

UNOFFICIAL COPY

03079626

03079626

AMENDED AND RESTATED MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

THIS AMENDED AND RESTATED MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT (the "Amendment"), dated as of the 11th day of May, 1993, by and between American National Bank and Trust Company of Chicago, not personally, but solely as Trustee under Trust Agreement dated December 28, 1982 and known as Trust Number 56647 (the "Mortgagor") and the Conant Family Partnership, an Illinois general partnership (the "Mortgagee"),

RECORDING 495.00
TRAN 8935 12/30/93 11:50:00
48969 * -03-079626
COOK COUNTY RECORDER

WITNESSETH:

WHEREAS, on February 26, 1986, Mortgagor executed and delivered its certain Promissory Note Secured by First Mortgage ("Initial Note") in the original principal amount of \$4,500,000, payable to the order of MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, a Massachusetts corporation ("Original Lender"), payable as set forth therein; and

WHEREAS, to secure payment of the Initial Note, Mortgagor executed and delivered its certain Mortgage, Security Agreement and Financing Statement, with respect to certain property located in Chicago, Cook County, Illinois and legally described on Exhibit A attached hereto and made a part hereof (the "Initial Mortgage"), which Initial Mortgage was recorded in the Office of the Recorder of Deeds of Cook County, Illinois on February 27, 1986 as Document Number 86080003; and

WHEREAS, by a documents dated as of May 10, 1993 and entitled "Assignment Agreement" and "Assignment of Loan Documents (the latter document being recorded in the Office of the Recorder of Deeds of Cook County, Illinois on June 9, 1993 as Document Number 93435581), Original Lender sold, transferred and assigned to Mortgagee all of Original Lender's rights, title, interest, benefits and indemnities under and in connection with the Loan Documents as defined in the Assignment Agreement, including, but not limited to, all payments due under the Initial Note and the Loan Documents accrued up to and including May 10, 1993; and

03079626

WHEREAS, Mortgagor and Mortgagee concurrently herewith have amended and restated the Initial Note to correctly reflect the agreements they have reached concerning the loan evidenced and secured by the Loan Documents, and desire to amend and restate the Initial Mortgage to reflect such agreements.

NOW, THEREFORE, in consideration of Ten and no/100 (\$10.00) and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the Mortgagor and Mortgagee do hereby agree that the Initial Mortgage is hereby amended in its entirety (except for the signatures

RECORDING 495.00
TRAN 8935 12/30/93 11:50:00
48969 * -03-079626
COOK COUNTY RECORDER

C:\WP\DOCUMENT\15MTG.444

MAIL TO 3

RETURN TO BOX 389 (MDM)

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

acknowledgement and Exhibit A thereto), to be and read as follows from and after the date hereof:

"

SENIOR MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

THIS SENIOR MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT (the "Mortgage") made as of May 11, 1993 by American National Bank and Trust Company of Chicago, not personally, but solely as Trustee under Trust Agreement dated December 28, 1982 and known as Trust Number 56647 (the "Mortgagor") to the Conant Family Partnership, an Illinois general partnership (the "Mortgagee"),

W I T N E S S E T H:

WHEREAS, Mortgagor and Mortgagee have executed that certain Amended and Restated Promissory Note Secured By First Mortgage (the "Note") of even date herewith, wherein Mortgagee has agreed to make a secured loan to Mortgagor in the original principal amount of Two Million Six Hundred Twenty-five Thousand Dollars (\$2,625,000);

NOW, THEREFORE, to secure the payment of all liabilities, which shall include, without limitation, the principal Indebtedness and future advances, if any, under the Note and interest, fees and premiums, if any thereon, (and all replacements, renewals and extensions thereof, in whole or in part) according to their tenor and effect, and to secure the payment of all other sums which may be at any time due and owing or required to be paid under this Mortgage (collectively all such sums are sometimes referred to herein as "Indebtedness Hereby Secured"); and to secure the performance and observance of all the covenants, agreements and provisions contained in this Mortgage; and to charge the properties, interests and rights hereinafter described with such payment, performance and observance, and for other valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the Mortgagor DOES HEREBY GRANT, REMISE, RELEASE, ALIEN, ENFEOFF, WARRANT, MORTGAGE AND CONVEY unto Mortgagee, its successors and assigns forever, the Land (as hereinafter defined) together with the following described property, rights and interests all of which are hereby pledged primarily and on a parity with the Land and not secondarily (and are, together with the Land, referred to herein as the "Premises"):

THE LAND located in the City of Chicago, County of Cook,

UNOFFICIAL COPY

State of Illinois and legally described in Exhibit "A" attached hereto and made a part hereof (the "Land");

TOGETHER WITH all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures, machinery, appliances, equipment, furniture, and personal property of every nature whatsoever now or hereafter owned by Mortgagor and located in or on, or attached to, or used or intended to be used in connection with or with the operation of, the Land, buildings, structures or other improvements, or in connection with any construction being conducted or which may be conducted thereon, and owned by Mortgagor, including all extensions, additions, improvements, betterments, renewals, substitutions, and replacements to any of the foregoing and all of the right, title and interest of Mortgagor in and to any such personal property or fixtures together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures by Mortgagor or on its behalf (the "Improvements");

TOGETHER WITH all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments (both corporeal and incorporeal) and appurtenances whatsoever, in any way belonging, relating or appertaining to the Land, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Mortgagor of, in and to the same;

TOGETHER WITH all rents, royalties, issues, profits, revenue, income and other benefits from the Premises to be applied against the Indebtedness Hereby Secured, provided, however, that permission is hereby given to Mortgagor so long as no default has occurred hereunder, to collect, receive, take, use and enjoy such rents, royalties, issues, profits, revenue, income and other benefits as they become due and payable, but not more than one (1) month in advance thereof;

TOGETHER WITH all right, title and interest of Mortgagor in and to any and all leases now or hereafter on or affecting the Premises whether written or oral and all agreements for use of the Premises (the "Leases"), together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to Mortgagor to collect the rentals under any such Lease;

TOGETHER WITH all fixtures and articles of personal property

UNOFFICIAL COPY

now or hereafter owned by Mortgagor and forming a part of or used in connection with the Land or the Improvements or the operation thereof, including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, mixers, motors, ovens, pipes, plumbing, pumps, racks, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Land or the Improvements in any manner; it being mutually agreed that all of the aforesaid property owned by Mortgagor and placed on the Land or the Improvements shall, so far as permitted by law, be deemed to be fixtures, a part of the realty, and security for the Indebtedness Hereby Secured; notwithstanding the agreement and declaration hereinabove expressed that certain articles of property form a part of the realty covered by this Mortgage and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute goods (as said term is used in the Uniform Commercial Code), this instrument shall constitute a security agreement, creating a security interest in such goods, as collateral, in Mortgagee as a secured party and Mortgagor as Debtor, all in accordance with said Uniform Commercial Code as more particularly set forth in Paragraph 15 hereof; and

TOGETHER WITH all proceeds of the foregoing, including without limitation all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Premises or proceeds of any sale, option or contract to sell the Premises or any portion thereof; and Mortgagor hereby authorizes, directs and empowers Mortgagee, at its option, on behalf of Mortgagor, or the successors or assigns of Mortgagor, to adjust, compromise, claim, collect and receive such proceeds, to give proper receipts and acquittances therefor, and, after deducting expenses of collection, to apply the net proceeds as a credit upon any portion, as selected by Mortgagee, of the Indebtedness Hereby Secured, notwithstanding the fact that the same may not then be due and payable or that the Indebtedness Hereby Secured is otherwise adequately secured.

TO HAVE AND TO HOLD the Premises, unto the Mortgagee, its successors and assigns, forever, for the purposes and upon the

UNOFFICIAL COPY

uses herein set forth together with all right to possession of the Premises after the occurrence of any default as hereinafter defined, subject only to Permitted Encumbrances described on Exhibit B attached hereto and made a part hereof; the Mortgagor hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Illinois.

