



Eugene "Gene" Moore Fee: \$52.00
Cook County Recorder of Deeds
Date: 08/15/2003 09:01 AM Pg: 1 of 15

[Space Above This Line For Recording Data]

15

MORTGAGE

THIS MORTGAGE (the "Instrument" or "Mortgage"), dated AUGUST 8TH, 2003, is made by
ESF PARTNERS LLC,

(hereinafter referred to as "Borrower" and "Mortgagor"), in favor of Mid America Bank, fsb., which is organized and existing under the laws of the United States of America, (hereinafter referred to as "Lender" and "Mortgagee"), whose address is 1823 Centre Point Circle, P.O. Box 5142, Naperville, Illinois 60566-7142.

WITNESSETH, that to secure the payment of an indebtedness in the amount of FOUR HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (450,000.00)

lawful money of the United States, to be paid with interest thereon according to a certain mortgage note (the "Note") bearing even date herewith, which provides for monthly payments with the full indebtedness, if not paid earlier, to be payable on SEPTEMBER 1, 2028 (the "Maturity Date") as well as any extension, modification, renewal or substitution thereof the Mortgagor hereby mortgages, conveys and transfers to the Mortgagee all of Mortgagor's right, title and interest in the property (the "Land") situated in COOK County, State of Illinois, commonly known as 2028 N OAKLEY, CHICAGO, ILLINOIS

and legally described as follows:

LOTS 32 AND 33 IN BLOCK 17 IN HOLSTEIN IN THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 31, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PERMANENT INDEX NUMBER: 14311320450000 14311320460000

Together with all improvements now or hereafter located thereon;

Together with all easements, rights-of-way and rights used in connection therewith or with a means of access thereto and all tenements, hereditaments and appurtenances thereto;

Together with all fixtures and all furniture, equipment and other personalty (excluding inventory goods) customarily located on, in or upon said real property, including but not limited to all partitions, security devices, carpeting, rugs, cash registers, lighting fixtures, office equipment, heating and cooling equipment, sprinkler systems, appliances and machinery used in the operation of the business conducted on said real property, as well as any and all additions, substitutions, replacements and proceeds thereto or therefrom, (collectively referred to herein as "Personalty"); and

BOX 333-CT1

815749E, 42, CB 10F2

UNOFFICIAL COPY

Together with all right, title and interest of the Borrower in and to any and all leases, now or hereafter on or affecting the property described above; and

Together with the rents, issues and profits of such real property, with full and complete authority and right in Noteholder in case of default of this Mortgage to demand, collect, receive and receipt for such rents, issues and profits.

Together with the real property legally described above, together with the improvements thereon, the rights therein, the appurtenances thereto, the Personalty on, in, upon, attached to or installed therein, the rents, issues and proceeds thereof, the present and future estates and interest of Mortgagor therein (collectively referred to as the "Mortgaged Premises").

And the Mortgagor covenants with the Mortgagee as follows:

1. Payment of Indebtedness

The Mortgagor will promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, any prepayment and late charges provided in the Note, and all other sums secured by this Instrument, and will otherwise duly comply with the terms thereof.

2. Funds for Taxes, Insurance and Other Charges.

Subject to applicable law or to a written waiver by Mortgagee, Mortgagor shall pay to Mortgagee on the day monthly installments of principal and interest are payable under the Note until the Note is paid in full, a sum (herein "Funds"), equal to one-twelfth of (a) the taxes and assessments which may be levied on the Property, (b) the yearly ground rents, if any, (c) the yearly premium installments for fire and other hazard insurance, rent loss insurance and such other insurance covering the Property as Mortgagee may require pursuant to paragraph 6 hereof, (d) the yearly premium installments for mortgage insurance, if any, and (e) if this Instrument is on a leasehold, the yearly fixed rents, if any, under the ground lease, all as reasonably estimated initially and from time to time by Mortgagee on the basis of assessments and bills and reasonable estimates thereof. Any waiver by Mortgagee of a requirement that Mortgagor pay such Funds may be revoked by Mortgagee, in Mortgagee's sole discretion, at any time upon notice in writing to Mortgagor. Mortgagee may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for federally related mortgage loan may require for Mortgagor's escrow account under the federal Real Estate Settlement Procedures Act of Act of 1974 as amended from time to time, 12 U.S.C. Section 2601 *et seq.* ("RESPA"), unless another law that applies to the Funds sets a lesser amount. Mortgagee may require Mortgagor to pay to Mortgagee, in advance, such other Funds for the other taxes, charges, premiums, assessments and impositions in connection with Mortgagor or the Mortgaged Premises which Mortgagee shall reasonably deem necessary to protect Mortgagee's interests (herein "Other Impositions"). Unless otherwise provided by applicable law, Mortgagee may require Funds for Other Impositions to be paid by Mortgagor in a lump sum or in periodic installments, at Mortgagee's option.

The Funds shall be held by Mortgagee. Mortgagee shall apply the Funds to pay said rents, taxes, assessments, insurance premiums and Other Impositions so long as Mortgagor is not in breach of any covenant or agreement of Mortgagor in this Instrument. Mortgagee shall make no charge for so holding and applying the Funds, analyzing said account or for verifying and compiling said assessments and bills, unless applicable law permits Mortgagee to make such a charge. Mortgagor and Mortgagee may agree in writing at the time of execution of this instrument that interest on the Funds shall be paid to Mortgagor, and unless such agreement is made or applicable law requires interest, earnings or profits to be paid, Mortgagee shall not be required by Mortgagor to any interest, earnings or profits on the Funds. Mortgagee shall give to Mortgagor, without charge, an annual accounting of the Funds in Mortgagee's normal format showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The funds are pledged as additional security for the sums secured by this Instrument.

If the amount of the Funds held by Mortgagee exceeds the amount permitted by applicable law, Mortgagee shall account to the Mortgagor for the excess funds in accordance with the requirements of applicable law. If at any time the amount of the Funds held by Mortgagee shall be less than the amount deemed necessary by Mortgagee to pay taxes, assessments, insurance premiums, rents and Other Impositions, as they fall due, Mortgagor shall pay to Mortgagee any amount necessary to make up the deficiency within thirty days after notice from Mortgagee to Mortgagor requesting payment thereof. In the event the Mortgagor does not remit the sum to the Mortgagee necessary to pay taxes, assessments, insurance premiums, rents and Other Impositions within said thirty day period, Mortgagee may, in its discretion, but shall not be obligated to, advance funds necessary to pay the charges described in this paragraph, and any amounts advanced by the Mortgagee hereunder shall be added to the balance

UNOFFICIAL COPY

due under the Note, and interest shall accrue upon said amounts at the Interest Rate described in the Note. The failure of the Mortgagor to remit any amounts requested by the Mortgagee hereunder within thirty days of its notice to the Mortgagor shall be considered an Event of Default of this Mortgage, and thereafter interest shall accrue on any amounts advanced by the Mortgagee under this paragraph at the Default Rate described in the Note.

