

# UNOFFICIAL COPY



0402142399

Doc#: 0402142399  
Eugene "Gene" Moore Fee: \$80.00  
Cook County Recorder of Deeds  
Date: 01/21/2004 12:12 PM Pg: 1 of 29

20f3

THIS DOCUMENT PREPARED BY:

Mr. Cary K. Kabumoto, Esq.  
5204 North Christiana Avenue  
Chicago, Illinois 60625

AFTER RECORDING MAIL TO:

FOSTER BANK  
5225 North Kedzie Avenue  
Chicago, Illinois 60625

29

LOAN#1434400

## COMMERCIAL MORTGAGE

THIS MORTGAGE, made this 12th day of December, 2003, by **TAE KYU ONG and KUM OK ONG**, jointly and severally, (whether one or more, herein called the "Mortgagor") to the **FOSTER BANK**, an Illinois banking corporation with an office at 5225 North Kedzie Avenue, Chicago, Illinois 60625 (herein, together with its successors and assigns, including each and every holder from time to time of the Note hereinafter defined, called the "Mortgagee").

### WITNESSETH:

WHEREAS, Mortgagor is or will become the owner and holder of fee simple title in and to all of the real estate described in Exhibit A attached hereto and by this reference made a part hereof, which real estate forms a portion of Premises (as hereinafter defined), and

WHEREAS, Mortgagor, or if Mortgagor is a trustee, then the beneficiary(ies) of the Mortgagor, desires Mortgagee to lend money in connection with Mortgagor's purchase or rehabilitation of the Premises (as hereinafter defined) and Mortgagee is willing to lend provided that Mortgagor will grant a mortgage as security for such indebtedness; and

WHEREAS, Mortgagor (or Mortgagor's beneficiary(ies)) has, concurrently herewith, executed and delivered to Mortgagee a note (the "Note") of even date herewith payable to the order of Mortgagee in the amount of **TWO HUNDRED FIFTY THOUSAND UNITED STATES DOLLARS (\$250,000.00)**, bearing interest initially at a rate equal to the **PRIME RATE plus ONE-HALF PERCENT (1/2%)** (which shall mean that rate of interest per year announced from time to time by the **WALL STREET JOURNAL** called the prime rate, which rate may not at any time be the lowest rate charged by Mortgagee; with changes in the rate of interest on the Loan resulting from a change in the Prime Rate shall take effect on the date set forth for the change in the Prime Rate), which rate may be adjustable

DOMINIC MANCINI MC6235108-23189709 JAA

**BOX 333-CTI**

# UNOFFICIAL COPY

as set forth in the Note or in the Loan Agreement of even date herewith (if any) (the "Loan Agreement") between the Mortgagor (or if the Mortgagor is a trustee, then the beneficiary(ies) of the Mortgagor) and the Mortgagee, payable in installments and accrued as provided therein, with the unpaid balance and any accrued interest being due and payable on **January 1, 2009**; and

NOW, THEREFORE, to secure the payment of the principal of and interest on the Note according to its tenor and effect, and to secure the payment of all other sums which may at any time be due and owing or required to be paid as provided in the Loan Agreement, the Note, or herein (the "Indebtedness Hereby Secured"), and the performance and observance of all of the covenants, agreements and provisions herein, in the Loan Agreement, and the Note and for other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged by the Mortgagor, the Mortgagor DOES HEREBY GRANT, DEMISE, RELEASE, ALIEN, MORTGAGE, WARRANT, and CONVEY unto Mortgagee, its successors and assigns forever, the real estate described in Exhibit A attached hereto and by this reference made a part hereof (which, together with the property mentioned in the next succeeding paragraphs hereto, hereinafter called the "Premises"). Notwithstanding anything to the contrary, in no event shall the indebtedness hereby secured exceed 200% of the original principal amount of the note.

TOGETHER with all right, title and interest of Mortgagor, including any after-acquired title or reversions, in and to the beds of the ways, streets, avenues, and alleys adjoining the aforesaid real estate;

TOGETHER with all and singular the tenements, hereditaments, easements, appurtenances, passages, waters, water courses, riparian rights, other rights, liberties and privileges thereof or in any way now or hereafter appertaining to said real estate, including any other claim at law or in equity as well as any after-acquired title, franchise, or license and the reversions and remainder hereof;

TOGETHER with all buildings and improvements of every kind and descriptions now or hereafter erected or placed thereon and all materials intended for construction, reconstruction, rehabilitation, alteration, and repairs of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the Premises immediately upon the delivery thereof to the aforesaid real estate, and all fixtures and articles of personal property now or hereafter owned by Mortgagor and attached to or forming a part of or used in connection with the aforesaid real estate or the operation and convenience of any building or buildings and improvements located thereon, including, but without limitation, all furniture, furnishings, equipment, apparatus, machinery, motors, elevators,

# UNOFFICIAL COPY

fittings, screens, awnings, partitions, carpeting, curtains and drapery hardware used or useful in the operation or for the convenience of the Premises, and all plumbing, electrical, heating, lighting, ventilating, refrigerating, incineration, air conditioning, and sprinkler equipment, systems, fixtures, and conduits (including, but not limited to, all furnaces, boilers, plants, units, condensers, compressors, ducts, apparatus, and hot-and-cold water equipment and system), and all renewals or replacements thereof or articles in substitution therefor, in all cases whether or not the same are or shall be attached to the Premises in any manner, it being mutually agreed that all of the aforesaid property owned by Mortgagor and placed on the Premises shall, so far as permitted by law, be deemed to be fixtures, a part of the realty, and security for the Indebtedness Hereby Secured. Notwithstanding the agreement and declaration hereinabove expressed that certain articles of property form a part of the realty covered by this Mortgage and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute goods or equipment (as said terms are used in the Uniform Commercial Code of Illinois), this instrument shall constitute a security agreement, creating a security interest in such goods and equipment as collateral, in Mortgagee as a secured party, all in accordance with the Uniform Commercial Code of Illinois, as more particularly set forth in Paragraph 18 hereof;

