

UNOFFICIAL COPY

This instrument was prepared by and, after recording, return to:

Ned S. Robertson
Aronberg Goldgehn Davis & Garmisa
One IBM Plaza - Suite 3000
Chicago, Illinois 60611

Common Address:
918-920 Michigan Avenue
Evanston, IL 60201

P.I.N.: 11-19-223-013



Doc#: 0330133194
Eugene "Gene" Moore Fee: \$54.00
Cook County Recorder of Deeds
Date: 10/28/2003 09:58 AM Pg: 1 of 16

Space above this line for Recorder's use only

JUNIOR MORTGAGE AND ASSIGNMENT OF RENTS AND LEASES

THIS JUNIOR MORTGAGE AND ASSIGNMENT OF RENTS AND LEASES ("Mortgage") is made as of the 16 day of October, 2003 by and between JOHN K. HAMAL and BETTY HAMAL, AS TRUSTEES UNDER THE HAMAL LIVING TRUST DATED MAY 16, 1999, (individually and collectively, "Mortgagor"), and GREATBANK A NATIONAL ASSOCIATION ("Mortgagee");

WITNESSETH THAT:

WHEREAS, Mortgagor is the owner of record of condominium unit nos. 918-1, 918-2, 918-3, 920-1, 920-2, 920-3, 918-CH and Parking Space P-1, P-2, P-3, P-4 and P-5 in the Michigan Avenue Condominium, 918-920 Michigan Avenue, Evanston, Illinois (individually, "Unit" and collectively, "Premises"), the legal description of which is attached hereto as Exhibit A; and

WHEREAS, the Premises are subject to a Mortgage from Mortgagor to GreatBank a National Association dated December 28, 2001 which instrument secures an obligation in the amount of \$1,800,000.00 and was recorded with the Recorder of Deeds of Cook County, Illinois on January 7, 2002 as Document No. 0020019215 (the "Senior Mortgage"), and the Premises continue to be subject to the Senior Mortgage and the related documents and agreements pertaining thereto; and

WHEREAS, 4550 BEACON STREET LLC, an Illinois limited liability company, 1359 WILSON AVE. LLC, an Illinois limited liability company, JOHN K. HAMAL and BETTY HAMAL, TRUSTEES UNDER THE HAMAL LIVING TRUST DATED MAY 13, 1999, and JOHN K. HAMAL and BETTY HAMAL, individually (individually and collectively, "Borrower") have concurrently herewith executed and delivered to Mortgagee a certain Acquisition and Construction Note bearing even date herewith in the principal sum of SIX MILLION AND NO/100 DOLLARS (\$6,000,000.00) (which note, as it may hereafter be

8087578 D2 1all

16 AS

COOK COUNTY RECORDER OF DEEDS

UNOFFICIAL COPY

modified, amended or extended, and together with any and all substitutions therefor and replacements thereof is referred to herein as the "Note") made payable to Mortgagee in and by which Note Borrower promises to pay the said principal sum and interest thereon at the rate and in installments as provided in such Note, at such place as the holder or holders of the Note ("Holders") may, from time to time, in writing appoint, and in the absence of such appointment, then at the office of Mortgagee, 3300 West Dempster, Skokie, Illinois 60076;

WHEREAS, the Note is secured by, among other things, (i) a Construction Mortgage, Security Agreement and Fixture Financing Statement ("Mortgage") of even date herewith, made by Borrower to Mortgagee, constituting a first lien on the property commonly known as 4550-56 North Beacon Street, Chicago, Illinois ("Beacon Property"); (ii) Assignment of Leases and Rents of even date herewith, made by Borrower to Mortgagee regarding the Beacon Property; (iii) a Mortgage, Security Agreement and Fixture Financing Statement of even date herewith, made by Borrower to Mortgagee, constituting a first lien on the property commonly known as 1351-67 West Wilson Avenue, Chicago, Illinois ("Wilson Property"); (iv) Assignment of Leases and Rents of even date herewith, made by Borrower to Mortgagee regarding the Wilson Property and (v) Construction Loan Agreement between Borrower and Mortgagee ("Loan Agreement");

WHEREAS, as additional security for the Note, Mortgagor has agreed to grant a mortgage on the Premises to Mortgagee.