Upon Mortgagor's breach of any covenant or agreement of Mortgagor in this Instrument, Mortgagee may apply, in any amount and in any order as Mortgagee shall determine in Mortgagee's sole discretion, any Funds held by Mortgagee at the time of application (i) to pay rents, taxes, assessments, insurance premiums and Other Impositions which are now or will hereafter become due, or (ii) as a credit against sums secured by this Instrument. Upon payment in full of all sums secured by this Instrument, Mortgagee shall promptly refund to Mortgagor any Funds held by Mortgagee.

3. Title to Land.

Mortgagor represents and covenants that (i) Mortgagor is seized of a Fee Simple Estate in the Land and the improvements, and that the Land is free and clear of all liens and encumbrances, other than easements, covenants, and restrictions of record which are acceptable to the Mortgagee, (ii) Mortgagor has full legal power, right and authority to mortgage, pledge and convey the Fee Simple Estate and (iii) this Mortgage creates a first lien on the Fee Simple Estate, subject only to easements, covenants, and restrictions of record which are acceptable to the Mortgagee.

4. Application of Payments.

Unless applicable law provides otherwise, all regular monthly payments or all other payments received by Mortgagee from Mortgagor under the Note or this Instrument shall be applied by Mortgagee in the following order of priority: (i) to all costs and expenses, including reasonable attorney's fees, incurred by the Mortgagee pursuant to the terms of the Note or this Instrument; (ii) to any and all amounts of interest payable on any and all advances and expenses made by the Mortgagee or on any other indebtedness due to the Mortgagee pursuant to the Note and this Instrument; (iii) to any and all advances made by the Mortgagee or any other indebtedness due to the Mortgagee pursuant to the Note and this Instrument; (iv) to any and all late charges due to the Mortgagee as provided in the Note; (v) to any and all amounts of interest payable on the Note; and (vi) to any and all amounts of principal due under the Note.

5. Maintenance of Mortgaged Premises Changes and Alterations.

A. The Mortgagor shall maintain, or cause to be maintained, the Mortgaged Premises in good repair, working order and condition and make, or cause to be made, as and when necessary, all repairs, renewals, and replacements, structural and non-structural, exterior and interior, ordinary and extraordinary. The Mortgagor shall refrain from, and shall not permit, the commission of waste in or about the Mortgaged Premises and shall not remove, demolish, alter, change or add to the structural character of any improvement at any time erected on the Mortgaged Premises without the prior written consent of the Mortgagee, except as hereinafter otherwise provided.

B. The Mortgagor may, in its discretion and without the prior written consent of the Mortgagee, any time and from time to time, make, or cause to be made reasonable changes, alterations or additions, structural or otherwise, in or to the Mortgaged Premises, which are suitable to the Mortgaged Premises.

C. The Mortgagor may, in its discretion and without the prior written consent of the Mortgagee, any time and from time to time, remove and dispose of any Personalty, now or hereafter constituting part of the Mortgaged Premises which, in the reasonable opinion of Mortgagor, becomes inefficient, obsolete, worn out, unfit for use or no longer useful in the operation of the Mortgaged Premises or the business conducted thereon, provided the Mortgagor promptly replaces such Personalty, and title to such replacements to be free and clear of all other liens and encumbrances and subject to a first lien hereunder. If any Personalty, which becomes inefficient, obsolete, worn out, unfit for use or no longer useful in the operation of the Mortgaged Premises or the business conducted thereon, shall be removed and disposed of in compliance herewith, the proceeds of a sale, if any, may be retained by the Mortgagor.

6. Insurance.

A. The Mortgagor shall maintain the following insurance coverage with respect to the Mortgaged Premises:

- (i) Insurance against loss of or damage to the Mortgaged Premises by fire and such other risks as are customarily insured against in the area in which the Mortgaged Premises are located, including, but not limited to, risks insured against under extended coverage policies with all risk and difference in

UNOFFICIAL COPY

conditions endorsements, in each case in amounts at all times sufficient to prevent the Mortgagor from becoming a co-insurer under the terms of the applicable policies and, in any event, in amounts not less than the greater of (i) the principal balance remaining outstanding from time to time on the Note and (ii) the full insurable value (as hereinafter defined) of the Mortgaged Premises, as determined from time to time.

- (ii) Comprehensive general liability insurance against any and all claims (including all costs and expenses of defending the same) for bodily injury or death and for property damage occurring upon, in or about the Mortgaged Premises and the adjoining streets or passageways in amounts not less than Five Hundred Thousand and No/100 Dollars (\$ 500,000.00) or such other respective amounts which the Mortgagee shall from time to time reasonably require, having regard to the circumstances and usual practice at the time of prudent owners of comparable properties in the area in which the Mortgaged Premises are located;
- (iii) Explosion insurance in respect to boilers, heating apparatus or other pressure vessels, if any, at the time located on the Mortgaged Premises in such amounts as shall from time to time reasonably be required by the Mortgagee;
- (iv) Insurance against actual loss of rents, business interruption, or insurance of a similar kind and nature;
- (v) Such other insurance as is customarily purchased in the area for similar types of business, in such amounts and against such insurable risks, as from time to time may reasonably be required by the Mortgagee, including, but not limited to, those amounts required from contractors and subcontractors under a construction loan agreement.

The term "full insurable value" as herein shall mean actual cash value, i.e., replacement cost, exclusive of costs of excavation, foundations and footings below the lowest basement floor or mortgage indebtedness, whichever is greater.

B. The Mortgagor may effect for its own account any insurance not required under the provisions of subparagraph A hereof, but any insurance effected by the Mortgagor on the Mortgaged Premises, whether or not required under this Mortgage, shall be for the benefit of the Mortgagee and the Mortgagor, as their interests may appear, and shall be subject to the provisions of this Mortgage.

C. If the Mortgagor shall fail to keep the Mortgaged Premises insured in accordance with the requirements of this Paragraph, the Mortgagee shall have the rights, at its option and in addition to any other remedies available to it under this Mortgage, to provide for such insurance and pay the premiums thereof, and any amounts paid thereon by the Mortgagee shall constitute additional indebtedness secured by this Mortgage, shall bear interest at the Interest Rate set forth in the Note from the date of payment, and shall become immediately due and owing to the Mortgagee. If the Mortgagor does not pay to the Mortgagee any and all amounts advanced by the Mortgagee under this Paragraph within thirty (30) days of the date of the Mortgagee's notice to the Mortgagor of said advance, interest will accrue on the funds advanced at the Default Rate of interest provided in the Note, and the failure to pay said amounts to the Mortgagee shall be considered an Event of Default hereunder.

D. All policies of insurance to be furnished under this Mortgage shall be in forms and with companies reasonably satisfactory to the Mortgagee, and shall comply with any and all of Mortgagee's Conditions for Acceptance of Hazard Insurance, with standard mortgage clauses attached to or incorporated in all policies in favor of the Mortgagee, including a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without thirty (30) calendar days prior written notice to the Mortgagee. Any or all of such insurance may be provided for under a blanket policy or policies carried by the Mortgagor or any affiliated corporation.