TOGETHER with all right, title, estate, and interest of the Mortgagor in and to the Premises, property, improvement, furniture, furnishing, apparatus, and fixtures hereby conveyed, assigned, pledged, and hypothecated, or intended so to be, and all right to retain possession of the Premises after default in payment or breach of any covenant herein contained;

TOGETHER with all rents, issues, profits, royalties, income, and other benefits derived from the real estate subject to the right, power and authority hereinafter given to Mortgagor to collect and apply such rents;

TOGETHER with all leasehold estate, right title, and interest of Mortgagor in and to all leases or subleases covering the real estate or any portion thereof now or hereafter existing or entered into, and all right, title, and interest of Mortgagor thereunder, including without limitation, all cash or security deposits, advance rentals, and deposits or payments of similar nature; and

TOGETHER with all awards and other compensation heretofore or hereafter to be made to the present and all subsequent owners of the Premises for any taking by eminent domain, either permanent or temporary, of all or any part of the Premises or any easement or appurtenance thereof, including severance and

# UNOFFICIAL COPY

consequential damage and change in grade of streets, which said awards and compensation are hereby assigned to Mortgagee, and Mortgagor hereby designates Mortgagee as its agent and directs and empowers Mortgagee, at the option of the Mortgagee, on behalf of Mortgagor, or the successors or assigns of Mortgagor, to adjust or compromise the claim for any award and to collect and receive the proceeds thereof, to give proper receipts and acquittances therefor, and, after deducting expenses of collection, to apply the net proceeds as a credit upon any portion, as selected by Mortgagee, of the Indebtedness Hereby Secured, notwithstanding the fact that the amount owing thereon may not then be due and payable or that the indebtedness is otherwise adequately secured, all subject to the provisions of Paragraph 10 hereof.

TO HAVE AND TO HOLD the Premises, with the appurtenances, and fixtures, unto the Mortgagee, its successors and assigns, forever, for the purposes and upon the uses and purposes herein set forth together with all right to possession of the Premises after any default in the payment of all or any part of the Indebtedness Hereby Secured, or the breach of any covenant or agreement herein contained, or upon the occurrence of any Event of Default as hereinafter defined; the Mortgagor hereby RELEASING AND WAIVING all rights under and by virtue of the homestead exemption laws of the State of Illinois.

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

## REPRESENTATIONS

1. Mortgagor represents it has good and marketable title to the Property. Mortgagor represents that it has the right and full power to sell and convey the same and that it has duly executed and delivered this Mortgage pursuant to proper directions and that Mortgagor will make any further assurances of title that the Mortgagee may require and will defend the Premises against all claims and demands whatsoever.

2. Mortgagor represents that the Indebtedness Hereby Secured will be used for the purposes specified in Paragraph 6404 of Chapter 17 of the Illinois Revised Statutes and that the principal sum evidenced by the Note constitutes a business loan which comes within the purview of such paragraph.

THE MORTGAGOR COVENANTS AND AGREES AS FOLLOWS:

# UNOFFICIAL COPY

1. Payment of Indebtedness. The Mortgagor shall pay when due (a) the principal of and interest on the indebtedness evidenced by the Note, and (b) all other Indebtedness Hereby Secured; and the Mortgagor shall duly and punctually perform and observe all of the terms, provisions, conditions, covenants, and agreements on the Mortgagor's part to be performed and observed as provided herein, in the Loan Agreement, and in the Note; and this Mortgage shall secure such payment, performance, and observance.

2. Maintenance, Repair, Restoration, Liens, etc. The Mortgagor shall (a) pay, promptly repair, restore, or rebuild any building or improvement whether structural or nonstructural now or hereafter included within the definition of Premises that may become damaged or be destroyed whether or not proceeds of insurance are available or sufficient for the purpose; (b) keep the Premises in good condition and repair, without waste, and free from mechanic's materialmen's or like liens or claims or other liens or claims for lien; (c) pay, when due, any indebtedness which may be secured by a lien or charge on the Premises (whether senior, or equal priority, or junior to the lien hereof) and, upon request, exhibit to the Mortgagee satisfactory evidence of the discharge of such lien; (d) complete, within a reasonable time, any building or buildings or other improvements now or at any time in the process of erection or rehabilitation upon the Premises; (e) comply with all requirements of law, municipal ordinances, and restrictions and covenants of record with respect to the Premises and the use thereof; (f) make or permit no material alterations in the Premises except as required by law or ordinance without the prior written consent of the Mortgagee; (g) suffer or permit no change in the general nature of the occupancy of the Premises; (h) initiate or acquiesce in no zoning reclassification with respect to the Premises; (i) suffer or permit no unlawful use of, or nuisance to exist upon, the Premises, and (j) cause the Premises to be managed in a competent and professional manner.

If any lien of any person supplying labor and materials for the construction, modification, rehabilitation, repair, or maintenance shall be filed against the Premises, Mortgagor agrees to discharge the same of record within twenty (20) days after the liens are filed or, if not filed, within twenty (20) days after Mortgagor has notice thereof; provided that in connection with any such lien or claim which Mortgagor may in good faith desire to contest, Mortgagor may contest the same by appropriate legal proceedings, diligently prosecuted, but only if Mortgagor shall furnish to a title insurance company approved by Mortgagee such security or indemnity as the title insurance company may require to induce it to issue its preliminary or interim report on title, or its title insurance policy, insuring against all such claims or liens. 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

# UNOFFICIAL COPY

doing or omission of which in the reasonable opinion of Mortgagee would impair the security of this Mortgage.