NOW, THEREFORE, Mortgagor in order to secure the payment of both principal and interest on the Note (and all replacements, renewals, amendments and extensions thereof, in whole or in part) and in accordance with the terms, provisions and limitations of this Mortgage and the Loan Agreement, and to secure the performance of the covenants and agreements herein and in the Note contained, to be performed by Mortgagor, does by these presents MORTGAGE, GRANT, BARGAIN, SELL and CONVEY unto Mortgagee, its successors and assigns, its estate in fee simple, in the Premises. For purposes of this Mortgage, the repayment required by Borrower under the Note and the performance of Mortgagor and Borrower under the Loan Agreement are sometimes hereafter referred to as "Obligations".

TO HAVE AND TO HOLD the Premises unto the said Mortgagee, its successors and assigns, forever, for the purposes and uses herein set forth together with the right to possession of the Premises after the occurrence of an Event of Default (as hereafter defined).

THIS MORTGAGE IS GIVEN TO SECURE: (a) payment of the indebtedness evidenced by the Obligations (together with any and all amendments or supplements thereto, extensions thereof and notes or other documents which may be taken in whole or partial renewal, substitution or extension thereof, or, which may evidence any of the indebtedness secured hereby); (b) payment by Mortgagor to Mortgagee as herein provided of all sums expended or advanced by Mortgagee pursuant to any term or provision of this Mortgage; (c) performance of each and every one of the covenants, conditions and agreements contained in this Mortgage and the documents evidencing the Obligations; and (d) performance under any other instrument given or at the direction of the Mortgagor or any Guarantor at any time to secure the payment of any other indebtedness to the Mortgagee. The foregoing documents, and any other documents

UNOFFICIAL COPY

evidencing and securing the Obligations, are referred to collectively herein as the "Loan Documents".

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. Maintenance, Repair and Restoration of Improvements, Payment of Prior Liens, Etc. Mortgagor shall (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed; (b) keep the Premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien not expressly subordinated to the lien hereof, except that Mortgagor shall have the right to contest in good faith and with reasonable diligence the validity of any such lien or claim upon furnishing (i) to the title company which has issued the loan policy of title insurance to Mortgagee insuring the lien of this Mortgage such security or indemnity as it may require to issue an endorsement thereto insuring against loss or damage on account of any such lien; or (ii) to Mortgagee such other security with respect to such claims as may be reasonably acceptable to Mortgagee; (c) pay when due any indebtedness which may be secured by a lien or charge on the Premises on a parity with or superior to the lien hereof, and upon request, exhibit satisfactory evidence to Mortgagee of the discharge of such lien; and (d) comply with all applicable requirements of law, municipal ordinances or restrictions of record with respect to the Premises and the use thereof. As used in this Paragraph and elsewhere in this Mortgage, the term "indebtedness" shall mean and include the principal sum evidenced by the Note, together with all interest thereon and all other amounts payable to Mortgagee thereunder, and all other sums at any time secured by this Mortgage.

2. Payment of Taxes and Assessments. Mortgagor shall pay before any penalty or interest attaches all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and all other charges or liens of any nature against the Premises when due, and shall furnish to Mortgagee duplicate receipts of payment therefor. If any special assessment is permitted by applicable law to be paid in installments, Mortgagor shall have the right to pay such assessment in installments, so long as all such installments are paid prior to the due date thereof. Notwithstanding anything contained herein to the contrary, Mortgagor shall have the right to protest any taxes assessed against the Premises, so long as such protest is conducted in good faith by appropriate legal proceedings diligently prosecuted and Mortgagor shall furnish to the title insurer such security or indemnity as said insurer requires to induce it to issue an endorsement, in form and substance acceptable to Mortgagee, insuring over any exception created by such protest.