E. The Mortgagor shall deliver to the Mortgagee the originals of all insurance policies or certificates of coverage under blanket policies, including renewal or replacement policies, and in the case of insurance about to expire shall deliver renewal or replacement policies as to the issuance thereof or certificates in the case of blanket policies not less than fourteen (14) days prior to their respective dates of expiration.

F. On all insurance policies of the character described in clauses (i), (iii) and (iv), of subparagraph A of this Paragraph 6, Mortgagee shall be named as Mortgagee in the standard mortgage clause and as an additional loss payee where appropriate and such insurance shall be for the benefit of the Mortgagor and the Mortgagee, as their interest may appear.

G. On all insurance policies of the character described in clauses (ii) and (v) of subparagraph A of this Paragraph 6, Mortgagee shall be named as an additional named insured thereunder.

UNOFFICIAL COPY

H. In any event, the Mortgagor shall continue to pay the principal and interest on the Note including amounts for taxes, insurance and Other Impositions provided in the Note and in this Mortgage, notwithstanding any damage, loss or capacity.

7. Damage or Destruction

A. In case of any damage to or destruction of the Mortgaged Premises or any part thereof from any cause whatsoever, other than a Taking (as defined in Paragraph 12 below), the Mortgagor shall promptly give written notice thereof to the Mortgagee. Subject to the provisions of subparagraph D of this Paragraph 7, Mortgagor shall restore, repair, replace, or rebuild the same or cause the same to be restored, repaired, replaced or rebuilt to substantially the same value, condition and character as existed immediately prior to such damage or destruction of with such changes, alterations and additions as may be made at the Mortgagor's election pursuant to Paragraph 5. Such restoration, repair, replacement or rebuilding (herein collectively called "Restoration") shall be commenced promptly and completed with diligence by the Mortgagor, subject only to delays beyond the control of the Mortgagor.

B. Subject to subparagraph D of this Paragraph 7, all net insurance proceeds received by the Mortgagee pursuant to Paragraph 6 shall be made available to the Mortgagor for the Restoration required hereby in the event of damage or destruction on account of which such insurance proceeds are paid. If at any time the net insurance proceeds shall be insufficient to pay the entire cost of the Restoration, the Mortgagor shall pay the deficiency. In such an event, Mortgagor shall make all payments from its own funds to the contractor making such Restoration until the amount of said deficiency has been satisfied; thereafter, Mortgagee shall make subsequent payments from the insurance proceeds to Mortgagor, or to the contractor, whichever is appropriate. All payments hereunder shall be made only upon a certificate or certificates of a supervising architect appointed by the Mortgagor and reasonably satisfactory to the Mortgagee that payments, to the extent approved by such supervising architect, are due to such contractor for the Restoration, the Land are free of all liens of record for work, labor or materials, and that the work conforms to the legal requirements therefore.

C. Upon completion of the Restoration, the excess net insurance proceeds, if any, shall be paid to the Mortgagor.

D. If an Event of Default (as hereinafter defined) shall occur, all insurance proceeds received by the Mortgagee may be retained by the Mortgagee and applied, at its option, in payment of the mortgage indebtedness and any excess repaid to or for the account of Mortgagor.

8. Indemnification.

The Mortgagor will protect, indemnify and save harmless the Mortgagee from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses), imposed upon or incurred by or asserted against the Mortgagee, as a result of (a) ownership of the Mortgaged Premises or any interest therein or receipt of any rent or other sum therefrom, (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Mortgaged Premises or any part thereof or on the adjoining sidewalks, curbs, vaults and vault space, if any, adjacent parking areas, streets or ways, (c) any use, nonuse or condition of the Mortgaged Premises or any part thereof or the adjoining sidewalks, curbs, vaults and vault space, if any, the adjacent parking areas, streets or ways, (d) any failure on the part of the Mortgagor to perform or comply with any of the terms of this Mortgage, or (e) the performance of any labor or services or the furnishing of any materials or other property with respect to the Mortgaged Premises or any part thereof. Interest shall accrue on all amounts payable to the Mortgagee hereunder at the Interest Rate provided in the Note. Any amounts payable to the Mortgagee under this Paragraph which are not paid within thirty (30) days after written demand therefore by the Mortgagee shall bear interest at the Default Rate of interest as set forth in the Note from the date of such demand and shall constitute additional indebtedness secured by this Mortgage. The obligations of the Mortgagor under this paragraph shall survive any termination or satisfaction of this Mortgage.

9. Protection of Mortgagee's Security.

If Mortgagor fails to perform the covenants and agreements contained in this Instrument, or if any action or proceeding is commenced which affects the Mortgaged Premises or title thereto or the interest of Mortgagee therein, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Mortgagee at Mortgagee's option may make such appearances, disburse such sums and take such action as Mortgagee deems necessary, in its sole discretion, to protect Mortgagee's interest, including, but not limited to, (i) disbursement of attorney's fees, (ii) entry upon the

UNOFFICIAL COPY

Mortgaged Premises to make repairs, (iii) procurement of satisfactory insurance as provided in paragraph 6 hereof, and (iv) if this Instrument is on a leasehold, exercise of any option to renew or extend the ground lease on behalf of Mortgagor and the curing of any default of Mortgagor in the terms and conditions of the ground lease. Interest shall accrue upon any advances made by the Mortgagee pursuant to this paragraph at the Interest Rate provided in the Note.

Any amounts disbursed by Mortgagee pursuant to this paragraph 9, with interest thereon, shall become additional indebtedness of Mortgagor secured by this Instrument. Unless Mortgagor and Mortgagee agree to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the Interest Rate as set forth in the Note bearing even date herewith, unless collection from Mortgagor of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Mortgagor under applicable law. If any amounts advanced by the Mortgagee remain unpaid after thirty days from the Mortgagee's notice of such advance to the Mortgagor, interest shall accrue on such advances at the Default Rate of interest as set forth in the Note, and the failure of the Mortgagor to pay to the Mortgagee any and all amounts advanced by the Mortgagee within thirty days of the date of notice from the Mortgagee shall be considered an Event of Default under this Instrument. Mortgagor hereby covenants and agrees that Mortgagee shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the indebtedness secured hereby. Nothing contained in this paragraph 9 shall require Mortgagee to incur any expense or take any action hereunder.

10. Sale, Conveyance, Mortgaging, Hypothecation, or Other Transfer.

A. If, during the term of the Note, the Mortgagor shall (whether voluntarily or by operation of law) sell, convey, assign, mortgage, hypothecate or otherwise transfer or encumber the Mortgaged Premises or any part thereof or any right, title or interest therein, including an Articles of Agreement for Deed, except to an entity wholly-owned directly or indirectly by the Mortgagor, the Mortgagee, at its option, may demand that the Mortgagor prepay the principal balance plus all accrued interest, prepayment premium, if any, and any and all other amounts remaining unpaid under the Note and this Instrument.