3. Other Liens. Except as otherwise expressly provided herein, the Mortgagor shall not create or suffer to permit any mortgage, lien, charge, or encumbrance to attach to the Premises, whether such lien or encumbrance is inferior, of equal priority, or superior to the lien of this Mortgage, excepting only the lien of real estate taxes and assessments not due or delinquent.

4. Taxes. The Mortgagor shall pay before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "Taxes"), whether or not assessed against the Mortgagor, if applicable to the Premises or any interest therein, or the Indebtedness Hereby Secured, or any obligation or agreement secured hereby; and Mortgagor shall, upon written request, furnish to the Mortgagee duplicate receipts therefor. The Mortgagor shall pay in full under protest in the manner provided by statute, any Taxes that the Mortgagor may desire to contest; provided, however, that if deferment of payment of any such Taxes is required to conduct any contest or review, the Mortgagor shall deposit with the Mortgagee the full amount thereof, together with an amount equal to the estimated interest and penalties thereon during the period of contest, and in any event, shall pay such Taxes, notwithstanding such contest, if in the opinion of the Mortgagee the Premises shall be in jeopardy or in danger of being forfeited or foreclosed; and if the Mortgagor shall not pay the same when required so to do, the Mortgagee may do so and may apply such deposit for the purpose. In the event that any law or court decree has the effect of deducting from the value of the land for the purpose of taxation any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the Taxes or liens herein required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the interest of the Mortgagee in the Premises, or the manner of collection of Taxes, so as to affect this Mortgage or the Indebtedness Hereby Secured or the Mortgagee, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such Taxes, or reimburse the Mortgagee therefor on demand, unless such payment or reimbursement by Mortgagor is unlawful, in which event the Indebtedness Hereby Secured shall be due and payable within thirty (30) days after written demand by Mortgagee to Mortgagor. Nothing in this paragraph 4 contained shall require the Mortgagor to pay any income, franchise or excise tax imposed upon the Mortgagee, excepting only such which may be levied against such income expressly as and for a specific substitute for Taxes pertaining to the Premises, and then only in an amount computed as if the Mortgagee derived no income from any source other than its interest hereunder.

# UNOFFICIAL COPY

5. Insurance Coverage. The Mortgagor at its own expense will insure and keep insured, including during any construction or rehabilitation and thereafter, all of the buildings and improvements now or hereafter included within the Premises, and each and every part and parcel thereof against such perils and hazards as the Mortgagee may from time to time require, and in any event including:

- (a) During construction, all-risks package of builder's risk insurance, including owner's, contractor's, and employer's liability insurance, workmen's compensation insurance, and physical damage insurance;
- (b) Insurance against loss by fire, risks covered by the so-called extended coverage endorsement, and other risks as the Mortgagee may reasonably require, in amounts equal to no less than one hundred (100%) percent of the full replacement value of the Premises;
- (c) Public liability against bodily injury and property damage with such limits as the Mortgagee may require;
- (d) Rental or business interruption insurance in amounts sufficient to pay during any period of up to one (1) year in which the Premises may be damaged or destroyed, all amounts required herein to be paid by the Mortgagor;
- (e) Steam boiler, machinery, and other insurance of the types and in amounts as the Mortgagee may require, but in any event not less than customarily carried by persons owning or operating like properties; and
- (f) Flood insurance, where appropriate.

If required as a condition of this mortgage loan, the Mortgagor at its own expense shall maintain a life insurance policy insuring the Mortgagor, guarantor, beneficiary or other individual as required by the Mortgagee, and the beneficiary of said life insurance policy shall be the Mortgagee.

6. Insurance Policies. All policies of insurance to be maintained and provided as required by Paragraph 5 hereof shall be with companies and in form and amounts satisfactory to the Mortgagee, and all policies of casualty insurance shall have attached thereto mortgagee clauses or endorsements in favor of and with loss payable to and in form satisfactory to the Mortgagee and shall provide that such insurance may not be cancelled or altered as to Mortgagee without at least 10 days prior written notice to Mortgagee. The Mortgagor will deliver all policies and certificates of insurance, including additional and renewal policies to the Mortgagee and, in case of insurance policies about to expire, the Mortgagor will deliver renewal

# UNOFFICIAL COPY

policies not less than ten (10) days prior to the respective date of expiration.

7. Deposits for Taxes and Insurance Premiums. If requested by the Mortgagee, in order to assure the payment of Taxes and insurance premiums payable with respect to the Premises as and when the same shall become due and payable:

(a) The Mortgagor shall, if hereinafter required by Mortgagee, deposit with the Mortgagee on the first day of each and every month, commencing with the date the first payment of interest or principal and interest shall become due on the Indebtedness Secured Hereby, an amount equal to:

(i) One-twelfth (1/12) of the Taxes next to become due upon the Premises; provided that in the case of the first such deposit, there shall be deposited in addition an amount which, when added to the aggregate amount of monthly sums next payable under this subparagraph (i), will result in a sufficient reserve to pay the Taxes next becoming due one month prior to the date when such Taxes are, in fact, due and payable, plus

(ii) One-twelfth (1/12) of the annual premiums on each policy of insurance upon the Premises; provided that in the case of the first such deposit, there shall be deposited in addition an amount which, when added to the aggregate amount of monthly sums next payable under this subparagraph (ii), will result in a sufficient reserve to pay the insurance premiums next becoming due one month prior to the date when such insurance premiums are, in fact, due and payable;

provided that the amount of such deposits (herein generally called "Tax and Insurance Deposits") shall be based upon Mortgagee's reasonable estimate as to the amount of Taxes and insurance premiums next to be payable; and all Taxes and Insurance Deposits shall be held by the Mortgagee without any allowance of interest thereon.