THE MORTGAGOR REPRESENTS, WARRANTS AND COVENANTS that it is lawfully seized of the Premises, that the same is unencumbered, and that it has good right, full power and lawful authority to convey and mortgage the same, and that it will warrant and forever defend said parcels and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

PROVIDED, NEVERTHELESS, that if Mortgagor shall pay in full when due the Indebtedness Hereby Secured and shall duly and timely perform and observe all of the terms, provisions, covenants and agreements herein and in the Note provided to be performed and observed by the Mortgagor, then this Mortgage and the estate, right and interest of Mortgagee in the Premises shall cease and become void and of no effect, but shall otherwise remain in full force and effect.

THE MORTGAGOR FURTHER COVENANTS AND AGREES AS FOLLOWS:

1. Payment of Indebtedness and Performance of Covenants. Mortgagor shall (a) pay when due the Indebtedness Hereby Secured; and (b) duly and punctually perform and observe all of the terms provisions, conditions, covenants and agreements on Mortgagor's part to be performed or observed as provided herein or in the Note.

2. Maintenance, Repair, Compliance with Law, Use, Etc. Mortgagor shall (a) promptly repair, restore, replace or rebuild any portion of the Improvements which may become damaged or be destroyed whether or not proceeds of insurance are available or sufficient for that purpose; (b) keep the Premises in good condition and repair, free from waste; (c) pay all operating costs of the Premises; (d) promptly complete any building or buildings or other Improvements now or at any time in the process of erection upon the Premises; (e) promptly comply with all requirements of statutes, ordinances, rules, regulations, orders, decrees and other requirements of law (including, without limitation, taking such action as is necessary or proper to avoid any remedial obligations under any Environmental Law, as hereinafter defined) relating to the Premises or any part thereof by any federal, state or local authority; (f) refrain from any action and correct any condition which would increase the risk of fire or other hazard to the Improvements or any portion thereof; (g) comply with any restrictions and covenants of record with respect to the Premises and the use thereof; and observe and comply with any conditions and requirements necessary to preserve

UNOFFICIAL COPY

and extend any and all rights, licenses, permits (including without limitation zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions that are applicable to the Premises or its use and occupancy; and (h) cause the Premises to be managed in a competent and professional manner. Without the prior written consent of Mortgagee, Mortgagor shall not cause, suffer or permit any (i) alterations of the Premises except as required by law or ordinance; (ii) change in the use or occupancy of the Premises from which the Improvements are currently used, including without limitation any change which would increase any fire or other hazard; (iii) change in the identity of the person or firm responsible for managing the Premises; (iv) initiation of zoning reclassification with respect to the Premises; (v) unlawful or noxious use of, or nuisance to exist upon, the Premises; or (vi) granting of any easements, licenses, covenants, conditions or declarations of use against the Premises.

3. Liens.

A. Prohibition. Subject to the provisions of Paragraph 4 hereof, the Mortgagor shall not create or suffer or permit any mortgage, lien, charge or encumbrance to attach to or be filed against the Premises, whether such lien or encumbrance is inferior or superior to the lien of this Mortgage, including mechanic's liens, materialmen's liens, or other claims for lien made by parties claiming to have provided labor or materials with respect to the Premises (which liens are herein defined as "Mechanic's Liens") and excepting only the lien of real estate taxes and assessments not due or delinquent, any liens and encumbrances of Mortgagee, the Permitted Encumbrances and any other lien or encumbrance expressly permitted by Mortgagee in writing.

B. Contest of Mechanic's Liens Claims. Notwithstanding the foregoing prohibition against Mechanic's Liens against the Premises, so long as no Event of Default then exists (and no event or circumstances then exist which, with the giving of notice or the passage of time or both, would constitute an Event of Default), Mortgagor, or any party obligated to Mortgagor to do so, may in good faith and with reasonable diligence contest the validity or amount of any Mechanic's Lien and defer payment and discharge thereof during the pendency of such contest, provided: (i) that such contest shall have the effect of preventing the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy such Mechanic's Lien; (ii) that, within ten (10) days after Mortgagor has been notified of the filing of such Mechanic's Lien, Mortgagor shall have notified Mortgagee in writing of Mortgagor's intention to contest such Mechanic's Lien or to cause such

UNOFFICIAL COPY

other party to contest such Mechanic's Lien; and (iii) that Mortgagor shall have obtained a title insurance endorsement over such Mechanic's Liens insuring Mortgagee against all loss or damage by reason of the existence of such Mechanic's Liens or Mortgagor shall have deposited or caused to be deposited with Mortgagee at such place as Mortgagee may from time to time in writing appoint, and in the absence of such appointment, then at the place of payment designated in the Note, a sum of money which shall be sufficient, in the judgment of Mortgagee, to pay in full such Mechanic's Lien and all interest which might become due thereon, and shall keep on deposit an amount so sufficient at all times, increasing such amount to cover additional interest whenever, in the judgment of Mortgagee, such increase is advisable. Such deposits are to be held without any allowance of interest. In case Mortgagor shall fail to maintain or cause to be maintained sufficient funds on deposit as hereinabove provided, shall fail to prosecute such contest or cause such contest to be prosecuted with due diligence or shall fail to pay or cause to be paid the amount of the Mechanic's Lien plus any interest finally determined to be due upon the conclusion of such contest, Mortgagee may, at its option, apply the money as deposited in payment of or on account of such Mechanic's Lien, or that part thereof then unpaid, together with all interest thereon. If the amount of money so deposited shall be insufficient for the payment in full of such Mechanic's Lien, together with all interest thereon, Mortgagor shall forthwith, upon demand, deposit with Mortgagee a sum which, when added to the funds then on deposit, shall be sufficient to make such payment in full. In the event the contest of the Mechanic's Lien claim is ultimately resolved in favor of the claimant, upon request by Mortgagor, Mortgagee shall apply the money so deposited in full payment of such Mechanic's Lien or that part thereof then unpaid, together with all interest thereon (provided Mortgagor is not then in default hereunder) when furnished with evidence satisfactory to Mortgagee of the amount of payment to be made. Any overplus remaining in the control of Mortgagee shall be paid to Mortgagor, within a reasonable time after the payment of such lien, provided Mortgagor is not then in default hereunder.

4. Taxes and Liens.

A. Payment. Mortgagor shall pay or cause to be paid when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, "tap-on" fees, and other fees, taxes, charges and assessments of every kind and nature whatsoever levied or assessed against the Premises or any part thereof or any interest therein or any obligation or instrument secured

UNOFFICIAL COPY

hereby, and all installments thereof (all herein generally called "Taxes"), whether or not assessed against Mortgagor, and Mortgagor shall furnish to Mortgagee receipts therefor on or before the date the same are due or if not available on such date, as soon as reasonably practicable after timely payment thereof; and shall discharge any claim or lien relating to taxes upon the Premises, other than matters expressly permitted by Mortgagee. Mortgagor shall well and duly perform all of its obligations under the Permitted Encumbrances listed on Exhibit B attached hereto and made a part hereof, and the note secured thereby.

B. Contest. So long as no Event of Default then exists (and no event or circumstances then exist which, with the giving of notice or the passage of time or both, would constitute an Event of Default), Mortgagor may, in good faith and with due diligence, contest or cause to be contested the validity or amount of any such Taxes, provided that:

(a) such contest shall have the effect of preventing the collection of the Taxes so contested and the sale or forfeiture of the Premises or any part thereof or interest therein to satisfy the same;

(b) Mortgagor has notified Mortgagee in writing of the intention of Mortgagor to contest the same or to cause the same to be contested before any Tax has been increased by any interest, penalties, or costs; and

(c) Mortgagor has deposited or caused to be deposited with Mortgagee, at such place as Mortgagee may from time to time in writing designate and in the absence of such designation then at the place of payment designated in the Note, a sum of money which shall be sufficient in the Mortgagee's judgment, to pay in full such contested Tax and all penalties and interest that might become due thereon, and shall keep on deposit an amount sufficient, in Mortgagee's judgment, to pay in full such contested Tax, increasing such amount to cover additional penalties and interest whenever, in Mortgagee's judgment, such increase is advisable. Such deposits are to be held without any allowance of interest.