Mortgagor shall not permit title to the Mortgaged Premises or any portion thereof or to be conveyed or mortgaged, or the beneficial interest or any portion thereof to be assigned, collaterally assigned or otherwise transferred or encumbered, voluntarily or involuntarily, directly or indirectly, without the prior written consent of the Mortgagee.

If prepayment is elected by Mortgagor, it shall be delivered to Mortgagee within five (5) business days after the sale, conveyance, assignment, mortgage, hypothecation or other transfer or encumbrance together with accrued interest thereon and prepayment premium, if any, calculated in accordance with the prepayment provisions of the Note. Except for the Personalty sold, exchanged, assigned, leased or otherwise conveyed in conjunction with the Mortgaged Premises therein, pursuant to the terms of this Paragraph, Personalty shall not be sold, exchanged, assigned or otherwise conveyed except in accordance with the provisions of Paragraph 5 above.

B. In the event the Mortgagor conveys, sells, grants possession, transfers or assigns any interest therein, either directly or indirectly, including, but not limited to, the assignment of a beneficial interest, or contracts to do any of the foregoing, without the prior written consent of the Mortgagee or violates any of the provisions of the Note, all terms and provisions of the Note being incorporated herein by reference, all sums due hereunder, both principal and interest, shall become immediately due and payable irrespective of the maturity date specified.

11. Priority of Lien: After-Acquired Property.

This Mortgage is and will be maintained as a valid first mortgage. The Mortgagor will not, directly or indirectly, create or suffer or permit to be created, or to stand against the Mortgaged Premises, or any portion thereof, or against the rents, issues and profits thereof, any lien, security interest, encumbrance or charge prior to or on a parity with the lien of this Mortgage; provided, however, that nothing herein contained shall require the Mortgagor to pay any Impositions or insurance premiums prior to the last day on which the same shall become due and payable without penalty or prevent the Mortgagor from contesting the validity of any Impositions in accordance with the provisions of this Mortgage.

Subject to the rights granted under Paragraph 29, the Mortgagor will keep and maintain the Mortgaged Premises free from all liens for monies due and payable to persons supplying labor for and providing materials used in the construction, modification, repair or replacement of the Land. If any such liens shall be filed against the Mortgaged Premises, the Mortgagor agrees to cause the same to be discharged of record promptly after the Mortgagor has notice thereof.

UNOFFICIAL COPY

In no event shall Mortgagor do, or permit to be done, or omit to do, or permit the omission of, any act or thing, the doing of which, or omission to do which, would impair the security of this Mortgage. The Mortgagor shall not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restriction or agreement materially changing the uses which may be made of the Mortgaged Premises or any part thereof without the express written consent of the Mortgagee.

All property of every kind acquired by the Mortgagor after the date hereof which, by the terms hereof, is required or intended to be subjected to the lien of this Mortgage shall, immediately, upon the acquisition thereof by Mortgagor, and without any further mortgage, conveyance, assignment or transfer, become subject to the lien and security of this Mortgage. Nevertheless, Mortgagor will do such further acts and execute, acknowledge and deliver such further conveyances, mortgages, security agreements, financing statements and assurances as Mortgagee shall reasonably require for accomplishing the purpose of this Mortgage.

If any action or proceeding shall be instituted to recover possession of the Mortgaged Premises or any part thereof or to accomplish any other purpose which would materially affect this Mortgage, Mortgagor will immediately, upon service of notice thereof, deliver to Mortgagee a true copy of each, petition, summons, complaint, notice of motion, order to show cause, and all other process, pleadings and papers however designated, served in any such action or proceeding.

12. Condemnation.

A. The term "Taking" as used herein shall mean a Taking of all or part of the Mortgaged Premises under the power of condemnation or eminent domain. Promptly upon the receipt by Mortgagor of notice of the institution of any proceeding for the Taking of the Mortgaged Premises or any part thereof, Mortgagor shall give written notice thereof to Mortgagee and Mortgagee may, at its option, appear in any such proceeding. Mortgagor will promptly give to Mortgagee copies of all notices, pleadings, awards, determinations and other papers received by Mortgagor in any such proceeding. Mortgagor shall not adjust or compromise any claim for award or other proceeds of a Taking without having first given at least thirty (30) days prior written notice to Mortgagee of the proposed basis of adjustment or compromise and without first having received the written consent thereto of Mortgagee. Any award or other proceeds of a Taking, after allowance for expenses incurred in connection therewith, are herein referred to as "Condemnation Proceeds".

B. In the event of a Taking of all or substantially all of the Mortgaged Premises, or in the event of a Taking of less than all or substantially all of the Mortgaged Premises in which the Mortgaged Premises are not susceptible to Restoration, the Condemnation Proceeds shall be paid to Mortgagee and applied, at its option, to payment of the mortgage indebtedness.

C. Subject to subparagraph D below, in the event of a Taking of less than all or substantially all of the Mortgaged Premises which leaves the Mortgaged Premises in a condition which is susceptible to Restoration, the Condemnation Proceeds shall be paid to Mortgagee in escrow, and shall be applied to reimburse the Mortgagor for such repair or restoration in conformity with and subject to the conditions specified in Paragraph 7 hereof relating to damage or destruction. The Mortgagor, whether or not the Condemnation Proceeds which are applicable thereto shall be sufficient for the purpose, shall promptly repair or restore the Mortgaged Premises as nearly as practicable substantially the same value, condition and character as existed immediately prior to the Taking, with such changes and alterations as may be made at Mortgagor's election in conformity with and subject to Paragraph 5 hereof and as may be required by such Taking.

D. If an Event of Default shall occur, any Condemnation Proceeds in the hands of Mortgagee or to which Mortgagee is entitled may be retained by Mortgagee and, at its option, applied in payment of the mortgage indebtedness. Any amount remaining in the hands of Mortgagee following such application shall be paid to Mortgagor.

13. Environmental Representations of Mortgagor.

A. Mortgagor covenants and represents that it shall maintain and keep the Mortgaged Premises free at all times of any environmental violation, waste, hazard or damage, including toxic chemicals, asbestos, or gasoline, and that the Mortgagor shall provide any proof or tests required by the Mortgagee that the Mortgaged Property is free from any environmental waste, hazard, or damage. Further, the Mortgagor represents that the Mortgaged Premises shall not violate any state or federal environmental statute, regulation or law. If at any time any soil test or any other environmental test of the Mortgaged Premises evidences environmental violations or dangers, the Mortgagor shall have a period of sixty (60) days to remedy said violation and deliver an updated test to Mortgagee evidencing that the environmental violations or dangers have been removed. If the Mortgagor fails to remediate the

UNOFFICIAL COPY

environmental dangers evidenced by the requisite soil or environmental test within sixty (60) days, or if any other environmental violation, waste, hazard, or damage occurs on the Mortgaged Premises, said environmental violation, waste, hazard or damage shall be considered an Event of Default under the terms of this Mortgage, and the Mortgagee shall have the right, at its option, but shall have no obligation, to cure any environmental violation, waste, hazard or damage on behalf of the Mortgagor, and any and all amounts advanced by the Mortgagee hereunder shall become an additional indebtedness of the Mortgagor under this Note, and interest shall accrue on said amounts advanced by the Mortgagee at the Default Rate as set forth in the Note. Any amounts advanced by the Mortgagee under this paragraph, plus interest thereon, shall be immediately due and payable by the Mortgagor.