(b) The aggregate of the monthly Tax and Insurance Deposits, together with monthly payments of interest or principal and interest payable on the Note shall be paid in a single payment each month, to be applied prior to default to the following items in the order stated:

(i) Taxes and insurance premiums;

(ii) Indebtedness Hereby Secured other than principal and interest on the Note;



# UNOFFICIAL COPY

(iii) Interest on the Note;

(iv) The principal balance of the Note.

(c) The Mortgagee will, out of the Tax and Insurance Deposits, upon the presentation to the Mortgagee by the Mortgagor of the bills therefor, pay the insurance premiums and Taxes or will, upon the presentation of receipted bills therefor, reimburse the Mortgagor for such payments made by the Mortgagor. If the total Tax and Insurance Deposits on hand shall not be sufficient to pay all of the Taxes and insurance premiums when the same shall become due, then the Mortgagor shall pay to the Mortgagee on demand any amount necessary to make up the deficiency. If the total of such Deposits exceeds the amount required to pay the Taxes and insurance premiums, such excess shall be credited on subsequent payments to be made for such Tax and Insurance Deposits.

(d) In the event of a default in any of the provisions contained in this Mortgage, the Loan Agreement, or the Note, the Mortgagee may, at its option, without being required so to do, apply any Tax and Insurance Deposits on hand to any of the Indebtedness Hereby Secured, in such order and manner as the Mortgagee may elect. When the Indebtedness Hereby Secured has been fully paid, then any remaining Tax and Insurance Deposits shall be paid to the Mortgagor. All Tax and Insurance Deposits are hereby pledged as additional security for the Indebtedness Hereby Secured, and shall be held by the Mortgagee to be irrevocably applied for the purposes for which made as herein provided, and shall not be subject to the direction or control of the Mortgagor.

(e) Notwithstanding anything herein to the contrary, the Mortgagee, and its loan servicing agent, or their successors and assigns, shall not be liable for any failure to apply to the payment of Taxes and insurance premiums any amounts deposited as Tax and Insurance Deposits unless the Mortgagor, while no default exists hereunder, shall have requested the Mortgagee in writing to make application of such Deposits on hand to the payment of the particular Taxes or insurance premiums for the payment of which such Deposits were made, accompanied by the bills therefor.

8. Proceeds of Insurance. The Mortgagor will give the Mortgagee prompt notice of any damage to or destruction of the Premises, and

(a) In case of loss covered by policies of insurance, the Mortgagee (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be) is hereby authorized at its option either (i)

# UNOFFICIAL COPY

to settle and adjust any claim under such policies without the consent of the Mortgagor (and the Mortgagor hereby agrees that the Mortgagee shall have no liability to the Mortgagor related to such adjustment), or (ii) allow the Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss; and provided that in any case the Mortgagee shall, and is hereby authorized to, collect and give receipt for any such insurance proceeds; and the expenses incurred by the Mortgagee in the adjustment and collection of insurance proceeds shall be so much additional Indebtedness Hereby Secured, and shall be reimbursed to the Mortgagee upon demand.

(b) In the event of any insured damage to or destruction of the Premises or any part thereof (herein called an "Insured Casualty"), and if, in the reasonable judgment of the Mortgagee, the Premises can be restored to an economic unit not less valuable than the same was prior to the Insured Casualty and adequately securing the outstanding balance of the Indebtedness Hereby Secured, then, if no Event of Default, as hereinafter defined, shall have occurred and be then continuing and the Mortgagor shall not be in default hereunder, or under the Loan Agreement, or the Note, the proceeds of insurance shall be applied to reimburse the Mortgagor for the cost of restoring, repairing, replacing, or rebuilding the Premises or part thereof subject to Insured Casualty, as provided for in Paragraph 9 hereof; and the Mortgagor hereby covenants and agrees forthwith to commence and diligently to prosecute such restoring, repairing, replacing, or rebuilding; provided, always, that the Mortgagor shall pay all costs of such restoring, repairing, replacing, or rebuilding in excess of the net proceeds of insurance made available pursuant to the terms hereof.

(c) Except as provided in subsection (b) of this Paragraph 8, the Mortgagee may apply the proceeds of insurance consequent upon any Insured Casualty upon the Indebtedness Hereby Secured, in such order or manner as the Mortgagee may elect; provided, however, that such application of proceeds shall not be considered a voluntary prepayment of the Note which would require the payment of any prepayment premium or penalty.

(d) In the event that proceeds of insurance, if any, shall be made available to the Mortgagor for the restoring, repairing, replacing, or rebuilding of the Premises, the Mortgagor hereby covenants to restore, repair, replace, or rebuild the same, to be of at least equal value and of substantially the same character as prior to such damage or destruction, all to be effected in accordance with plans and specifications to be first submitted to and approved by the

# UNOFFICIAL COPY

Mortgagee.