3. Tax and Insurance Deposits. If required by Mortgagee, upon the direction of Mortgagee, Mortgagor covenants and agrees to deposit at such place as Mortgagee may from time to time in writing appoint, and in the absence of such appointment, then at the office of Mortgagee in Chicago, Illinois, a sum equal (a) to one-twelfth (1/12th) of the last total annual taxes and assessments for the last ascertainable year (general and special) on the Premises, unless said taxes are based upon assessments which exclude the improvements or any part thereof now constructed, or to be constructed, in which event the amount of such deposits shall be based upon Mortgagee's reasonable estimate as to the amount of taxes and assessments to be levied and

UNOFFICIAL COPY

assessed, and (b) one-twelfth (1/12th) of the annual premiums payable for insurance required to be maintained in accordance with Paragraph 4 hereof. Mortgagor, concurrently with the first monthly deposit of taxes required hereunder, will also deposit with Mortgagee (i) an amount which, together with the aggregate of the monthly deposits to be made pursuant to (a) above, shall be sufficient to pay in full the total annual taxes and assessments so ascertainable or so estimated by Mortgagee, as the case may be, to become due and payable with respect to the Premises for the current calendar year, as of one month prior to the due date of such taxes and assessments, and (ii) which, together with the aggregate deposits to be made pursuant to (b) above, shall be sufficient to pay in full the total annual insurance premium estimated by Mortgagor to next become due and payable with respect to the Premises, as of one month prior to the date on which the next annual insurance premium becomes due. Such deposits are to be held without any allowance for interest except as may be required by law and are to be used for the payment of taxes and assessments (general and special) and insurance premiums, respectively, on the Premises next due and payable when they become due. If the funds so deposited are insufficient to pay any such taxes or assessments (general and special) and premiums for any year when the same shall become due and payable, Mortgagor shall within ten (10) days after receipt of demand therefor, deposit such additional funds as may be necessary to pay such taxes and assessments (general and special) and insurance premiums in full. If the funds so deposited exceed the amount required to pay such taxes and assessments (general and special) and insurance premiums for any year, the excess shall be applied to the next subsequent deposit or deposits. Except as may be required by law, said deposits need not be kept separate and apart from any other funds of Mortgagee.

4. Insurance. The Mortgagor shall at all times keep all buildings, improvements, fixtures and articles of personal property, if any, now or hereafter situated on the Premises and owned by Mortgagor, insured against loss or damage by fire and such other hazards as may reasonably be requested by Mortgagee from time to time, including without limitation: (a) all-risk and extended coverage insurance, with vandalism and malicious mischief endorsements, for the full replacement value of the Premises, with agreed upon amount and inflation guard endorsements; (b) if there are tenants under leases at the Premises, rent and rental value or business loss insurance for the same perils described in (a) above payable at the rate per month and for the period specified from time to time by Mortgagee; (c) broad form boiler and sprinkler damage insurance in an amount reasonably satisfactory to Mortgagee, if and so long as the Premises shall contain a boiler and sprinkler system, respectively; (d) if the Premises are located in a flood hazard district, flood insurance in the maximum amount obtainable up to the amount of the indebtedness hereby secured; (e) during construction, builder's completed value risk insurance against "all risks of physical loss" (including collapse and transit coverage) and (f) such other insurance as Mortgagee may from time to time reasonably require. Mortgagor shall also maintain at all times comprehensive public liability, property damage and worker's compensation insurance covering the Premises and any employees thereof, with such limits for personal injury, death and property damage as Mortgagee may reasonably require. All policies of insurance to be furnished hereunder shall be in forms, companies, amounts and deductibles reasonably satisfactory to Mortgagee, with mortgagee clauses attached to all policies in favor of and in form satisfactory to Mortgagee, including a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior

UNOFFICIAL COPY

written notice to Mortgagee and shall contain endorsements that no act or negligence of the insured or any occupant and no occupancy or use of the Premises for purposes more hazardous than permitted by the terms of the policies will affect the validity or enforceability of such policies as against Mortgagee. Mortgagor shall deliver all policies, including additional and renewal policies, to Mortgagee, and, in the case of insurance about to expire, shall deliver renewal policies not less than thirty (30) days prior to their respective dates of expiration.