B. The Mortgagee shall have the right, at its discretion, to direct the Mortgagor to conduct environmental tests upon the Mortgaged Premises at the Mortgagor's expense and to provide the Mortgagee with updated test reports detailing the results of the environmental tests. Upon receipt of a request for an environmental test from the Mortgagee, the Mortgagor shall have a period of thirty (30) days to provide the Mortgagee with the results of the requisite environmental test. Any failure of the Mortgagor to conduct any environmental test requested by the Mortgagee, or to provide the Mortgagee with test results, shall be considered an Event of Default under the terms of this Mortgage.

C. The Mortgagor agrees that, in addition to its representations provided in paragraph 13(a) above, it shall, at its own expense, comply with any operation or management plan proposed by any state or federal agency for the removal of asbestos from the Mortgaged Premises. The failure of the Mortgagor to comply with this paragraph 13(c) shall be considered an Event of Default under this Mortgage.

14. Zoning and Placement of Sign.

Upon the request of Mortgagee, the Mortgagor shall furnish to the Mortgagee satisfactory evidence that the Mortgaged Premises is in compliance with all applicable zoning and other laws and regulations and that it may be lawfully occupied and used for the purposes for which the same has been constructed.

If applicable, Mortgagee reserves the right to place a sign on the Mortgaged Premises during construction subject to existing local ordinances, if any, and which does not interfere with signs or advertising by Mortgagor.

15. Right to Inspect.

Mortgagee, its agents and representatives, may at all reasonable times make such inspections of the Mortgaged Premises as Mortgagee may deem necessary or desirable.

16. Books and Records; Financial Statements.

Mortgagor will keep and maintain all necessary books, records, and accounts relating to the Mortgaged Premises and the operation thereof, including the leases relating to the Mortgaged Premises. The books, records, and accounts to be maintained by the Mortgagor shall include, but shall not be limited to, financial statements of the Mortgagor, operating and expense statements relating to the Mortgaged Premises, and up to date rental records for the Mortgaged Premises, if applicable. Such financial and operating statements shall contain correct entries in accordance with generally accepted accounting principles of all dealings and transactions relative to the Mortgaged Premises therein, and shall be prepared and certified at the expense of the Mortgagor in such a manner as shall be acceptable to the Mortgagee. The Mortgagee may, by written notice to the Mortgagor, request that the Mortgagor deliver any and all books, records and accounts to the Mortgagee on January 1st and July 1st of each year during the term of this Mortgage, or within a reasonable time thereafter. The Mortgagee may also require that same be prepared and certified, pursuant to audit, by a firm of independent certified public accountants satisfactory to Mortgagee, in which case such accountants shall state whether or not, in their opinion, any default or Event of Default exists hereunder or under the Note. If the statements furnished shall not be prepared in accordance with generally accepted accounting principles consistently applied, or if the Mortgagor fails to furnish same when due, Mortgagee may, in its sole discretion, audit or cause to be audited, the books of the Mortgagor and/or the Mortgaged Premises, at the Mortgagor's expense, and the costs of such audit shall be an additional advance and indebtedness of the Mortgagor payable upon the demand of the Mortgagee, and shall bear interest at the Default Rate until paid. Any failure by the Mortgagor to comply with the covenants and requirements contained in this paragraph shall be considered an Event of Default, as described in paragraph 18 herein, and the Mortgagee may avail itself of any and all remedies provided in said paragraph 18. Notwithstanding anything to the contrary contained herein, Mortgagee may request, at any time, and the Mortgagor shall produce, any and all additional documents and records which it may reasonably request from the Mortgagor.

17. Leases Affecting Land. **UNOFFICIAL COPY**

A. Mortgagor covenants and agrees to keep, observe, and perform and to require the tenants to keep, observe, and perform all of the covenants, agreements, and provisions of any present or future leases of any portion of the Mortgaged Premises on their respective parts to be kept, observed, and performed, and, in case Mortgagor shall neglect or refuse to do so, then Mortgagee may, if it shall so elect, perform and comply with or require performance and compliance by the tenants with any such lease covenants, agreements and provisions, and any sums expended by Mortgagee in performance or compliance therewith or in enforcing such performance or compliance by the tenant, including costs, expenses, and attorneys' fees, shall bear interest from the date of such expenditures at the rate set forth in the note, shall be paid by Mortgagor to Mortgagee upon demand and shall be deemed a part of the debt secured hereby and recoverable as such in all respects.

B. In addition to the covenants and terms herein contained and not in limitation thereof, Mortgagor covenants that the Mortgagor will not in any case cancel, abridge or otherwise modify tenancies, subtenancies, leases, or subleases of the mortgaged property or accept prepayments of installments of rent to become due thereunder as provided in Paragraph 17(D)(i)-(iii) of this Mortgage.

The whole of the principal sum and the interest shall become due at the option of Mortgagee if Mortgagor fails or refuses to comply with the provisions of this paragraph.

C. Mortgagor covenants and warrants that, in the event of the enforcement by the Mortgagee of the remedies provided for by law or by this Mortgage, any person succeeding to the interest of the Mortgagor as a result of such enforcement shall not be bound by any payment of rent or additional rent for more than one (1) month in advance.

D. Mortgagor covenants and warrants that should Mortgagee succeed to the interest of the Mortgagor, as Landlord, under the terms of the leases, pursuant to a default as defined herein, Mortgagee shall not be liable for security deposits for any leases on the property.

(i) The Mortgagor will not (a) execute an assignment of the rents or any part thereof from the premises unless such assignment shall provide that it is subordinate to the assignment contained in this mortgage and any assignment executed pursuant hereto; or, (b) except where the lessee is in default thereunder, terminate or consent to the cancellation or surrender of any lease of the premises or of any part thereof, not existing or hereafter to be made, having an unexpired term of two (2) years or more unless, promptly after the cancellation or surrender of any lease, a new lease is entered into with a new lessee on substantially the same terms as the terminated or cancelled lease; or (c) modify any such lease so as to shorten the unexpired term thereof or so as to decrease the amount of the rents payable thereunder; or (d) accept prepayments of any installments of rents to become due under such leases, except prepayments in the nature of security for the performance of the lessees thereunder; or (e) in any other manner impair the value of the Mortgaged Premises or the security of the Mortgagee for the payment of the principal of, and interest on, the Note.

(ii) The Mortgagor will not execute any lease of all or a substantial portion of the Mortgaged Premises except for actual occupancy by the lessee thereunder, and will at all times promptly and faithfully perform, or cause to be performed, all of the covenants, conditions and agreements contained in all leases of the premises now or hereafter existing, on the part of the lessor thereunder to be kept and performed.

(iii) The Mortgagor shall furnish to the Mortgagee within thirty (30) days after a request by the Mortgagee to do so, a written statement containing the names of all lessees of the premises, the terms of their respective leases, the spaces occupied and the rental paid.