In the event Mortgagor fails to prosecute such contest with due diligence or fails to maintain sufficient funds on deposit as hereinabove provided, or the sale or forfeiture of the Premises or any part thereof, or any interest therein to satisfy such contested Tax becomes eminent or threatened in Mortgagee's judgment, Mortgagee may, at its option, apply the monies as deposited with Mortgagee, in payment of, or on

UNOFFICIAL COPY

account of, such contested Taxes, or any portion thereof then unpaid, including all penalties and interest thereon. If the amount of the money so deposited is insufficient for the payment in full of such Taxes, together with all penalties and interest thereon, Mortgagor shall forthwith, upon demand, either deposit with Mortgagee a sum that, when added to such funds then on deposit, is sufficient to make such payment in full, or, if Mortgagee has applied funds on deposit on account of such Taxes restore such deposit to an amount satisfactory to Mortgagee. Provided that an Event of Default does not then exist (and no event or circumstances then exist which, with the giving of notice or the passage of time or both, would constitute an Event of Default), Mortgagee shall, if so requested in writing by Mortgagor, after final disposition of such contest and upon Mortgagor's delivery to Mortgagee of an official bill for such Taxes, apply the money so deposited in full payment of such Taxes or that part thereof then unpaid, together with all penalties and interest thereon. Any surplus shall be paid to Mortgagor, provided an Event of Default does not then exist (and no event or circumstances then exist which, with the giving of notice or the passage of time or both, would constitute an Event of Default).

5. Change in Tax Laws. If, by the laws of the United States of America, or of any state or municipality having jurisdiction over Mortgagee, Mortgagor or the Premises any tax is imposed or becomes due in respect of the issuance of the Note or the recording of this Mortgage, Mortgagor shall pay such tax in the manner required by such law. In the event that any law, statute, rule, regulation, order or court decree has the effect of deducting from the value of the Premises for the purpose of taxation of any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the interest of Mortgagee in the Premises, or the manner of collection of taxes, so as to affect this Mortgage, the Indebtedness Hereby Secured or Mortgagee, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes, or reimburse Mortgagee therefor on demand, unless Mortgagee determines, in Mortgagee's judgment, that such payment or reimbursement by Mortgagor is unlawful; in which event the Indebtedness Hereby Secured shall at Mortgagee's option be due and payable within thirty (30) days after written demand by Mortgagee to Mortgagor. Nothing in this Paragraph 5 shall require Mortgagor to pay any income, franchise or excise tax imposed upon Mortgagee, excepting only such which may be levied against the income of Mortgagee as a complete or partial substitute for taxes required to be paid by Mortgagor pursuant hereto.

6. Insurance Coverage. Mortgagor will insure the

UNOFFICIAL COPY

Premises against such perils and hazards, and in such amounts and with such limits, as Mortgagee may from time to time reasonably require, and in any event will continuously maintain the following described policies of insurance (the "Insurance Policies"):

(a) All-Risk Casualty insurance against loss and damage by all risks of physical loss or damage, including fire, lightning, hail, windstorm, flood, earthquake and other risks covered by the so-called extended coverage endorsement and against loss or damage by malicious mischief, vandalism and sprinkler leakage in amounts not less than the full insurable replacement value of all Improvements, fixtures and equipment from time to time on the Premises, but in any event in an amount sufficient to prevent Mortgagor from becoming a co-insurer of any partial loss under the applicable insurance policies, which shall be written on a replacement cost basis and which shall contain an "agreed amount endorsement" and Mortgagor shall have the appraisal on which this agreed amount is based updated annually and a new "agreed amount endorsement" issued;

(b) Comprehensive public liability against death, bodily injury and property damage in an amount reasonably acceptable to Mortgagee;

(c) Rental or business interruption insurance in amounts sufficient to pay, for a period of up to ninety (90) days, all amounts required to be paid by Mortgagor pursuant to this Mortgage;

(d) If the Department of Housing and Urban Development or other federal agency has designated the Premises to be in a special flood hazard area and designated the community in which the Premises are located eligible for sale of subsidized insurance, first and second layer flood insurance when and as available;

(e) Explosion insurance in respect to any steam or pressurized vessel, boiler or other similar apparatus located in the Premises in an amount reasonably acceptable to Mortgagee;

(f) Appropriate workers' compensation or other insurance against liability arising from claims of workers or other persons performing work or services in, on or about the Premises; and

0379626

UNOFFICIAL COPY

(g) All other types and amounts of coverage as are customarily maintained by reasonably prudent owners or operators of like properties.

Mortgagee may, at any time and in its reasonable discretion, procure and substitute for any and all of the policies of insurance required above, such other policies of insurance, in such amounts, and carried in such companies, as it may select, and in such event, those policies of insurance shall be included within the definition of "Insurance Policies" set forth herein; provided, however, that Mortgagee shall, in each instance, give Mortgagor written notice of its intent to so procure or substitute insurance coverage and shall allow Mortgagor ten (10) days after the receipt of such notice for Mortgagor to so procure or substitute such insurance coverage on its own before Mortgagee exercises this right.

7. Insurance Policies. All Insurance Policies shall be in form, companies and amounts reasonably satisfactory to Mortgagee. The insurance companies shall at least have a Policy holder's rating of "B", a financial size rating of XII or such other rating acceptable to Mortgagee in the current edition of Best Insurance Reports, and shall be licensed to do business in the State of Illinois. All Insurance Policies insuring against casualty, rent loss and business interruption and other appropriate policies shall include non-contributing mortgagee endorsements in favor of and with loss payable to Mortgagee, as well as standard waiver of subrogation endorsements, shall provide that the coverage shall not be terminated or materially modified without thirty (30) days advance written notice to Mortgagee and shall provide that no claims shall be paid thereunder to any Person other than the Mortgagee without ten (10) days' advance written notice to Mortgagee. Mortgagor will deliver all Insurance Policies premium prepaid, to Mortgagee and, in case of Insurance Policies about to expire, Mortgagor will deliver renewal or replacement certificates not less than thirty (30) days prior to the date of expiration and renewal or replacement policies as soon as practicable thereafter. The requirements of the preceding sentence shall apply to any separate policies of insurance taken out by Mortgagor concurrent in form or contributing in the event of loss with the Insurance Policies. Insurance Policies maintained by tenants under the Leases, if any, may, if in conformity with the requirements of this Mortgage and if approved by Mortgagee, be presented to Mortgagee in satisfaction of Mortgagor's obligation to provide the insurance coverages provided by those Insurance Policies.

8. Deposits for Taxes and Insurance Premiums. In order to assure the payment of Taxes and premiums payable with respect to all Insurance Policies ("Premiums") as and when the same shall become due and payable, at Mortgagee's option exercisable from and after the occurrence of an Event of Default

UNOFFICIAL COPY

hereunder:

(a) Mortgagor shall deposit with Mortgagee or its designated agent, on the same day of each month that payments are due under the Note an amount equal to one-twelfth (1/12) of the Taxes and Premiums thereof to become due upon the Premises within thirteen (13) months after the date of such deposit; provided that in the case of the first such deposit, there shall be deposited in addition an amount which, when added to the aggregate amount of monthly deposits to be made hereunder with respect to Taxes and Premiums to become due and payable within thirteen (13) months after such first deposit, will provide (without interest) a sufficient fund to pay such Taxes and Premiums plus three (3) months Taxes and Premiums deposits. The amounts of such deposits (herein generally called "Tax and Insurance Deposits") shall be based upon Mortgagee's estimate as to the amount of Taxes and Premiums. Mortgagor shall within ten (10) days of demand by Mortgagee make additional Tax and Insurance Deposits as Mortgagee may from time to time require due to (i) failure of Mortgagee to require, or failure of Mortgagor to make, Tax and Insurance Deposits in previous months, (ii) under-estimation of the amounts of Taxes and/or Premiums, (iii) the particular due dates and amounts of Taxes and/or Premiums, or (iv) application of the Tax and Insurance Deposits pursuant to Paragraph 8(c) hereof. All Tax and Insurance Deposits shall be held by Mortgagee without any allowance of interest thereon.