In the event of loss Mortgagor shall give immediate notice by mail to Mortgagee, who may make proof of loss if not made promptly by Mortgagor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Mortgagee instead of to Mortgagor and Mortgagee jointly. Provided, however, that if there is no Event of Default hereunder, then Mortgagee shall settle and adjust claims with the consent of Mortgagor (which consent shall not be unreasonably withheld) or allow Mortgagor to settle and adjust such claims. Any insurance proceeds so received by Mortgagee, or any part thereof, shall be applied by Mortgagee, after the payment of all of Mortgagee's reasonable expenses, including costs and reasonable attorneys' fees, to the payment of the indebtedness or at Mortgagee's election, to the restoration or repair of the property damaged. In the event of foreclosure of this Mortgage, all right, title and interest of Mortgagor in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale. Mortgagor shall furnish Mortgagee, without cost to Mortgagee, at the request of Mortgagee, from time to time, evidence of the replacement value of the Premises.

5. Mortgagee's Interest In and Use of Deposits. Upon the occurrence of an Event of a Default in any of the provisions contained in this Mortgage or in the Note, Mortgagee may at its option, without being required to do so, apply any moneys at the time on deposit pursuant to any provision of this Mortgage, as any one or more of the same may be applicable, on any of Mortgagor's obligations herein or in the Note, in such order and manner as Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the Premises. Such deposits are hereby pledged as additional security for the indebtedness hereunder and shall be held to be irrevocably applied by Mortgagee for the purposes for which made hereunder and shall not be subject to the direction or control of Mortgagor; provided, however, that Mortgagee shall not be liable for any failure to apply to the payment of taxes, assessments or insurance premiums any amount so deposited unless Mortgagor, while not in default hereunder, shall have requested Mortgagee in writing to make application of such funds to the payment of the particular taxes or assessments or the payment of the particular insurance premiums as the case may be for payment of which they were deposited, accompanied by the bills for such taxes, assessments or insurance premiums. Mortgagee shall not be liable for any act or omission taken in good faith or pursuant to the instructions of any party authorized to act on behalf of Mortgagor.

6. Condemnation. If all or any part of the Premises are damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid indebtedness secured by this instrument, is hereby assigned to Mortgagee, who is empowered to collect and

UNOFFICIAL COPY

receive the same and to give proper receipts therefor in the name of Mortgagor and the same shall be paid forthwith to Mortgagee, who shall release any such award or monies so received or apply the same in whole or in part, after the payment of all of its reasonable expenses, including costs and reasonable attorneys' fees, to the restoration or repair of the property, if in the reasonable judgment of Mortgagee the property can be restored or repaired to the condition existing immediately prior to the taking. If in the reasonable judgment of Mortgagee the said property cannot be restored or repaired to the condition existing immediately prior to the taking, then such award or monies received after the payment of expenses of Mortgagee as aforesaid shall be applied on account of the unpaid principal balance of the Note, irrespective of whether such principal balance is then due and payable and, at any time from and after the taking, upon sixty (60) days prior written notice to Mortgagor, Mortgagee may declare the whole of the Obligations to be due and payable. Furthermore, in the event such award or monies so received shall exceed the cost of restoration or repair of the property and expenses of Mortgagee as aforesaid, then such excess monies shall be applied on account of the unpaid principal balance of the Note, irrespective of whether such principal balance is then due and payable. Any application to the unpaid principal balance of the Note pursuant to this Paragraph 6 shall not extend the due date or reduce the amount of the principal and interest installments required to be paid under the Note.

7. Stamp Tax. If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over Mortgagor, any tax is due or becomes due in respect of the issuance of the Note or recording of this Mortgage, Mortgagor covenants and agrees to pay such tax in the manner required by any such law. Mortgagor further covenants to hold harmless and agrees to indemnify Mortgagee, its successors or assigns, against any liability incurred by reason of the imposition of any tax on the issuance of the Note or recording of this Mortgage.