9. Disbursement of Insurance Proceeds. In the event the Mortgagor is entitled to reimbursement out of insurance proceeds held by the Mortgagee, such proceeds shall be disbursed from time to time upon the Mortgagee being furnished with (i) evidence satisfactory to it of the estimated cost of completion of the restoration, repair, replacement, and rebuilding, (ii) funds (or assurances satisfactory to the Mortgagee that such funds are available) sufficient in addition to the proceeds of insurance to complete the proposed restoration, repair, replacement, and rebuilding, and (iii) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, plats or survey, and such other evidences of cost, payment, and performance as the Mortgagee may reasonably require and approve; and the Mortgagee may, in any event, require that all plans and specifications for such restoration, repair, replacement, and rebuilding be submitted to and approved by the Mortgagee prior to commencement of work. No payment made prior to the final completion of the restoration, repair, replacement, and rebuilding shall exceed ninety (90%) percent of the value of the work performed from time to time (provided that if funds are available, the balance of the value of the work performed shall be paid upon final completion); funds other than proceeds of insurance shall be disbursed prior to disbursement of such proceeds; and at all times the undisbursed balance of such proceeds remaining in the hands of the Mortgagee, together with funds deposited for the purpose or irrevocably committed to the satisfaction of the Mortgagee to pay for the cost of completion of the restoration, repair, replacement, or rebuilding, free and clear of all liens or claims for lien. Any surplus that may remain out of insurance proceeds held by the Mortgagee after payment of such costs of restoration, repair, replacement, or rebuilding shall, at the option of Mortgagee, be applied on account of the Indebtedness Hereby Secured then most remotely to be paid, or be paid to any other party entitled thereto. No interest shall be allowed to the Mortgagor on account of any proceeds of insurance or other funds held in the hands of the Mortgagee.

10. Condemnation. The Mortgagor hereby assigns, transfers, and sets over unto the Mortgagee the entire proceeds of any award or claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation including any payments made in lieu of or in settlement of a claim or threat of condemnation. The Mortgagee may elect to apply the proceeds of the award upon or in reduction of the Indebtedness Hereby Secured then most remotely to be paid, whether due or not, or require the Mortgagor to restore or rebuild the Premises, in which event the proceeds shall be held by the Mortgagee and used to reimburse the Mortgagor for the cost of such rebuilding or restoring. If, in the reasonable judgment of the Mortgagee, the

# UNOFFICIAL COPY

Premises can be restored to an economic unit not less valuable than the same was prior to the condemnation and adequately securing the outstanding balance of the Indebtedness Hereby Secured, the award shall be used to reimburse the Mortgagor for the cost of restoration and rebuilding; provided, always, that Mortgagor is not in default hereunder, under the Loan Agreement, or the Note, and that no Event of Default has occurred and is then continuing. If the Mortgagor is required or permitted to rebuild or restore the Premises as aforesaid, such rebuilding or restoration shall be effected solely in accordance with plans and specifications previously submitted to and approved by the Mortgagee, and proceeds of the award shall be paid out in the same manner as is provided in Paragraph 9 hereof for the payment of insurance proceeds towards the cost of rebuilding or restoration. If the amount of such award is insufficient to cover the cost of rebuilding or restoration, the Mortgagor shall pay such costs in excess of the award before being entitled to reimbursement out of the award. Any surplus which may remain out of the award after payment of such costs of rebuilding or restoration shall, at the option of the Mortgagee, be applied on account of the Indebtedness Hereby Secured then most remotely to be paid, or be paid to any other part entitled thereto. No interest shall be allowed to Mortgagor on account of any award held by Mortgagee.

11. Stamp Tax. If, by the laws of the United States of America, or of any state or municipality having jurisdiction over the Mortgagor or the Premises, any tax is sued or becomes due in respect of the issuance of the Note, the Mortgagor shall pay such tax in the manner required by such law.

12. Prepayment Privilege. The Mortgagor may prepay all or any portion of the unpaid principal balance of the Note (in addition to the required payments thereunder) in accordance with the terms and conditions set forth in the Note and the Loan Agreement, but not otherwise.

13. Effect of Extensions of Time and Amendments on Junior Liens and Others. If the payment of the Indebtedness Hereby Secured, or any part thereof, be extended or varied, or if any part of the security therefor be released, all persons now or at any time hereafter liable therefor (or for any part thereof), or interested in the Premises, shall be held to assent to such extension, variation, or release; and their liability, and the lien, and all provisions hereof, shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding any such extension, variation or release. Any person, firm, or corporation taking a junior mortgage, or other lien upon the Premises or any interest therein, shall take the said lien subject to the rights of the Mortgagee to amend, modify, and supplement this Mortgage, the Note, and the Loan Agreement, and

# UNOFFICIAL COPY

to extend the maturity of the Indebtedness Hereby Secured, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien.

14. Mortgagee's Performance of Mortgagor's Obligations. In case of default herein, the Mortgagee, either before or after acceleration of the Indebtedness Hereby Secured or the foreclosure of the lien hereof and during the period of redemption, if any, may, but shall not be required to, make any payment or perform any act herein required of the Mortgagor (whether or not the Mortgagor is personally liable therefor) in any form and manner deemed expedient to the Mortgagee; and the Mortgagee may, but shall not be required to, 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 contest any tax or assessment, and may, but shall not be required to, complete construction, rehabilitation, furnishing, and equipping of the improvements upon the Premises and rent, operate, and manage the Premises and such improvements and pay operating costs and expenses, including without limitation management fees, of every kind and nature in connection therewith, so that the Premises and improvements shall be operational and usable for their intended purposes. All monies paid for any of the purposes herein authorized, and all expenses paid or incurred in connection therewith, including attorneys' fees and other monies advanced by the Mortgagee to protect the Premises and the lien hereof, or the complete construction, furnishing, and equipping or to rent, operate, and manage the Premises and such improvements or to pay any such operating cost and expenses thereof or to keep the Premises and improvements operational and usable for its intended purpose, shall be so much additional Indebtedness Hereby Secured, whether or not they exceed the face amount of the Note, and shall become immediately due and payable without notice, and with interest thereon at the post-maturity interest rate set out in the Note. Inaction of the Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of the Mortgagor. The Mortgagee, in making any payment hereby authorized (a) relating to taxes and assessments, may do so according to any bill, statement, or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien, or title or claim thereof; (b) for the purchase, discharge, compromise, or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted; or (c) in connection with the completion of construction, rehabilitation, furnishing, or equipping of the improvements or the rental, operating costs and expenses thereof, Mortgagee may do so in such amounts and to such persons as Mortgagee may deem appropriate and may enter into such contracts therefor as Mortgagee may deem appropriate or may

# UNOFFICIAL COPY

perform the same itself.