(b) Mortgagee will, out of the Tax and Insurance Deposits, upon the presentation to Mortgagee by Mortgagor of the bills therefor, pay the Taxes and Premiums as the same become due to the extent of the Tax and Insurance Deposits in hand or will, within thirty (30) days after delivery by Mortgagor to Mortgagee of receipted bills therefor, reimburse Mortgagor for such payments made by Mortgagee. Mortgagee shall have no duty to inquire into the validity or accuracy of any such bill. If the total Tax and Insurance Deposits on hand shall not be sufficient to pay all of the Taxes and Premiums when the same shall become due, then Mortgagor shall forthwith pay to Mortgagee on demand the amount necessary to make up the deficiency.

(c) Upon an Event of Default under this Mortgage, Mortgagee may, at its option, without being required so to do, apply any Tax and Insurance Deposits on hand to any of the Indebtedness Hereby Secured, in such order and manner as Mortgagee may elect, in its discretion. When the Indebtedness Hereby Secured has been fully paid, any remaining Tax and Insurance Deposits shall be paid to Mortgagor. All Tax and Insurance Deposits are hereby

03079626

UNOFFICIAL COPY

pledged as additional security for the Indebtedness Hereby Secured, and shall be held by Mortgagee irrevocably to be applied for the purposes for which made as herein provided, and shall not be subject to the direction or control of Mortgagor.

(d) Notwithstanding anything herein contained to the contrary, Mortgagee, or its successors and assigns, shall not be liable for any failure to apply the Tax and Insurance Deposits unless Mortgagor, while no default exists hereunder, shall have requested Mortgagee in writing to make application of such Deposits on hand to the payment of the Taxes or Premiums for the payment of which such Deposits were made, accompanied by the bills therefor.

(e) The provisions of this Mortgage are for the benefit of Mortgagor and Mortgagee alone. No provision of this Mortgage shall be construed as creating in any party other than Mortgagor and Mortgagee any rights in and to the Tax and Insurance Deposits or any rights to have the Tax and Insurance Deposits applied to payment of Taxes and Premiums. Mortgagee shall have no obligation or duty to any third party to collect Tax and Insurance Deposits.

9. Damage to or Destruction of the Premises. Mortgagor shall give Mortgagee immediate notice of any damage to or destruction of the Premises or any part thereof, and in case of loss or damage covered by any of the Insurance Policies, Mortgagee (or any grantee or grantees under any sale or sales under the provisions of this Mortgage) is hereby authorized at its option either (i) to settle and adjust any claim under such Insurance Policies without the consent of Mortgagor, or (ii) allow Mortgagor to settle and adjust such claim without the consent of Mortgagee; provided that in either case Mortgagee shall, and is hereby authorized to collect and receipt for any such insurance proceeds, and the expenses incurred by Mortgagee in the adjustment and collection of insurance proceeds shall be so much additional Indebtedness Hereby Secured, and shall be reimbursed to Mortgagee upon demand or may be deducted by Mortgagee from said insurance proceeds prior to any other application thereof. Notwithstanding the foregoing, Mortgagor shall be entitled to settle or adjust any claim for loss or damage covered by such Insurance Policies provided that such claim shall not be for an amount in excess of One Hundred Thousand Dollars (\$100,000). However, each insurance company which has issued an Insurance Policy is hereby authorized and directed to make payment for all losses covered by an Insurance Policy to Mortgagee alone, and not to Mortgagee and Mortgagor jointly. All insurance proceeds shall be applied in accordance with Section 11 hereof.

10. Condemnation. Mortgagor shall give Mortgagee

UNOFFICIAL COPY

prompt notice of any action, actual or threatened, in condemnation or eminent domain against the Premises and hereby assigns, transfers and sets over to Mortgagee the entire proceeds of any award or claim for damages for all or any part of the Premises taken or damaged under the power of eminent domain or condemnation. Mortgagee is hereby authorized to intervene in any such action in the name of Mortgagor, to compromise and settle any such action or claim, and to collect and receive from the condemning authorities and give proper receipts and acquittances for such proceeds. Any expenses incurred by Mortgagee in intervening in such action or compromising and settling such action or claim, or collecting such proceeds shall be reimbursed to Mortgagee first out of the proceeds. The remaining proceeds or any part thereof shall be applied in accordance with Paragraph 11 hereof.

11 Disbursement of Insurance and Condemnation Proceeds. In the event of any such damage or destruction or condemnation to the Premises as provided in Paragraphs 9 and 10 hereof, unless, by virtue of such damage, destruction or condemnation, the Premises cannot be restored to the same condition as existed prior to such damage, destruction or condemnation, in Mortgagee's reasonable judgment, then Mortgagor shall restore the Premises to the condition thereof prior to such condemnation or damage or destruction, and any proceeds in excess of the cost of such restoration shall, at the option of Mortgagee, be (i) applied to the last maturing installments of the liabilities under the Note, irrespective of whether such installments are due and payable, or (ii) delivered to Mortgagor. In the event of such condemnation or damage or destruction and Mortgagor fails to commence restoration of the Premises as soon as practicable after the adjustment of insurance claims, but in all events within sixty (60) days of such condemnation, damage or destruction, as required by this Section, then each and every one of the liabilities, plus accrued interest shall at the option of Mortgagee become due and payable in full. In the event that, by virtue of any damage, destruction or condemnation, the Premises cannot be reasonably restored to substantially the same condition as existed prior to such damage, destruction or condemnation, then each and every one of the remaining liabilities, plus accrued interest shall become due and payable in full and the full amount of any such proceeds shall be applied against the liabilities. Any excess of such insurance or condemnation proceeds remaining after payment in full of the liabilities, accrued interest under the Note and all other Indebtedness Hereby Secured shall be the property of Mortgagor.

In the event Mortgagor is required to repair and restore the Premises as provided above, Mortgagee shall make the insurance or condemnation proceeds available to Mortgagor for such restoration and repair, subject to satisfaction of the following conditions:

UNOFFICIAL COPY

(a) no uncured default exists under the Note nor any uncured default then exists under this Mortgage;

(b) such repair and restoration is done under the supervision of an architect reasonably acceptable to Mortgagee, according to plans and specifications approved by Mortgagee, such approval not to be unreasonably withheld or delayed;

(c) such restoration and repair commences within the period stated above after such loss occurs and proceeds in a good and workmanlike manner thereafter;

(d) Mortgagee shall be given reasonably satisfactory proof that the Premises have been fully restored or that such insurance or condemnation proceeds will be sufficient to repair, restore or rebuild the Premises, free and clear of all liens except the lien of this Mortgage. In the event such insurance or condemnation proceeds shall be insufficient to repair, restore or rebuild the Premises, prior to commencing such work, Mortgagor shall deposit with Mortgagee (i) funds or letter of credit in the amount of such deficiency, which, together with the insurance or condemnation proceeds, shall be sufficient to restore, repair and rebuild the Premises. If such deposit is in the form of a letter of credit, such letter of credit shall be negotiable, irrevocable and unconditional, from a financial institution acceptable to Mortgagee, naming Mortgagee as beneficiary thereunder and expiring no earlier than sixty (60) days after the estimated date of completion of the restoration of the Premises. Mortgagee must be able to draw on such letter of credit by delivery of a sight draft stating the amount to be paid to the applicable architect, engineer, contractor or materialman in accordance with the approved plans and specifications for such restoration. Mortgagee shall also be entitled to draw under the letter of credit if the letter of credit will expire within ten (10) days and has not been replaced or extended;

(e) Prior to the disbursement of any such proceeds held by the Mortgagee in accordance with the terms of this Section, Mortgagee shall be furnished with a statement of Mortgagor's architect, certifying the extent of the repair and restoration completed to the date thereof, and that such repairs, restoration and rebuilding have been performed to date in conformity with the plans and specifications approved by Mortgagee; and Mortgagee shall be furnished with appropriate evidence of payment for labor or material furnished to the Premises and total or partial lien waivers substantiating such payments, and in the event of any disbursement made prior to completion of all such repairs and restoration, the balance of such proceeds held by

UNOFFICIAL COPY

Mortgagee shall at all times be sufficient in Mortgagee's estimation to complete the repair, restoration and rebuilding of the Premises;

(f) Mortgagee shall be given a waiver of subrogation from any insurer who claims that no liability exists as to Mortgagor or the then owner or other insured under the policy of insurance in question;

(g) Mortgagor shall deliver construction contracts, sworn contractors statements, endorsements to title insurance policies, property and casualty insurance policies and other similar documents and certifications reasonably requested by Mortgagee or requested by any title insurer in order to issue the required title insurance, all in form number and substance reasonably satisfactory to Mortgagee.