8. Reserved.

9. Effect of Extensions of Time. If the payment of the debt secured hereby or any part thereof be extended or varied or if any part of the security granted to secure such indebtedness be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, or having an interest in Mortgagor or in the beneficiary of Mortgagor, 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, the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation or release.

10. Reserved.

11. Mortgagee's Performance of Defaulted Acts and Expenses Incurred by Mortgagee. Upon the occurrence of an Event of Default, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or

UNOFFICIAL COPY

consent to any tax or assessment or cure any default of Mortgagor in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by Mortgagee in regard to any tax referred to in Paragraph 7 above or to protect the Premises or the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the Default Rate (as defined in the Note). In addition to the foregoing, any costs, expenses and fees, including reasonable attorneys' fees, incurred by Mortgagee reasonably necessary in connection with (a) sustaining the lien of this Mortgage or its priority, (b) protecting and enforcing any of Mortgagee's rights hereunder, (c) recovering any indebtedness secured hereby, (d) any litigation or proceedings affecting the Note, this Mortgage, the Loan Agreement, the Premises or any guarantor or co-maker of the Note, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the Default Rate. Notwithstanding anything contained herein to the contrary, in no event shall the indebtedness secured by this Mortgage exceed Two Million Dollars.

12. Reserved.

13. Acceleration of Indebtedness in Event of Default. Each of the following shall constitute an "Event of Default" for purposes of this Mortgage:

(a) The occurrence of any default under the Note or the Loan Agreement and the failure to cure within the applicable cure periods, if any, or if Mortgagor fails to pay any other amount due pursuant to this Mortgage within five (5) days of such due date; or

(b) Mortgagor fails to promptly perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Mortgagor under this Mortgage within thirty (30) days' written notice; provided, however, that in the event that such failure cannot be cured within said thirty (30) days, and Mortgagor has otherwise diligently commenced to cure the same within said thirty (30) days and thereafter continues to diligently pursue cure, then no Event of Default shall exist to Mortgagee during this period, not to exceed in any event sixty (60) days after Mortgagee's original notice, unless the value of the collateral securing the Note, or the safety of the Premises, would be materially impaired, threatened or jeopardized, in which event such period shall be unavailable to Mortgagor; or

(c) Reserved.

(d) Reserved.

(e) The commencement of any voluntary or involuntary petition in bankruptcy by or against Mortgagor or Borrower, or the institution against Mortgagor or

UNOFFICIAL COPY

Borrower any reorganization, arrangement, composition, readjustment, dissolution, liquidation or similar proceedings under any present or future Federal, state or other statute or law, or the appointment of a receiver, trustee or similar officer for all or any substantial part of the property of Mortgagor or Borrower; or

(f) The conveyance, sale, transfer, lease of the Premises or an assignment, lien or encumbrance is made against the Premises.

If an Event of Default occurs, Mortgagee may, at its option, declare the whole of the Obligations to be immediately due and payable without notice to Mortgagor, with interest thereon from the date of such Event of Default at the Default Rate.

14. Foreclosure; Expense of Litigation. When the Obligations shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to institute proceedings for the complete foreclosure of this Mortgage, in which case the Premises may be sold for cash or credit in one or more parcels. At any such sale by virtue of any judicial proceedings or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Mortgagor shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Mortgagor, and against all other persons claiming or to claim the property sold or any part thereof, by, through or under Mortgagor. In the event of a foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at such 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 said insurance policies.

In any suit to foreclose this Mortgage, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' 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 assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this paragraph mentioned and such expenses and fees as may be incurred in the enforcement of Mortgagor's obligations hereunder, the protection of said Premises and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate and shall be secured by this Mortgage.

15. Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: first, on

UNOFFICIAL COPY

account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Paragraph 14 hereof; second, all other items which may under the terms hereof constitute secured indebtedness in addition to that evidenced by the Note, with interest thereon as herein provided and all principal and interest remaining unpaid on the Note; and third, any surplus to Mortgagor, its successors or assigns, as their rights may appear.

