DIVISION OF THE SOUTH WEST 1/4 OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

AND ALSO: THAT PART LYING NORTH OF TOUHY AVENUE AND LYING WESTERLY OF A LINE DESCRIBED AS BEGINNING AT A POINT IN THE NORTHERLY LINE OF HEREINAFTER DESCRIBED LOT 14, 350.15 FEET EASTERLY OF THE INTERSECTION OF SAID NORTHERLY LINE PRODUCED WESTERLY TO THE WESTERLY LINE OF LOT 5, IN CIRCUIT COURT COMMISSIONER'S SUBDIVISION OF LOT 2 IN HEREINAFTER DESCRIBED WILLIAM WEST AND OTHERS SUBDIVISION; THENCE SOUTHERLY IN A STRAIGHT LINE FORMING AN ANGLE OF 90 DEGREES 14 MINUTES WITH SAID NORTHERLY LINE OF SAID LOT 14 (TURNED EAST TO SOUTHERLY), OF THE FOLLOWING DESCRIBED LAND TAKEN AS A TRACT, TO WIT: LOT 9 (EXCEPT THE WESTERLY 25 FEET THEREOF), ALL OF LOTS 10, 11, 12, 13, AND 14 IN WILLIAM WEST AND OTHERS SUBDIVISION OF PART OF LOTS 1 AND LOT 18 IN THE ASSESSOR'S DIVISION OF THE SOUTH WEST FRACTIONAL 1/4 OF SECTION 30 AND LOT 8 IN JANE MIRANDA'S RESERVATION IN SECTION 30, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT FROM SAID PREMISES THAT PART FALLING IN TOUHY AVENUE AND SCHOOL STREET), ALL IN COOK COUNTY, ILLINOIS.

STREET ADDRESS:

6840 Touhy Avenue, Niles, Illinois 60714 ✓

P.I.N.:

10-30-317-044 and 10-30-317-030

AFTER RECORDING MAIL TO:

Matthew B. Brotschul  
Wildman, Harrold, Allen & Dixon  
225 West Wacker Drive, Suite 2800  
Chicago, Illinois 60606