If Mortgagor fails to repair and restore the Premises as required by this Section, then Mortgagee may, at its option and upon not less than ten (10) days' written notice to Mortgagor, and without waiving any of its rights hereunder:

(i) commence to restore, repair or rebuild the Premises for or on behalf of Mortgagor, and for such purpose, may perform all necessary acts to accomplish such restoration, repair or rebuilding; in the event the insurance or condemnation proceeds shall exceed the amount necessary to complete the repair, restoration or the rebuilding of the Premises, such excess may, at Mortgagee's sole option, be applied to the last maturing installments of the liabilities irrespective of whether such installments are then due and payable or be returned to Mortgagor; or

(ii) apply all or any part of the insurance or condemnation proceeds on account of the last maturing installments of the liabilities whether then due or not or return same to the Mortgagor.

12. Assignment of Rents, Leases and Profits. To further secure the Indebtedness Hereby Secured, Mortgagor hereby sells, assigns and transfers unto Mortgagee all of the rents, leases, issues and profits now due and which may hereafter become due under or by virtue of any Leases which may have been heretofore or may be hereafter made or agreed to by Mortgagor or its agents or which may be made or agreed to by Mortgagee under the powers herein granted, it being the intention hereby to establish an absolute transfer and assignment of all such Leases, rents and all avails thereunder, to Mortgagee. Mortgagor hereby irrevocably appoints Mortgagee its agent in its name and stead (this power of attorney and any other powers of attorney granted

UNOFFICIAL COPY

herein are powers coupled with an interest and cannot be revoked, modified or altered without the written consent of Mortgagee), with or without taking possession of the Premises as provided in Paragraph 20 hereof, to rent, lease or let all or any portion of the Premises to any party or parties at such rental and upon such terms as said Mortgagee shall, in its sole and unfettered discretion, determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due or that may hereafter become due under each and every of the Leases, written or oral, or other tenancy existing, or which may hereafter exist on the Premises, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Mortgagee would have upon taking possession pursuant to the provisions of Paragraph 20 hereof. Mortgagor represents and agrees that no rent has been or will be paid by any person in possession of any portion of the Premises for more than one installment in advance and that the payment of none of the rents to accrue for any portion of said Premises has been or will be waived, released, reduced, discounted or otherwise discharged or compromised by Mortgagor. Mortgagor waives any rights of set off against any person in possession of any portion of the Premises. Mortgagor agrees that it will not further assign any of the rents or profits of the Premises, except to a purchaser or grantee of the Premises permitted under Paragraph 17 hereof, if any. Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the taking of actual possession of the Premises by Mortgagee pursuant to Paragraph 20 hereof. In the exercise of the powers herein granted to Mortgagee, no liability shall be asserted or enforced against Mortgagee, all such liability being expressly waived and released by Mortgagor and Mortgagor hereby agreeing to indemnify and hold Mortgagee harmless from and against any loss, cost, damage, liability or obligation which may arise as a result of or in connection with the exercise of the powers herein granted. Mortgagor further agrees to assign and transfer to Mortgagee all future leases upon all or any part of the Premises and to execute and deliver, at the request of Mortgagee, all such further assurances and assignments in the Premises as Mortgagee shall from time to time require. Although it is the intention of the parties that the assignment contained in this paragraph shall be a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Mortgagee shall not exercise any of the rights or powers conferred upon it by this paragraph until an Event of Default shall exist under this Mortgage or the Note. From time to time, Mortgagor will furnish Mortgagee with executed copies of each of the Leases and use its best efforts to furnish Mortgagee with estoppel letters from each tenant under each of the Leases, which estoppel letters shall be in a form satisfactory to Mortgagee and shall be delivered within thirty (30) days after Mortgagee's written demand therefor. In the event Mortgagor is unable to

UNOFFICIAL COPY

deliver such estoppels in such time period, Mortgagor shall deliver to Mortgagee Mortgagor's certification of the matters covered by the estoppels. In the event Mortgagee requires that Mortgagor execute and record a separate Collateral Assignment of Rents or separate assignments of any of the Leases to Mortgagee, the terms and provisions of those assignments shall control in the event of a conflict between the terms of this Mortgage and the terms thereof.

13. Observance of Leases. Mortgagor expressly covenants and agrees that if Mortgagor, as lessor therein, shall fail to perform and fulfill any material term, covenant, condition or provision in any Lease, on its part to be performed or fulfilled at the times and in the manner in said Lease provided, or if Mortgagor shall cancel, terminate, amend, modify or void any Lease without Mortgagee's prior written consent; or if Mortgagor shall suffer or permit to occur any uncured default after the expiration of the applicable cure period therefor provided in any Lease assigned and given as additional security for the payment of the Indebtedness Hereby Secured; then and in any such event, such breach or default shall constitute an Event of Default hereunder.

14. Mortgagee's Performance of Mortgagor's Obligations. After the occurrence of any default in the performance of Mortgagor's obligations under this Mortgage or the Note, either before or after the acceleration of the Indebtedness Hereby Secured or the foreclosure of the lien hereof, or during the period of redemption, if any, or during any emergency, Mortgagee may, but shall not be required to, make any payment or perform any act herein required of Mortgagor in reasonable form and manner. Mortgagee may, but shall not be required to, complete construction, furnishing and equipping of the Improvements and rent, operate and manage the Premises and such Improvements and pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Premises shall be operational and usable for their intended purposes. All monies paid, and all expenses paid or incurred in connection therewith, including attorney's fees, all costs of litigation and other monies advanced by Mortgagee to protect the Premises and the lien hereof, or to complete construction, furnishing and equipping or to rent, operate and manage the Premises or to pay any such operating costs and expenses thereof or to keep the Premises operational and usable for their intended purpose shall be so much additional Indebtedness Hereby Secured, whether or not the Indebtedness Hereby Secured, as a result thereof, shall exceed the face amount of the Note, and shall become immediately due and payable on demand, and with interest thereon at the Default Rate in the Note. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default, nor shall the provisions of this Paragraph or any exercise by Mortgagee of its rights hereunder

UNOFFICIAL COPY

prevent any default from constituting an Event of Default. Mortgagee, in making any payment hereby authorized (a) relating to Taxes, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; (b) for the purchase, discharge, compromise or settlement of any lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted; or (c) in connection with the completion of construction, furnishing or equipping of the Premises or the rental, operation or management of the Premises or the payment of operating costs and expenses thereof, may do so in such amounts and to such persons as Mortgagee may deem appropriate. Nothing contained herein shall be construed to require Mortgagee to advance or expend monies for any purpose mentioned herein, or for any other purpose.

15. Security Agreement. Mortgagor and Mortgagee agree that this Mortgage shall constitute a Security Agreement within the meaning of the Illinois Uniform Commercial Code (hereinafter referred to as the "Code") with respect to (i) any and all sums at any time on deposit for the benefit of Mortgagee or held by the Mortgagee (whether deposited by or on behalf of the Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage and (ii) with respect to any personal property included in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the Premises or may not constitute a "fixture" (within the meaning of Section 9-313 of the Code) (which property is hereinafter referred to as "Personal Property"), and all replacements of such Personal Property, substitutions for such Personal Property, additions to such Personal Property, and the proceeds thereof (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as the "Collateral"), and that a security interest in and to the Collateral is hereby granted to the Mortgagee, and the Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to the Mortgagee, all to secure payment of the Indebtedness Hereby Secured. All of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and Mortgagor hereby covenants as follows, which covenants shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:

(a) Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefitting Mortgagee and no other party, and liens and encumbrances, if any, filed in connection with any Permitted Encumbrances.

UNOFFICIAL COPY

(b) The Collateral is to be used by Mortgagor solely for business purposes.

(c) The Collateral will be kept at the Land and will not be removed therefrom without the consent of Mortgagee (being the Secured Party as that term is used in the Code). The Collateral may be affixed to the Land but will not be affixed to any other real estate.