16. Appointment of Receiver. Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises. Such appointment may be made either before or after sale, without notice, without regard to the 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 holder of the Note may be appointed as such receiver. Such receiver shall have 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 a deficiency during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (a) the Obligations, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; and (b) the deficiency in case of a sale and deficiency.

17. Mortgagee's Right of Possession in Case of Default. In any case in which under the provisions of this Mortgage, Mortgagor shall forthwith and 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 agents or attorneys, as for condition broken. Mortgagee's rights and remedies under this Paragraph 17 shall be effective whether before or after the whole principal sum secured hereby is declared to be immediately due as provided hereunder, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder. In the event Mortgagee is entitled to take possession of the Premises, Mortgagee in its discretion may, with reasonable force or without force and with or without process of law, enter upon and take and maintain possession of all or any part of said Premises, together with all documents, books, records, papers and accounts of Mortgagor or then owner of the Premises relating thereto, and may exclude Mortgagor, or its respective employees, agents or servants, wholly therefrom. In such case Mortgagee, under the powers herein granted, may hold, operate, manage and control the Premises and conduct the business, if any, thereof, either personally or by its agents. Mortgagee shall have 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 avails, rents, issues, and profits of the Premises, including actions for the recovery of rent, actions, in forcible detainer and actions in distress for rent, Mortgagee shall have full power:

UNOFFICIAL COPY

- (a) to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same;
- (b) to elect to disaffirm any lease or sublease which is then subordinate to the lien hereof;
- (c) to extend or modify any then existing leases and to enter new leases, which extensions, modifications and 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 indebtedness secured hereby and beyond the date of 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 and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;
- (d) to make any repairs, decorating renewals, replacements, alterations, additions, betterments and improvements to the Premises as to it may seem judicious;
- (e) to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; and
- (f) to receive all of such avails, rents, issues and profits; hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter without notice to Mortgagor.

Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any lease. To the extent provided by law, Mortgagor shall and does hereby agree to protect, indemnify, defend and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under said leases or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases except for such claims and demands as result directly from the negligent or willful actions of Mortgagee. Should Mortgagee incur any such liability, loss or damage under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount thereof, including costs, expenses and attorneys' fees, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest at the Default Rate.

18. Assignment of Rents and Leases. To further secure the indebtedness secured hereby, Mortgagor hereby sells, assigns and transfers unto Mortgagee all the rents, issues and profits now due and which may hereafter become due under or by virtue of any lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the Premises

UNOFFICIAL COPY

or any part thereof, which may have been heretofore or may be hereafter made or agreed to 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 and agreements, and all the avails thereunder, to Mortgagee. Mortgagor hereby irrevocably appoints Mortgagee its true and lawful attorney in its name and stead (with or without taking possession of the Premises as provided in Paragraph 17 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 Mortgagee shall, in its 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 and agreements, 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 17 hereof. Notwithstanding the foregoing provisions of this Paragraph 18, so long as no Event of Default shall exist under the Note, Mortgagee or any other Loan Documents, Mortgagor shall have the right and license to collect, use and enjoy all rents and other sums due or to become due under and by virtue of any lease as they respectively become due, but not more than thirty (30) days in advance.

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 without Mortgagee's prior written consent and that the payment of none of the rents to accrue for any portion of the 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. If any lease provides for the abatement of rent during repair of the Premises damaged thereunder by reason of fire or other casualty, Mortgagor shall furnish to Mortgagee rental insurance, the policies to be in amount and form and written by such insurance companies as shall be satisfactory to Mortgagee. Mortgagor agrees that it will not assign any of the rents or profits of the Premises, except to a purchaser or grantee of the Premises.

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 17 hereof. In the exercise of the powers herein granted Mortgagee, no liability shall be asserted or enforced against Mortgagee, all such liability being expressly waived and released by Mortgagor.

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 18 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 section until an Event of Default shall exist under this Mortgage or the Note.