15. Inspection of Premises and Records. The Mortgagee shall have the right to inspect the Premises and all books, records, and documents relating thereto at all reasonable times, and access thereto shall be permitted for that purpose.

16. Financial Statements. If required by the Mortgagee, the Mortgagor will, within ninety (90) days after the end of each fiscal year of Mortgagor, furnish to the Mortgagee financial and operating statements of the Premises for such fiscal year, including, but without limitation, a balance sheet and supporting schedules, detailed statement of income and expenditures and supporting schedules, detailed statement of income and expenditures and supporting schedules, all in reasonable detail. Such financial and operating statements shall be prepared and certified at the expense of Mortgagor in such manner as may be acceptable to the Mortgagee, and the Mortgagee may, by notice in writing to the Mortgagor, require that the same be prepared and certified, pursuant to audit, by a firm of independent certified public accountants satisfactory to Mortgagee.

17. Assignment of Leases, Rents, and Contracts. Mortgagor hereby bargains, sells, transfers, assigns, conveys, and delivers to Mortgagee all of Mortgagor's right, title, and interest in all rents, issues, and profits of the Premises, as further security for the payment of the Indebtedness Hereby Secured. This assignment is absolute and is effective immediately. Notwithstanding the foregoing, until a notice is sent to the Mortgagor in writing that a default has occurred under the terms and conditions of the Note, the Loan Agreement, or this Mortgage, the Mortgagor may receive, collect and enjoy the rents, income, and profits accruing from the Premises.

In the event of any default at any time hereunder, any failure to pay the Indebtedness Hereby Secured when and as due, or any default or Event of Default hereunder or under the Loan Agreement or the Note, at its option, the Mortgagee may after Service of a Notice, receive and collect all such rents, income, and profits as they become due, from the Premises and under any and all leases of all or any part of the Premises. The Mortgagee shall thereafter continue to receive and collect all such rents, income, and profits, as long as such default or defaults shall exist, and during the pendency of any foreclosure proceedings, and if there is a deficiency, during any redemption period.

The Mortgagor hereby irrevocably appoints the Mortgagee its true and lawful attorney, which appointment is irrevocable and coupled with an interest, with full power of substitution and with full power for the Mortgagee in its own name and capacity or in the name and capacity of the Mortgagor, from and after the occurrence of a default, to demand, collect, receive, and give

# UNOFFICIAL COPY

complete acquittance for any and all rents, income, and profits accruing from the Premises, and at the Mortgagee's discretion to file any claim or take any other action or proceeding and make any settlement of any claims, either in its own name or in the name of the Mortgagor or otherwise, which Mortgagor may deem necessary or desirable in order to collect and enforce the payment of the rents, income and profits. Lessees of the Premises are hereby expressly authorized and directed to pay any and all amounts due the Mortgagor pursuant to the leases to the Mortgagee or such nominee as the Mortgagee may designate in writing delivered to and received by such lessees who are expressly relieved of any and all duty, liability or obligation to the Mortgagor in respect of all payments so made.

From and after the occurrence of a default, the Mortgagee is hereby vested with full power to use all measures, legal and equitable, deemed by it necessary or proper to enforce this assignment and to collect the rents, income, and profits assigned hereunder, including the right of the Mortgagee or its designee to enter upon the Premises, or any part thereof, with or without force and with or without process of law, and take possession of all or any part of the Premises together with all personal property, fixtures, documents, books, records, papers and accounts of the Mortgagor relating thereto, and may exclude the Mortgagor, its agents and servants, wholly therefrom. The Mortgagor hereby grants full power and authority to the Mortgagee to exercise all rights, privileges, and powers herein granted at any and all times after service of a Notice, without further notice to the Mortgagor, with full power to use and apply all of the rents and other income herein assigned to the payment of the costs of managing and operating the Premises and of any Indebtedness Hereby Secured. Mortgagee shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of the lessor under any of the leases and does not assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of Mortgagor in the leases. It is further understood that this assignment shall not operate to place responsibility for the control, care, management, or repair of the Premises, or parts thereof, upon the Mortgagee, nor shall it operate to make the Mortgagee liable for the performance of any of the terms and conditions of any of the leases, or for any waste of the Premises by any lessee under any of the leases or any other person, or for any dangerous or defective condition of the Premises or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any lessee, licensee, employee, or stranger.

Mortgagor will, from time to time after notice and demand, execute, and deliver or cause to be executed and delivered to Mortgagee, in form satisfactory to Mortgagee, further agreements

# UNOFFICIAL COPY

evidencing its willingness to comply and its compliance with the provisions of this paragraph. Mortgagor shall pay Mortgagee the expenses incurred by Mortgagee in connection with the recording of any such agreement.

The assignment contained in this Section is given as collateral security and the execution and delivery hereof shall not in any way impair or diminish the obligations of the Mortgagor, nor shall this assignment impose any obligation on Mortgagee to perform any provision of any contract pertaining to the Property or any responsibility for the non-performance thereof by Mortgagor or any other person. The assignment under this Section is given as a primary pledge and assignment of the rights described herein and such assignment shall not be deemed secondary to the security interest and Mortgage of Mortgagor in the Premises. Mortgagee shall have the right to exercise any rights under this Section before, together with, or after exercising any other rights under this Mortgage. Nothing herein contained shall be deemed to obligate the Mortgagee to perform or discharge any obligation, duty, or inability of Mortgagor under this assignment, and the Mortgagor shall and does hereby indemnify and hold the Mortgagee harmless from any and all liability, loss or damage which the Mortgagee may or might incur by reason of this assignment; and any and all such liability, loss or damage incurred by the Mortgagee, together with the costs and expenses, including reasonable attorneys' fees, incurred by the Mortgagee in the defense of any claims or demands therefor (whether successful or not) shall be so much additional Indebtedness Hereby Secured, and the Mortgagor shall reimburse the Mortgagee therefor on demand, together with interest at the post maturity interest rate set forth in the Note from the date of demand to the date of payment.