18. Events of Default.

In the case one or more of the following events ("Events of Default") shall occur, to-wit:

A. If default shall be made in the payment of any installment of interest, or of principal and interest, on the Note, or in the payment of any other amount required to be paid thereunder or hereunder when the same or any part thereof shall become due and payable, including, but not limited to, the Escrow payment required for insurance, taxes, costs, fees and other charges provided under the Note and this Mortgage, and such default shall have been declared, if so required, pursuant to the Note or this Mortgage and if such default shall not have been cured within the time period, if any, given under the Note or this Mortgage; or

B. Subject to the rights granted under Paragraph 29, if default shall be made in the payment of any Imposition when the same shall become due and payable, and if such default shall remain uncured for a period of thirty (30) days after receipt by Mortgagor from Mortgagee of a written notice declaring such default; or

UNOFFICIAL COPY

C. If default shall be made in the performance of any of the other covenants or provisions of the Note or this Mortgage or under any of the provisions of the Assignment of Rents and Leases bearing even date herewith, or any other Assignment or Security Agreement given to the Mortgagee, and if such default shall remain uncured for a period of thirty (30) calendar days after receipt by Mortgagor from Mortgagee of written notice declaring such default, provided that, if the default is curable but not reasonably capable of being cured within such thirty (30) day period, such default shall be deemed cured for the purposes hereof if, and so long as, Mortgagor shall commence such cure within such thirty (30) day period and diligently pursue said cure to completion; or

D. If Mortgagor shall make a general assignment for the benefit of creditors, or shall state in writing or by public announcement its inability to pay its debts as they become due, or shall file a petition in bankruptcy, or shall be adjudicated a bankrupt, or insolvent, or shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or shall file an answer admitting or not contesting the material allegations of a petition against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Mortgagor or any material portion of their assets; or

E. If, within sixty (60) days after the commencement of any proceeding against Mortgagor seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed, or if, within sixty (60) days after the appointment, without the consent or acquiescence of Mortgagor, of any trustee, receiver or liquidator of Mortgagor or any material portion of their assets, such appointment shall not have been vacated; or

F. If any representation or warranty made by Mortgagor in this Mortgage, or made hereto or contemporaneously herewith in any other instrument, agreement or written statement in any way related hereto or to the loan transaction with which this Mortgage is associated, shall prove to have been false or incorrect in any material respect on or as of the date when made and such falsity or incorrectness shall materially affect the security of this Mortgage.

Then, in any such event, at the option of Mortgagee, the entire unpaid principal balance of the Note secured hereby, the applicable premium, if any, and all accrued and unpaid interest under the Note, and any other sums secured hereby shall be due and payable immediately and, thereafter, each of said amounts shall bear interest at the Default Rate of Interest as provided in the Note. All costs and expenses incurred by, or on behalf of, Mortgagee (including, without limitation, reasonable attorneys' fees and expenses) occasioned by an Event of Default by Mortgagor hereunder shall be immediately due and payable by Mortgagor and, thereafter, each of said amounts shall bear interest at the Default Rate of interest as provided in the Note. After any such Event of Default, Mortgagee may institute, or cause to be instituted, proceedings of the realization of its rights under this Mortgage or the Note.

19. Taxes on Mortgage or Note.

In the event of the passage of any law which deducts from the value of real property, for purposes of taxation, any lien thereon and which, in turn, imposes a tax, whether directly or indirectly, on this Mortgage or on the Note, and if Mortgagor is prohibited by law from paying the whole of such tax in addition to every other payment required hereunder, or if Mortgagor, although permitted to pay such tax, fails to do so in a timely fashion, then, in such event, at the option of Mortgagee, the entire unpaid principal balance of the Note secured hereby, and all accrued and unpaid interest under the Note, and any other sums secured thereby shall be due and payable immediately without premium and, thereafter, each of said amounts shall bear interest at the rate of interest as provided in the Note.

20. Rights, Powers and Remedies of Mortgagee.

If an Event of Default shall occur, Mortgagee may, at any time, at its election and to the extent permitted by law and after thirty (30) days written notification to Mortgagor and after expiration of any applicable grace period:

A. Advertise the Mortgaged Premises or any part thereof for sale and thereafter sell, assign, transfer and deliver the whole, or from time to time any part, of the Mortgaged Premises, or any interest in any part thereof, at any private sale or at public auction, with or without demand upon Mortgagor, for cash, on credit or in exchange for other property, for immediate or future delivery, and for such price and on such other terms as Mortgagee may, in its discretion, deem appropriate or as may be required by law. The exercise of this power of sale by Mortgagee shall be in accordance with the provisions of any statute of the State of Illinois now or hereafter in effect which authorizes the enforcement of a mortgage by power of sale, or any statute expressly amending the foregoing.

B. Enter upon and take possession of the Mortgaged Premises or any part thereof by force, summary proceedings, ejectment or otherwise, and may remove Mortgagor and all other persons and any and all property

UNOFFICIAL COPY

therefrom, and may hold, operate, manage, and lease the same and receive all earnings, income, rents, issues and proceeds accruing with respect thereto. Mortgagee shall be under no liability for or by reason of such entry, taking of possession, removal, holding, operation or management, except that any amounts so received shall be applied as hereinafter provided in this Mortgage.

C. Make application for the appointment of a receiver for the Mortgaged Premises whether such receivership be incident to a proposed sale of said Mortgaged Premises or otherwise, and Mortgagor hereby consents to the appointment of such receiver and agrees not to oppose any such appointment. Further, Mortgagor agrees that Mortgagee shall be appointed the receiver of the Mortgaged Premises at Mortgagee's option.

In the event the right to accelerate the indebtedness secured hereby or to foreclose the Mortgage has accrued to Mortgagee, whether the entire debt has then been accelerated or whether foreclosure proceedings have been commenced, Mortgagee may, without order of Court notice to or demand upon Mortgagor, take possession of the Mortgaged Premises, or any part or portion thereof. Should Court proceedings be instituted, Mortgagor hereby consents to the entry of an order by agreement to effect and carry out the provisions of this Subparagraph C. While in possession of the Mortgaged Premises, or any part or portion thereof, Mortgagee shall have the following powers:

- (i) To collect the rents and manage, lease, alter and repair the Mortgaged Premises, cancel or modify existing leases, obtain insurance and in general have all powers and rights customarily incident to absolute ownership; and
- (ii) To pay out of the rents so collected the management and repair charges, taxes, insurance, commissions, fees and all other expenses and, after creating reasonable reserves, apply the balance (if any) on account of the indebtedness secured hereby.

Mortgagee may remain in possession of the Mortgaged Premises, in the event of a foreclosure, until the foreclosure sale and thereafter during the entire period of redemption (if any), if a deficiency exists. Mortgagee shall incur no liability for, nor shall Mortgagor assert any claim, set-off or recoupment as a result of, any action taken while Mortgagee is in possession of the Mortgaged Premises, except only for Mortgagee's own gross negligence or willful misconduct. In the event no foreclosure proceedings are commenced, Mortgagee may remain in possession as long as there exists a Default.