UNOFFICIAL COPY

19. Observance of Lease Assignment. In the event Mortgagor, as additional security for the payment of the indebtedness described in and secured hereby, has sold, transferred and assigned, or may hereafter sell, transfer and assign, to Mortgagee, its successors and assigns, any interest of Mortgagor as lessor in any lease or 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 said lease or leases, or any of them, on its part to be performed or fulfilled, at the times and in the manner in said lease or leases provided, or if Mortgagor shall suffer or permit to occur any material breach or default under the provisions of any assignment of any lease or leases of the Premises given as additional security for the payment of the indebtedness secured hereby, then and in any such event, such breach or default shall constitute a default hereunder unless cured within twenty-one (21) days after notice from Mortgagee, and at the option of the Mortgagee, and without notice to Mortgagor, all unpaid indebtedness secured by this Mortgage shall, notwithstanding anything in the Note or in this Mortgage to the contrary, become due and payable as in the case of other defaults; provided, however, that Mortgagor shall not be in default if corrective action is initiated by Mortgagor within such period and diligently pursued to completion, so long as the corrective action is completed within ninety (90) days from the date that Mortgagor receives notice of such default.

20. Application of Income Received by Mortgagee. Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it, shall have full power to use and apply the avails, rents, issues and profits of the Premises to the payment of or on account of the following, in such order as Mortgagee may determine:

(a) to the payment of the operating expenses of the Premises, including cost of management and leasing thereof (which shall include reasonable compensation to Mortgagee and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

(b) to the payment of taxes and special assessments now due or which may hereafter become due on the Premises; and, if this is a leasehold mortgage, of all rents due or which may become hereafter due under the underlying lease;

(c) to the payment of all maintenance, repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of the Premises, and of placing the Premises in such condition as will, in the reasonable judgment of Mortgagee, make it readily rentable;

(d) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale.

21. 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

UNOFFICIAL COPY

implied, given now or hereafter existing at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of 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.

22. Reserved.

23. Release Upon Payment and Discharge of Mortgagor's Obligations. Upon closing of the sale of each Unit, Mortgagee agrees that upon receipt of payment by Mortgagor of a release fee of TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) plus the greater of: (i) 94% of the gross contract sales price (including extras); or (ii) 100% of the net sales proceeds for such Unit (the "Unit Release Price"), and if (x) there then exists no Event of Default under the terms of the Loan Agreement, or a default under any other Loan Document, as defined in the Loan Agreement, and (y) Mortgagor delivers to Mortgagee an endorsement in form and substance satisfactory to Mortgagee issued by the Title Company that such release shall not affect the priority of the lien of this Mortgage on the remaining Premises and improvements thereon, Mortgagee will execute and deliver a release of such Unit from the lien of this Mortgage. For purposes of this paragraph, "net sales proceeds" shall mean the total contracted sales price less sales commissions of 1% to 5%, customary closing costs and option and upgrade costs not funded by the Note. Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby, including payment of reasonable expenses incurred by Mortgagee in connection with the execution of such release.

24. Notices. All notices, demands or other communications required or permitted to be given hereunder shall be (a) in writing and shall be deemed to be given when either (i) personally delivered, (ii) two business days after deposit in a regularly maintained receptacle of the U.S. Mail, postage prepaid, by United States registered or certified mail, return receipt requested, (iii) received if sent by private courier service, (iv) on the day on which the party to whom such notice is addressed refuses delivery by mail or private courier service, or (v) received via facsimile with mechanical proof of delivery and (b) addressed as follows:

Mortgagor: Betty Hamal
 4115 West Lake Street
 Glenview, IL 60025

With a copy to: STEPHENS & SCHRAUTH
 833 Elm Street (Suites 205 and 207)
 Winnetka, IL 60093
 Attention: Todd J. Stephens, Esq.
 Fax: 847/784-0229

UNOFFICIAL COPY

Mortgagee: GREATBANK A NATIONAL ASSOCIATION
 3300 West Dempster Street
 Skokie, Illinois 60076
 Attention: Michael Foster
 Fax: 847/676-5707

With a copy to: Aronberg Goldgehn Davis & Garmisa
 One IBM Plaza, Suite 3000
 Chicago, IL 60611
 Attention: Ned S. Robertson
 Fax 312/222-6370

Any party may designate a different address or facsimile number for notice purposes by giving notice thereof in accordance with this paragraph.