18. Illinois Uniform Commercial Code. This Mortgage constitutes a Security Agreement under the Uniform Commercial Code of Illinois (herein called the "Code") with respect to any part of the Premises which may or might now or hereafter be or be deemed to be personal property, fixtures, or property other than real estate (all for the purposes of this Paragraph is called "Collateral"); all of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of the Paragraph 18 shall not limit the generality or applicability of any other provision of this Mortgage but shall be in addition thereto:

(a) The Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges, or encumbrances.

(b) The Collateral is to be used by the Mortgagor solely



# UNOFFICIAL COPY

for business purposes, being installed upon the Premises for Mortgagor's own use or as the equipment and furnishings furnished by Mortgagor, as landlord, to tenants of the Premises.

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

(d) The only persons having any interest in the Premises are the Mortgagor, the Mortgagee, and permitted tenants and user thereof.

(e) No financing statement covering any of the Collateral or any proceeds thereof is on file in any public office; and Mortgagor will at its own cost and expenses, upon demand, furnish to the Mortgagee such further information and will execute and deliver to the Mortgagee such financing statements and other documents in form satisfactory to the Mortgagee and will do all such acts and things as the Mortgagee may at any time or from time to time reasonably request or may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness Hereby Secured, subject to no adverse liens or encumbrances, and the Mortgagor will pay the cost of filing the same or filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by the Mortgagee to be necessary or desirable.

(f) Upon any Event of Default hereunder and at any time thereafter, the Mortgagee at its option may declare the Indebtedness Hereby Secured immediately due and payable, all as more fully set forth in Paragraph 20 hereof, and thereupon Mortgagee shall have the remedies of a secured party under the Code, including, but without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as the Mortgagor can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and the Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in

# UNOFFICIAL COPY

satisfaction of the Mortgagor's obligations as provided in the Code. The Mortgagee, without removal may render the Collateral unusable and dispose of the Collateral on the Premises. The Mortgagee may require the Mortgagor to assemble the Collateral and make it available to the Mortgagee for its possession at a place to be designated by the Mortgagee. The Mortgagee will give Mortgagor at least ten (10) days notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by first-class mail, postage prepaid, to the address of Mortgagor shown in Paragraph 36 of this Mortgage at least ten (10) days before the time of the sale or disposition. The Mortgagee may buy at any public sale, and if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, Mortgagee may buy at private sale. Any such sale may be held as part of and in conjunction with any foreclosure sale of the real estate comprised within the Premises, the Collateral and real estate to be sold as one lot if Mortgagee so elects. The net proceeds realized upon any such disposition, after deduction for the expenses or retaking, holding, preparing for sale, selling, or the like and reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied against the Indebtedness Hereby Secured. The Mortgagee will account to the Mortgagor for any surplus realized on such disposition.

(g) The remedies of the Mortgage hereunder are cumulative and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of any of the other remedies of the Mortgagee, including having the Collateral deemed part of the realty upon any foreclosure thereof so long as any part of the Indebtedness Hereby Secured remains unsatisfied.

(h) The terms and provisions contained in this Paragraph 18 shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

(i) This Mortgage is intended to be a financing statement within the purview of Section 9-402(6) of the Code with respect to the Collateral and the goods described at the beginning of this mortgage, which goods are or are to become fixtures relating to the Premises. The addresses of the Mortgagor (Debtor) and Mortgagee (Secured Party) are set forth in Paragraph 36 hereof. This Mortgage is to be filed for record with the Recorder of Deeds of the County or Counties where the Premises are located. The Mortgagor is the record owner of the Premises.

# UNOFFICIAL COPY

19. Restrictions on Transfer. It shall be an Event of Default hereunder and the Indebtedness Hereby Secured shall be immediately due and payable (to the extent permitted by law) if, without the prior written consent of the Mortgagee, any one or more of the following shall occur:

(a) If the Mortgagor shall create, effect or consent to or shall suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of the Premises or any part thereof or interest therein, excepting only sales or other dispositions of Collateral (herein called "Obsolete Collateral") no longer useful in connection with the operation of the Premises, provided that prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by new Collateral, subject to the first and prior lien hereof, of at least equal value and utility;

(b) If the Mortgagor is a trustee, then if any beneficiary of the Mortgagor shall create, effect, or consent to, or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest, or other encumbrance or alienation of all or any portion of such beneficiary's beneficial interest in the Mortgagor;

(c) If the Mortgagor is a corporation, or if any corporation is a beneficiary of a trustee mortgagor, then if any shareholder of such corporation shall create, effect or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of any such shareholder's shares in such corporation; provided that if such corporation is a corporation whose stock is publicly traded on a national securities exchange or on the "Over The Counter" market, then this subparagraph 19(c) shall be inapplicable;

(d) If the Mortgagor is a partnership or joint venture, or if any beneficiary of a trustee mortgagor is a partnership or joint venture, then if any partner or joint venturer in such partnership or joint venture shall create, effect, or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest, or other encumbrance or alienation of all or any part of the partnership interest or joint venture interest, as the case may be, of such partner or joint venturer (provided that the Mortgagee shall not unreasonably withhold its consent to any of the foregoing with respect to any limited partnership interest);

in each case whether any such conveyance, sale assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or

# UNOFFICIAL COPY

involuntarily, by operation of law or otherwise; provided that the foregoing provision of the Paragraph 19 shall not apply to (i) liens securing the Indebtedness Hereby Secured, (ii) the lien of current taxes and assessments not in default, and (iii) any transfers of the Premises, or part thereof, or interest therein, or any beneficial interest, or shares of stock or partnership or joint venture interest, as the case may be, in the Mortgagor or any beneficiary of a trustee mortgagor by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heir, legatees, devisees, executors, administrators, estate, personal representatives, or committee. The provisions of this Paragraph 19 shall be operative with respect to, and shall be binding upon, any persons who, in accordance with the terms hereof or otherwise shall acquire any part of or interest in or encumbrance upon the Premises, or such beneficial interest in, shares of stock of, or partnership or joint venture interest in, the Mortgagor or any beneficiary of a trustee mortgagor.