In order to facilitate Mortgagee's exercise of the rights, powers and remedies granted above, Mortgagor hereby irrevocably appoints Mortgagee its true and lawful attorney to act in its name and stead for the purpose of effectuating any sale, assignment, transfer or delivery authorized above, whether pursuant to power of sale or otherwise, and to execute and deliver all such deeds, bills of sale, leases, assignments and other instruments as Mortgagee may deem necessary and appropriate. Notwithstanding the foregoing, if requested by Mortgagee or any purchaser from Mortgagee, Mortgagor shall ratify and confirm any such sale, assignment, transfer or delivery by executing and delivering to Mortgagee or such purchaser all appropriate deeds, bills of sale, leases, assignments and other instruments as may be designated in such request. Further, Mortgagor agrees that Mortgagee may be a purchaser of the Mortgaged Premises or any part thereof or any interest therein at any sale, whether pursuant to power of sale or otherwise, and may apply upon the purchase price the indebtedness secured hereby. Any purchaser at any sale shall acquire good title to the property so purchased, free of the lien of this Mortgage and free of all rights of redemption in Mortgagor. The receipt of the officer making the sale under judicial proceedings or of Mortgagee shall be sufficient discharge to the purchaser for the purchase money and such purchaser shall not be responsible for the proper application thereof.

Mortgagor hereby waives the benefit of all appraisalment, valuation, stay, extension, redemption and equity of redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Mortgaged Premises or any part thereof or any interest therein.

The Proceeds of any sale of the Mortgaged Premises or part thereof or any interest therein, whether pursuant to power of sale or otherwise hereunder, and all amounts received by Mortgagee by reason of any holding, operation or management of the Mortgaged Premises or any part thereof, together with any other moneys at the time held by Mortgagee, shall be applied in the following order:

First: To all costs and expenses of the sale of the Mortgaged Premises or any part thereof or any interest therein, or entering upon, taking possession of, removal from, holding, operating and managing the Mortgaged Premises or any part thereof, as the case may be, together with (a) the costs and expenses of any receiver of the Mortgaged Premises or any part thereof appointed pursuant hereto and (b) any taxes, assessments or other charges, prior to the lien of this Mortgage, which Mortgagee may consider necessary or desirable to pay;

UNOFFICIAL COPY

Second: To any indebtedness secured by this Mortgage and at the time due and payable, other than the indebtedness with respect to the Note at the time outstanding;

Third: To any Late Charges due and payable under the terms of the Note;

Fourth: To all amounts of principal and interest at the time due and payable on the Note at the time outstanding (whether at maturity or on a date fixed for any installment payment or any prepayment or by declaration or acceleration or otherwise), including interest at the Default Rate of interest as provided in the Note on any overdue principal and (to the extent permitted under applicable law) on any overdue interest; and, in case such monies shall be insufficient to pay in full the amount so due and unpaid upon the Note, first, to the payment of all amounts of interest at the time due and payable on the Note, and second, to the payment of all amounts of principal at the time due and payable on the Note; and

Fifth: The balance, if any, to the person or entity then entitled thereto pursuant to applicable state law.

21. Waivers

A. To the extent permitted by law, the Mortgagor hereby waives all rights of redemption and/or equity of redemption which exist by statute or common law for sale under any order or decree of foreclosure of this Mortgage on its own behalf and on behalf of each and every decree or judgment creditors of Mortgagor who may acquire any interest in or title to the Mortgaged Premises or the trust estate subsequent to the date hereof.

B. Mortgagor hereby waives the benefit of all appraisal, valuation, stay, or extension laws now or hereafter in force and all rights of marshaling in the event of any sale hereunder of the Mortgaged Premises on any part thereof or any interest therein.

C. Mortgagor hereby waives the benefit of any rights of benefits provided by the Homestead Exemption laws, if any, now or hereinafter in effect.

D. Mortgagor hereby waives all errors and imperfections in any proceeding instituted by Mortgagee under any loan documents and all benefit of any present or future law, regulation, or judicial decision which exempts any of the Mortgaged Premises or any part of the proceeds arising from any sale thereof from attachment, levy or sale under execution.

22. Remedies are Cumulative.

Each right, power and remedy of Mortgagee now or hereafter existing at law or in equity shall be cumulative and concurrent and shall be in addition to every right, power and remedy provided for in this Mortgage, and the exercise of any right, power or remedy shall not preclude the simultaneous or later exercise of any other right, power or remedy.

23. Compromise of Actions.

Any action, suit or proceeding brought by Mortgagee pursuant to this Mortgage, or otherwise, and any claim made by Mortgagee under this Mortgage, or otherwise, may be compromised, withdrawn or otherwise dealt with by Mortgagee without any notice to or approval of Mortgagor, except as otherwise provided in this Mortgage.

24 No Waiver.

No delay or failure by Mortgagee to insist upon the strict performance of any term hereof or of the Note or to exercise any right, power or remedy provided for herein or therein as a consequence of an Event of Default hereunder or thereunder, and no acceptance of any payment of the principal, interest or premium, if any, on the Note during the continuance of any such Event of Default, shall constitute a waiver of any such term, such Event of Default or such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No waiver of any Event of Default hereunder shall affect or alter this Mortgage, which shall continue in full force and effect with respect to any other then existing or subsequent Event of Default.

25. Further Assurances.

The Mortgagor, at its expense, will execute, acknowledge and deliver such instruments and take such actions as Mortgagee from time to time may reasonably request for the further assurance to Mortgagee of the properties and rights now or hereafter subjected to the lien hereof or assigned hereunder or intended so to be.

26. Defeasance.

If Mortgagor shall pay the principal, interest and premium, if any, due under the Note in accordance with the terms thereof, and if it shall pay all other sums payable hereunder and shall comply with all other terms hereof and of the Note, then this Mortgage and the estate and rights hereby created shall cease, terminate and become void,

UNOFFICIAL COPY

and thereupon Mortgagee, at the expense of Mortgagor, shall execute and deliver to Mortgagor such instruments as shall be required to evidence of record the satisfaction of this Mortgage and the lien thereof, and any sums at the time held by Mortgagee for the account of Mortgagor pursuant thereto shall be paid over to the Mortgagor as Mortgagor may direct.

27. Definitions.

The term "Mortgagor," as used in this Mortgage, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, shall be construed as meaning the "Mortgagor and any subsequent owner or owners of the Mortgaged Premises", and the word "Mortgagee" shall be construed as meaning "Mortgagee and any subsequent holder or holders of this Mortgage."

28. Authorization.

The execution of this Mortgage has been duly authorized by the Mortgagor.

29. Permitted Contests.

Mortgagor, at its expense, may contest, by appropriate legal proceedings, conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Imposition or lien, or the validity of any instrument of record affecting the Mortgaged Premises or any part thereof, provided that (a) neither the Mortgaged Premises, nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost, (b) neither Mortgagor nor Mortgagee would be in any danger of any additional civil or any criminal liability for failure to comply therewith, and (c) Mortgagor shall have set aside on its books adequate reserves with respect thereto and shall have furnished such security, if any, as may be required in the proceedings or reasonably requested by Mortgagee.