25. Reserved.

26. Reserved.

27. Indemnity. To the full extent provided by law, Mortgagor hereby covenants and agrees that no liability shall be asserted or enforced against Mortgagee in the exercise of the rights and powers granted to Mortgagee in this Mortgage, except for liability arising from Mortgagee's gross negligence or willful misconduct, and Mortgagor hereby expressly waives and releases any such liability, except for liability arising from Mortgagee's gross negligence or willful misconduct. Mortgagor shall indemnify and save Mortgagee harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses (including attorneys' fees and Court costs) of whatever kind or nature which may be imposed on, incurred by or asserted against Mortgagee at any time by any third party which relate to or arise from: the making of the Loan evidenced by the Note and secured by this Mortgage; any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Mortgagee may or does become a party, either as plaintiff or as a defendant, by reason of this Mortgage or for the purpose of protecting the lien of this Mortgage; the offer for sale or sale of all or any portion of the Premises; and/or the ownership, leasing, use, operation or maintenance of the Premises. All costs provided for herein and paid for by Mortgagee shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest at the Default Rate.

28. Mortgagor's Right to Reinstate. Notwithstanding Mortgagee's acceleration of all sums secured by this Mortgage, Mortgagor shall have the right of reinstatement to the extent provided by law upon compliance with all statutory requirements.

29. Invalidity of Provisions; Governing Law. In the event one or more of the provisions contained in this Mortgage or the Note shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity,

UNOFFICIAL COPY

illegality or unenforceability shall at the option of Mortgagee, not affect any other provision of this Mortgage, and this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein. This Mortgage and the Note it secures are to be construed and governed by the laws of the State of Illinois.

30. Compliance with Illinois Mortgage Foreclosure Law.

(a) In the event that any provision of this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law 735 ILCS 5/15-1101, et. seq. (1992) (herein called the "Act"), the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

(b) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law.

IN WITNESS WHEREOF, Mortgagor has caused these presents to be executed the day and year first above written.

HAMAL LIVING TRUST DATED MAY 16, 1999

By: John K. Hamal
John K. Hamal, Trustee

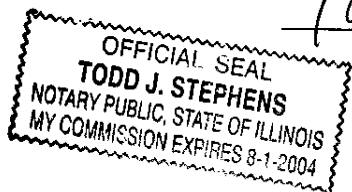
By: Betty Hamal
Betty Hamal, Trustee

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for said County, in the State aforesaid, does hereby certify that John K. Hamal and Betty Hamal, as Trustees of the HAMAL LIVING TRUST DATED MAY 13, 1999 who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as Trustees of the aforesaid Trust, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act as such Trustees for the uses and purposes therein set forth.

Given under my hand and notarial seal this 6th day of October, 2003.

Todd J. Stephens
Notary Public



304250.1

UNOFFICIAL COPY

EXHIBIT A

Legal Description

UNITS , 918-2, 918-3, 920-1, , 920-3, 918-CH and Parking Space P-1, P-2, P-4 and in 918-920 MICHIGAN AVENUE CONDOMINIUM AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED REAL ESTATE:

THE NORTH 14 FEET OF LOT 15 AND ALL OF LOT 16 IN BLOCK 2 IN REUBDIVISION OF BLOCKS 4 AND 5 IN GIBBS, LADD & GEORGE'S ADDITION TO EVANSTON IN SECTION 19, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, WHICH SURVEY IS ATTACHED AS EXHIBIT B TO THE DECLARATION OF CONDOMINIUM RECORDED AS DOCUMENT 0030019457, TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS

Office of Cook County Clerk's Office