(d) The only persons having any interest in the Premises are Mortgagor, Mortgagee and holders of interests, if any, expressly permitted by Mortgagee.

(e) No Financing Statement (other than Financing Statements showing Mortgagee as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted by Mortgagee) covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor will at its own cost and expense, upon demand, furnish to Mortgagee such further information and will execute and deliver to Mortgagee such financing statements and other documents in form satisfactory to Mortgagee and will do all such acts and things as Mortgagee may at any time or from time to time request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness Hereby Secured, subject to no other liens or encumbrances, other than liens or encumbrances benefitting Mortgagee and no other party and liens and encumbrances (if any) filed in connection with any Permitted Encumbrances; and Mortgagor will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by Mortgagee to be necessary or desirable.

(f) Whenever an Event of Default has occurred and is continuing hereunder, Mortgagee shall have the remedies of a secured party under the Code, including without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as Mortgagor can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace), upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral in satisfaction of Mortgagor's obligations, as provided in the Code. Mortgagee may render the Collateral

03079626

UNOFFICIAL COPY

unusable without removal and may dispose of the Collateral on the Premises. Mortgagee may require Mortgagor to assemble the Collateral and make it available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. Mortgagee will give Mortgagor at least five (5) days notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is to be made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Mortgagor hereinafter set forth at least five (5) business days before the time of the sale or disposition. Mortgagee may buy at any public sale and, if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, Mortgagee may buy at private sale. Any such sale may be held as part of and in conjunction with any foreclosure sale of the Premises, the Premises including the Collateral to be sold as one lot if Mortgagee so elects. The net proceeds realized upon any such disposition after deduction for the expenses of retaking, holding, preparing for sale, selling or the like and the reasonable attorney's fees and legal expenses incurred by Mortgagee shall be applied against the Indebtedness Hereby Secured in such order or manner as Mortgagee shall select. Mortgagee will account to Mortgagor for any surplus realized on such disposition.

(g) The terms and provisions contained in this Paragraph 15 shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

(h) This Mortgage is intended to be a financing statement within the purview of Section 9-402(6) of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Premises. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are hereinafter set forth. This Mortgage is to be filed for record with the Recorder of Deeds of the County or Counties where the Premises are located. Mortgagor is the record owner of the Premises.

(i) To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover and include all Leases between Mortgagor as lessor, and various tenants named therein, as lessee, including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacement of said Leases, together with all of the right, title and interest of Mortgagor, as lessor thereunder, including, without limiting the generality of the foregoing, the present and

UNOFFICIAL COPY

continuing right to make claim for, collect, receive and receipt for any and all of the rents, income, revenues, issues and profits and moneys payable as damages or in lieu of the rent and moneys payable as the purchase price of the Premises or any part thereof or of awards or claims for money and other sums of money payable or receivable thereunder howsoever payable, and to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which Mortgagor or any lessor is or may become entitled to do under the Leases.

16. Environmental Matters.

A. For the purpose of this Paragraph 16, the following terms shall have the following meanings:

1. "Environmental Law(s)" means any and all federal, state or local environmental or health and safety-related laws, regulations, rules, ordinances, orders or directives.

2. "Hazardous Material" means any chemical, substance, material, object, condition, waste or combination thereof which is or may be hazardous to human health or safety or to the environment due to its radioactivity, ignitability, corrosivity, reactivity, explosivity, toxicity, carcinogenicity, infectiousness or other harmful or potentially harmful properties or effects, including, without limitation, all of those chemicals, substances, materials, objects, conditions, wastes or combinations thereof which are now or become listed, defined or regulated in any manner by any federal, state or local law based upon, directly or indirectly, such properties or effects.

B. The Mortgagor hereby represents and warrants to the Mortgagee that neither the Mortgagor nor, to the best of the Mortgagor's knowledge, any other person or entity, has ever caused or permitted (and will not cause or permit) any Hazardous Material to be placed, held, located or disposed of on, under or at (a) the Premises or any part thereof, or (b) any other real property in which the Mortgagor holds any estate or interest whatsoever (including, without limitation, or which is owned by a land trust the beneficial interest in which is owned, in whole or in part, by the Mortgagor), and that none of the property described above contains or will contain any underground storage tanks (singly, a "UST"), and none of such property has been or will be used by the Mortgagor, or, to the best of the Mortgagor's knowledge, by any other person or entity, as a temporary or permanent storage or disposal site for any Hazardous Material.

EXCEPT AS TO TRUSTEE'S EXCLUSION

C. Without limitation or any other provision hereof, the Mortgagor hereby agrees, except with respect to liabilities and obligations arising solely from gross negligence or willful

UNOFFICIAL COPY

misconduct on the part of the Mortgagee, to indemnify, defend and hold the Mortgagee harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any kind whatsoever including, without limitation, attorneys' fees and all costs of litigation as well as any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any Environmental Law paid, incurred, suffered by or asserted against the Mortgagee as a direct or indirect result of any of the following, regardless of whether or not caused by, or within the control of, the Mortgagor: (i) the presence of any Hazardous Material or UST on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release of any Hazardous Material from (A) the Premises or any part thereof, or (B) any other real property in which the Mortgagor holds any estate or interest whatsoever, or (ii) any liens against the Premises permitted or imposed by any Environmental Laws, or any actual or asserted liability or obligations of the Mortgagor or any of its affiliates or subsidiaries under any Environmental Laws, or (iii) any actual or asserted liability or obligations of the Mortgagee or any of its affiliates or subsidiaries under any Environmental Law relating to the Premises. This indemnity shall be irrevocable, ongoing and perpetual and shall not terminate upon, but rather shall survive, any foreclosure or release of this Mortgage.

17. Restrictions on Transfer. Mortgagor shall not, without the prior written consent of Mortgagee create, effect, contract for, consent to, suffer or permit any "Prohibited Transfer" (as defined herein). Any conveyance, sale, lease with option of sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of the Premises or any part thereof or interest therein, which occurs, is granted, accomplished, attempted or effectuated without the prior written consent of Mortgagee shall constitute a "Prohibited Transfer", in each case whether any such conveyance, sale, lease with option of sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by Mortgagor or any third party, by operation of law or otherwise; provided, however, that the foregoing provisions of this Paragraph 17 shall not apply (i) to liens securing the Indebtedness Hereby Secured, (ii) to the lien of current taxes and assessments not in default or (iii) execution of Leases.

18. Defaults. If one or more of the following events (herein called "Events of Default") shall occur

- (a) An Event of Default pursuant to the Note;
- (b) The occurrence of a Prohibited Transfer; or

UNOFFICIAL COPY

(c) Failure by the Mortgagor to comply with covenants, provisions, terms or conditions contained in this Mortgage, and the continuance of such failure for twenty (20) days after notice thereof to the Mortgagor from Mortgagee;

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

19. Foreclosure. When the Indebtedness Hereby Secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof in accordance with the laws of the State of Illinois and to exercise any other remedies of Mortgagee provided in the Note, this Mortgage, or which Mortgagee may have at law, in equity or otherwise. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness Hereby Secured in the decree of sale, all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Mortgagee may deem necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Premises. All expenditures and expenses of the nature mentioned in this Paragraph, and such other expenses and fees as may be incurred in the protection of the Premises and rents and income therefrom and the maintenance of the lien of this Mortgage, or arising from any suit to which Mortgagee is made a party by reason of its interest in the Premises, including the fees of any attorney employed by Mortgagee in any litigation or proceedings arising out of Mortgagee's interest in the Premises or affecting this Mortgage, or the Premises, including probate and bankruptcy proceedings, or in preparation of the commencement or defense of any such proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be so much additional Indebtedness Hereby Secured and shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate

UNOFFICIAL COPY

until paid.