30. Economic Abandonment.

If Mortgagor determines that the Mortgaged Premises can no longer be economically operated and if Mortgagor provides Mortgagee with reasonably satisfactory evidence demonstrating that the Mortgaged Premises can no longer be economically operated, then Mortgagor, at its option must prepay the entire principal plus accrued interest and other amounts remaining unpaid under the Note.

31. Amendments.

This Mortgage cannot be changed or terminated orally but may only be amended, modified or terminated pursuant to written agreement between Mortgagor and Mortgagee.

32. Notices.

Any notice, demand or other communication given pursuant to the terms hereof shall be in writing and shall be delivered by personal service or sent by registered mail, return receipt requested, postage prepaid, addressed as follows:

Mortgagor:	ESF PARTNERS LLC 1316 N Cleveland Chicago, IL 60610
If to Mortgagee:	MIDAMERICA BANK 1823 Centre Point Circle P.O. Box 3142 Naperville, Illinois 60566-7142 Attention: Multi-Family Lending Department
Copy to:	MIDAMERICA BANK 1823 Centre Point Circle P.O. Box 3142 Naperville, Illinois 60566-7142 Attention: Manager, Loan Servicing

or at such other address within the United States or to the attention of such other office as either party shall have designated in writing to the other. Any such notice, demand or other communication shall be deemed given when received at the office of the Mortgagee or Mortgagor or of any other officer who shall have been designated by the addressee by notice in writing to the other party.

UNOFFICIAL COPY**33. Expense of Litigation and Preparation Where No Litigation is Initiated.**

If any action or proceeding be commenced to which Mortgagee is made a party, or in which it becomes necessary to defend or uphold the lien of this Mortgage, all sums paid by Mortgagee for the expense (including reasonable attorneys' fees) of any litigation to prosecute or to defend the rights and lien created by this Mortgage shall be paid by the Mortgagor immediately upon written demand therefore, or title to, interest in or claim upon the Premises, attaching to or accruing subsequent to the lien of this Mortgage, and shall be deemed to be secured by this Mortgage. Mortgagor further expressly agrees to pay all costs and expenses (including reasonable attorneys' fees) should Mortgagee incur costs and attorney's fees relating to this Mortgage, even in the event no suit or litigation is initiated.

34. Cross-Default Clause.

Any default by Mortgagor in the performance or observance of any covenant or condition hereof in accordance with Paragraph 18 above shall be deemed a default or an event of default under the Note and any of the other loan documents and security agreements executed by the Mortgagor in connection with the loan described in the Note, entitling Mortgagee to exercise all or any remedies available to Mortgagee under the terms of this Mortgage, the Note, or other loan documents and security agreements executed by the Mortgagor, and any default or event of default under any other such loan documents or security agreements shall be deemed a default hereunder, entitling Mortgagee to exercise any or all remedies provided for herein. Failure by Mortgagee to exercise any right which it may have hereunder shall not be deemed a waiver thereof unless so agreed in writing by Mortgagee, and the waiver by Mortgagee of any default by Mortgagor hereunder shall not constitute a continuing waiver or a waiver of any other default or of the same default on any future occasion.

35. Disclaimer by Mortgagee.

Mortgagee shall not be liable to any party for services performed or obligations due in connection with the loan evidenced by the Note and this Mortgage. Mortgagee shall not be liable for any debts or claims accruing in favor of any parties against Mortgagor or against the Mortgaged Premises or any interest therein. The Mortgagor is not nor shall be an agent of Mortgagee for any purposes, and Mortgagee is not a venture partner with Mortgagor in any manner whatsoever. Approvals granted by Mortgagee for any matters covered under this Agreement shall be narrowly construed to cover only the parties and facts identified in any written approval or if not in writing such approvals shall be solely for the benefit of Mortgagor.

36. Future Advances.

Upon request of Mortgagor, Mortgagee, at Mortgagee's option, so long as this Instrument secures the full indebtedness held by Mortgagee, may make Future Advances to Mortgagor. Such Future Advances, with interest thereon, shall be secured by this Instrument when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this instrument, not including sums advanced in accordance herewith to protect the security of this Instrument, exceed the original amount of the Note.

37. Miscellaneous.

A. Within fifteen (15) days after request therefore, Mortgagor shall confirm in writing to Mortgagee, or its designee, the amount then due hereunder and under the Note.

B. The Loan proceeds are to be used, along with Mortgagor's other funds, for the benefit of the Mortgaged Premises, and for no other purpose, which shall occur contemporaneously with the disbursement of the loan proceeds as evidenced by the Note. Such use is the business purpose of Mortgagor's beneficiaries and the Loan is therefore not usurious under Section 815 ILCS 205/4 of the Illinois Interest Act.

C. This Mortgage shall be binding upon Mortgagor and its successors and assigns, and all persons claiming under or through Mortgagor or any such successor or assign, and shall inure to the benefit of and be enforceable by Mortgagee and its successors and assigns.

D. The headings in this Mortgage are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.

E. If any clause, phrase, paragraph or portion of this Mortgage or the application thereof to any person, party or circumstances shall be invalid or unenforceable under applicable law, such event shall not affect, impair or render invalid or unenforceable the remainder of this Mortgage nor any other clause, phrase, paragraph or portion hereof, nor shall it affect the application of any clause, phrase, paragraph or provision hereof to other persons, parties or circumstances.

UNOFFICIAL COPY

F. This Mortgage is negotiated in the County of DuPage, Naperville, Illinois and shall be governed by and construed in accordance with the laws of the State of Illinois. It is expressly agreed that all parties hereto waive any right they now or in the future may have to remove any claim or dispute arising here from.

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed and attested hereto.

By: [Signature]
ESF PARTNERS LLC

By: _____

By: _____

By: _____

By: _____

By: _____

STATE OF ILLINOIS)

SS:

COUNTY OF COOK

I, _____, a Notary Public in and for said county and state, do hereby certify that ESF PARTNERS LLC

personally known to me to be the same person(s) whose name(s) subscribed to the foregoing instrument, appeared before me this day in person, and acknowledge that HE signed and delivered the said instrument as HIS free and voluntary act, for the uses and purposes therein set forth.

WITNESS my hand and official seal.

Signature: [Signature]

Name (Typed or Printed) _____

My Commission Expires: 10/26/05



THIS INSTRUMENT WAS PREPARED BY:
KENNETH KORANDA, PRESIDENT
MID AMERICA BANK, FSB.
1823 CENTRE POINT CIRCLE
P. O. BOX 3142
NAPERVILLE, ILLINOIS 60566-7142

WHEN RECORDED RETURN TO:
MID AMERICA BANK, FSB.
1823 CENTRE POINT CIRCLE
P. O. BOX 3142
NAPERVILLE, IL 60566-7142