20. Right of Possession. When the Indebtedness Hereby Secured shall become due, whether by acceleration or otherwise, or in any case in which, under the provisions of this Mortgage, Mortgagee has a right to institute foreclosure proceedings, Mortgagor shall, forthwith upon demand of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to take actual possession of, the Premises or any part thereof, personally or by its agent or attorneys, and Mortgagee, in its sole and unfettered discretion, may enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers, and accounts of Mortgagor or the then owner of the Premises relating thereto, and may exclude Mortgagor, such owner, and any agents and servants thereof wholly therefrom and may, on behalf of Mortgagor or such owner, or in its own name as Mortgagee and under the powers herein granted:

(a) hold, operate, manage, and control all or any part of the Premises and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Premises, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Mortgagor;

(b) cancel or terminate any Lease or sublease of all or any part of the Premises for any cause or on any ground that would entitle Mortgagor to cancel the same;

(c) elect to disaffirm any Lease or sublease of all or any part of the Premises made subsequent to this Mortgage without Mortgagee's prior written consent;

(d) extend or modify any then existing Leases and make new Leases of all or any part of the Premises which extensions, modifications, and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the loan evidenced by the Note and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor, all persons whose interests in the Premises are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Indebtedness Hereby Secured, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;

UNOFFICIAL COPY

(e) make all necessary or proper repairs, decoration renewals, replacements, alterations, additions, betterments, and improvements in connection with the Premises as may seem judicious to Mortgagee, to insure and reinsure the Property against all risks incidental to Mortgagee's possession, operation, and management thereof, and to receive all rents, issues, deposits, profits, and avails therefrom; and

(f) apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Premises, to the payment of Taxes, Premiums and other charges applicable to the Premises, or in reduction of the Indebtedness Hereby Secured in such order and manner as Mortgagee shall select.

Nothing herein contained shall be construed as constituting Mortgagee a "mortgagee-in-possession" in the absence of the actual taking of possession of the Premises.

21. Receiver. Upon the filing of a complaint to foreclose this Mortgage or at any time thereafter, the court in which such complaint is filed may appoint a receiver of the Premises. Such appointment may be made either before or after sale, without notice, without regard to solvency or insolvency of Mortgagor at the time of application for such receiver, and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not; and Mortgagee hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have the power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and deficiency, during the full statutory period of redemption whether prior to or after sale, if any, whether there be a redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collection of such rents, issues and profits, and such receiver shall have all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court may, from time to time, authorize the receiver to apply the net income from the Premises in payment in whole or in part of: (a) the Indebtedness Hereby Secured or the indebtedness secured by a decree foreclosing this Mortgage, or any tax, special assessment, or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to the foreclosure sale; or (b) the deficiency in case of a sale and deficiency.

22. Foreclosure Sale. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all

UNOFFICIAL COPY

such items as are mentioned in Paragraph 19 hereof; Second, all other items which, under the terms hereof, constitute **Indebtedness Hereby Secured**, with interest on such items as herein provided; and lastly, any overplus to Mortgagor, and its successors or assigns, as their rights may appear.

23. Insurance During Foreclosure. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any Insurance Policy, if not applied in rebuilding or restoring the Improvements, as aforesaid, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct. In the event of foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all Insurance Policies to the purchaser at the sale, or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the Insurance Policies without credit or allowance to Mortgagor for prepaid premiums thereon.

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

UNOFFICIAL COPY

law or laws have been or will have been made or enacted. To the full extent permitted by law, Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note.

25. Rights Cumulative. Each right, power and remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter provided by law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient to Mortgagee. The exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein. No waiver of or acquiescence in any default under any provision of this Mortgage shall constitute a waiver as to any other default hereunder or as to any continuing or subsequent default under the same provision of this Mortgage unless expressly so provided by Mortgagee in writing.

26. Successors and Assigns.

A. Holder of the Notes. This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon Mortgagor and its successors and assigns (including, without limitation, each and every record owner from time to time of the Premises or any other person having an interest therein), and shall inure to the benefit of Mortgagee and its successors and assigns. Wherever herein Mortgagee is referred to, such reference shall be deemed to include the holder from time to time of the Note; and each such holder, from time to time shall have and enjoy all of the rights, privileges, powers, options and benefits afforded hereby and hereunder, and may enforce all and every of the terms and provisions hereof, as fully and to the same extent and with the same effect as if such holder from time to time were herein by name specifically granted such rights, privileges, powers, options and benefits and was herein by name designated Mortgagee.

B. Covenants Run With Land; Successor Owners. All of the covenants of this Mortgage shall run with the Land and be binding on any successor owners of the Land. In the event that the ownership of Premises or any portion thereof becomes vested in a person or persons other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest of Mortgagor with reference to this Mortgage and the Indebtedness Hereby Secured in the same manner

03079624

UNOFFICIAL COPY

as with Mortgagor without in any way releasing or discharging Mortgagor from its obligations hereunder. Mortgagor will give immediate written notice to Mortgagee of any conveyance, transfer or change of ownership of the Premises, but nothing in this Paragraph 26 shall vary or negate the provisions of Paragraph 17 hereof or be construed as constituting Mortgagee's consent to any Prohibited Transfer.

27. Effect of Extensions and Amendments. If the payment of the Indebtedness Hereby Secured, or any part thereof, be extended or varied, or if any part of the security or guaranties therefor be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability, and the lien, and all provisions hereof, shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding any such extension, variation or release. Any person, firm or corporation taking a junior mortgage, or other lien upon the Premises or any part thereof or any interest therein, shall take the said lien subject to the rights of Mortgagee to amend, modify, extend or release this Mortgage or any other document or instrument evidencing, securing or guarantying the Indebtedness Hereby Secured, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien.

28. Future Advances. This Mortgage shall secure as part of the Indebtedness Hereby Secured the unpaid balances of future and additional loan advances to Mortgagor from Mortgagee made pursuant to this Mortgage while this Mortgage remains unreleased of record. At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage also secures, as part of the Indebtedness Hereby Secured, the payment of any and all taxes, assessments, loan commissions, service charges, liquidated damages, attorney's fees and costs of litigation, expenses and advances due to or incurred by Mortgagee in connection with the Indebtedness Hereby Secured, all in accordance with this Mortgage; provided, however, that in no event shall the total amount of the Indebtedness Hereby Secured exceed 500% of the maximum principal amount of the Note.

29. Execution of Separate Security Agreements, Financing Statements, Etc.; Estoppel Letter. Mortgagor will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, conveyances, notes, mortgages, security agreements, financing statements and assurances, as Mortgagee shall require or request for the better assuring, conveying, mortgaging, assigning and confirming unto Mortgagee all property mortgaged hereby or property intended so to be, whether now owned by Mortgagor or hereafter acquired.

UNOFFICIAL COPY

Without limitation of the foregoing, Mortgagor will assign to Mortgagee, upon request, as further security for the Indebtedness Secured Hereby, its interests in all agreements, contracts, licenses and permits affecting the Premises, such assignments to be made by instruments satisfactory to Mortgagee, but no such assignment shall be construed as a consent by the Mortgagee to any agreement, contract, license or permit or to impose upon Mortgagee any obligations with respect thereto. From time to time, Mortgagor will furnish within five (5) days after Mortgagee's request a written and duly acknowledged statement of the amount due under the Note and under this Mortgage and whether any alleged offsets or defenses exist against the Indebtedness Hereby Secured.

30. Subrogation. If any part of the Indebtedness Hereby Secured is used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Premises or any part thereof, then Mortgagee shall be subrogated to the rights of the holder thereof in and to such other lien or encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.

31. Option to Subordinate. At the option of Mortgagee, to be exercised in its sole and unfettered discretion, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases of all or any part of the Premises upon the execution by Mortgagee and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds of Cook County, Illinois, of a unilateral declaration to that effect.

32. Governing Law. The place of negotiation, execution, and delivery of this Mortgage and the location of the Property being the State of Illinois, this Mortgage shall be construed and enforced according to the laws of that State, without reference to the conflicts of law principles of that State.

33. Business Loan. Mortgagor warrants and represents that the proceeds of the Note will be used for the purposes specified in Illinois Compiled Statutes, 815 ILCS 205/4, and that the principal obligations secured hereby constitute "business loans" coming within the definition and purview of said section.

34. Inspection of Premises and Records. Mortgagee and its representatives and agents shall have the right to inspect the Premises and all books, records and documents relating thereto at all reasonable times, and access thereto shall be permitted for that purpose. Mortgagor shall keep and maintain full and correct books and records showing in detail the income

UNOFFICIAL COPY

and expenses of the Premises and, within five (5) days after demand therefor by Mortgagee, permit Mortgagee or its agents to examine such books and records and all supporting vouchers and data at any reasonable time and from time to time on reasonable request at its offices at the address hereinafter identified or at such other location as may be mutually agreed upon.

35. Time of the Essence. Time is of the essence of the Credit Agreement, this Mortgage, and any other document or instrument evidencing or securing the Indebtedness Hereby Secured.

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

37. Notices. Any notice, demand or other communication which any party hereto may desire or may be required to give to any other party hereto shall be in writing, and shall be deemed given if and when personally delivered, on the first business day following deposit, prepaid, with a nationally recognized overnight courier service, on the second business day after being deposited in United States registered or certified mail, postage prepaid, return receipt requested, addressed to a party at its address set forth below, or to such other address as the party to receive such notice may have designated to all other parties by notice in accordance herewith, or by telecopier:

(a) If to Mortgagee:

Mr. Paul Vishny
D'Ancona & Pflaum
30 North LaSalle Street
Chicago, Illinois 60602

Telephone (312) 580-2050
Telecopy (312) 580-0923

(b) If to Mortgagor:

Pamela Rahmann Conant
c/o Urban Innovations, Ltd.
444 North Wells Street
Chicago, Illinois 60610

Telephone: (312) 222-0777
Telecopy: (312) 222-5369

UNOFFICIAL COPY

Except as otherwise specifically required herein, notice of the exercise of any right, power or option granted to Mortgagee by this Mortgage is not required to be given. Rejection or refusal to accept or inability to deliver because of changed address when no notice of changed address was given, shall be deemed to be receipt.

38. No Oral Waiver or Modification. Neither this Mortgage nor any provision hereof may be charged, waived, discharged or terminated orally, such being accomplishable by only a written instrument signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

39. Severability. If any term or condition of this Mortgage or the application thereof to any person, entity or circumstance shall be invalid or unenforceable to any extent, the remainder of this Mortgage and the application of such term or condition to any other person, entity or circumstance shall not be affected thereby and shall be enforced to the greatest extent permitted by law. Without limiting the generality of the foregoing, any provision herein, or in the Note, to the contrary notwithstanding, Mortgagee shall in no event be entitled to receive or collect, nor shall or may amounts received hereunder be credited, so that Mortgagee shall be paid, as interest, a sum greater than the maximum amount permitted by law. If any construction of this Mortgage or the Note indicates a different right given to Mortgagee to ask for, demand or receive any larger sum, as interest, such is a mistake in calculation or in wording, which this clause shall override and control, and proper adjustment shall automatically be made accordingly.

40. Mortgagee's Authority. No person shall be required to inquire into the authority of Mortgagee to
(a) modify, amend or waive any provision of this Mortgage, or
(b) grant any consent contemplated or required hereby, or
(c) exercise any rights or remedies hereunder, or (d) release the lien of this Mortgage.

UNOFFICIAL COPY

41. Nonrecourse Mortgage. This Mortgage is executed by American National Bank and Trust Company not personally but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that nothing in this Mortgage contained shall be construed as creating any liability whatsoever against said Trustee or its beneficiary, or their successors or assigns, personally, and in particular without limiting the generality of the foregoing, there shall be no personal liability to pay any indebtedness accruing hereunder or to perform any covenant, either express or implied, herein contained, and that all personal liability of said Trustee or its beneficiary, or their successors or assigns, of every sort, if any, is hereby expressly waived by Mortgagee, and by every person now or hereafter claiming any right or security hereunder, and that so far as said Trustee or its beneficiary, or their successors or assigns, is concerned the owner of any indebtedness or liability accruing hereunder shall look solely to the Premises or any guarantor for the payment thereof.

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be duly signed, sealed and delivered the day and year first above written."

This Amendment is executed by American National Bank and Trust Company not personally but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that nothing in this Amendment contained shall be construed as creating any liability whatsoever against said Trustee or its beneficiary, or their successors or assigns, personally, and in particular without limiting the generality of the foregoing, there shall be no personal liability to pay any indebtedness accruing hereunder or to perform any covenant, either express or implied, herein contained, and that all personal liability of said Trustee or its beneficiary, or their successors or assigns, of every sort, if any, is hereby expressly waived by Mortgagee, and by every person now or hereafter claiming any right or security hereunder, and that so far as said Trustee or its beneficiary, or their successors or assigns, is concerned the owner of any indebtedness or liability accruing hereunder shall

03079626

UNOFFICIAL COPY

look solely to the Premises or any guarantor for the payment thereof.

IN WITNESS WHEREOF, Mortgagor and Mortgagee have caused this Amendment to be duly signed, sealed and delivered the day and year first above written.

MORTGAGOR:

American National Bank and Trust Company of Chicago as Trustee of Trust Number 56647

[Handwritten signature]

ASEE SECTY

By: *[Handwritten signature]*
Title: 2ND VP

MORTGAGEE:

Conant Family Partnership

By: *[Handwritten signature]*
partner *[Handwritten initials]*

The terms and conditions contained in this instrument to the contrary notwithstanding, this instrument is subject to the provisions of the Trust Agreement and its amendments hereto and, in all respects hereof.

This instrument is executed by the undersigned Land Trustee, not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by it solely in its capacity as Trustee and not personally. It is further understood and agreed that the Trustee merely holds title to the property herein described and has no agents, employees or control over the management of the property and no knowledge of other factual matters except as represented to it by the beneficiary(ies) of the Trust. No personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this instrument, all such liability being expressly waived by every person now or hereafter claiming any right or security hereunder; and the owner of any indebtedness or cause of action for breach of any warranty, indemnity, representation, covenant, undertaking or agreement accruing hereunder shall look solely to the Trust estate for the payment thereof.

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The undersigned, a Notary Public, in and for said County, in the State aforesaid, do hereby certify that ~~Donald Johnson~~ ~~the~~ ~~SECOND VICE PRESIDENT~~ ~~ASSISTANT SECRETARY~~ of American National Bank and Trust Company of Chicago, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such ~~SECRETARY~~ ~~ASSISTANT SECRETARY~~ appeared before me this day in person and acknowledged that (s)he signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said Bank as Trustee as aforesaid for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 29 day of December, 1993.

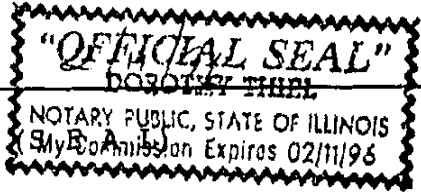


Notary Public

Dorothy Thiel

Type or Print Name

My Commission Expires:



UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The undersigned, a Notary Public, in and for said County, in the State aforesaid, do hereby certify that Paul H. Vishny, a partner of Conant Family Partnership, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such partner, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said partnership or the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 28th day of December, 1993.

Marthy Borg
Notary Public

Marthy Borg
Type or Print Name

My Commission Expires:

"OFFICIAL SEAL"
(S E A L) Marthy Borg
Notary Public, State of Illinois
My Commission Expires May 2, 1996

UNOFFICIAL COPY

EXHIBIT A
TO
MORTGAGE

THE LAND
(Legal Description)

Lot 1 in the Assessor's Division of Block 11 in Newberry's
Addition to Chicago in Section 9, Township 39 North, Range 14,
East of the Third Principal Meridian in Cook County, Illinois.

Street Address: 444 N. Wells Street
Chicago, Illinois 60610

P.I.N.: 17-09-251-004

THIS INSTRUMENT PREPARED BY:
Michael D. Miselman, Esq.
D'Ancona & Pflaum
30 N. LaSalle Street
Suite 2900
Chicago, Illinois 60602

UNOFFICIAL COPY

EXHIBIT B TO MORTGAGE

PERMITTED ENCUMBRANCES

1. Junior Mortgage, Security Agreement and Financing Statement with Assignment of Rents made as of May 11, 1993 by Mortgagor to Howard R. Conant, Sr.

Property of Cook County Clerk's Office