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

(a) If default be made and shall continue for fifteen (15) days in the due and punctual payment of the Note or any installment thereof, either principal or interest, as and when the same is due and payable, or if default be made and shall continue for fifteen (15) days in the making of any payment of monies required to be made hereunder or under the Note; or

(b) Mortgagor shall fail to observe or perform any covenant, condition, or agreement to be served or performed under Paragraphs 2, 3, 4, and 5 of this Mortgage or any representation or warranty of Mortgagor when made was false or misleading in any material respects or if any Event of Default pursuant to Paragraph 19 hereof shall occur and be continuing, without notice or period of grace of any kind; or

(c) Any default shall occur under any loan agreement, the Note, or any other document or agreement evidencing, relating to, securing, or guaranteeing any of the Indebtedness Hereby Secured, and such default shall continue beyond any applicable period of grace; or

(d) If (and for the purpose of this subsection (d) of this Paragraph 20 only, the term Mortgagor shall mean and include not only Mortgagor but any beneficiary of a trustee mortgagor and each person who, as guarantor, co-maker, or otherwise, shall be or become liable for or obligated upon all or any part of the Indebtedness Hereby Secured or any of the covenants or agreements contained herein):

# UNOFFICIAL COPY

(i) Mortgagor shall file a petition in voluntary bankruptcy under any chapter of the federal bankruptcy code, or any similar law for the relief of debtors, state or federal, now or hereafter in effect, or

(ii) Mortgagor shall file an answer admitting insolvency or inability to pay its debts, or

(iii) Within thirty (30) days after the filing against Mortgagor of any involuntary proceeding under the federal bankruptcy code or similar law for the relief of debtors, such proceedings shall not have been vacated or stayed, or

(iv) Mortgagor shall be adjudicated a bankrupt, or a trustee or receiver shall be appointed for the Mortgagor for all or a material part of the Mortgagor's property or the Premises, in any involuntary proceeding, or any court shall have taken jurisdiction of all or the major part of the Mortgagor's property or the Premises in any involuntary proceeding for the reorganization, dissolution, liquidation or winding up of the Mortgagor, and such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within sixty (60) days, or

(v) Mortgagor shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due or shall consent to the appointment of a receiver or trustee or liquidator of all or a material part of its property, or the Premises; or

(e) If default shall continue for ten (10) days after written notice thereof by the Mortgagee to the Mortgagor in the due and punctual performance or observance of any other agreement or conditions herein; or

(f) If the Premises shall be abandoned;

then the Mortgagee is hereby authorized and empowered, at its option, and without affecting the lien hereby created or the priority of said lien or any right of the Mortgagee hereunder to declare, without further notice, all Indebtedness Hereby Secured to be immediately due and payable, whether or not such default be thereafter remedied by the Mortgagor, and the Mortgagee may immediately proceed to foreclose this Mortgage or to exercise any right, power, or remedy provided by this Mortgage, the Note, the Loan Agreement, or by law or in equity conferred.

21. Possession by Mortgagee. When the Indebtedness

# UNOFFICIAL COPY

Hereby Secured shall become due, whether by acceleration or otherwise, the Mortgagee shall, if applicable law permits, have the right to enter into and upon the Premises and take possession thereof or to appoint an agent or trustee for the collection of the rents, issues, and profits of the Premises; and the net income, after allowing a reasonable fee for the collection thereof and for the management of the Premises, may be applied to the payment of Taxes, insurance premiums, and other charges applicable to the Premises, or in reduction of the Indebtedness Hereby Secured; and the rents, issues, and profits of and from the Premises are hereby specifically pledged to the payment of the Indebtedness Hereby Secured.

22. Foreclosure. When the Indebtedness Hereby Secured, or any part thereof, shall become due, whether by acceleration or otherwise, the Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the decree of sale, all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies and similar data and assurance with respect to title, as the Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree, the true conditions of the title to or the value of the Premises. All expenditures and expenses of the nature mentioned in this Paragraph, and such other expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by the Mortgagee in any litigation or proceedings affecting this Mortgage, the Note, or the Premises, including probate and bankruptcy proceedings or on appeal, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, shall be so much additional Indebtedness Hereby Secured and shall be immediately due and payable by the Mortgagor, with interest thereon at the post-maturity rate as set forth in the Note until paid.

23. 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 regard to solvency or insolvency of the 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 the Mortgagee hereunder or any employee or agent thereof may be appointed as such receiver.

# UNOFFICIAL COPY

Such receiver shall have the power to collect the rents, issues, and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when the Mortgagor, except for the intervention of such receiver, would be entitled to collection of 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 may, from time to time, authorize the receiver to apply the net income from the Premises in his hands in payment in whole or in part of;

(a) The Indebtedness Hereby Secured or the indebtedness secured by a decree foreclosing this Mortgage, or any tax, special assessment, or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to the foreclosure sale; or

(b) The deficiency in case of a sale and deficiency.

24. 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 account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Paragraph 22 hereof; Second, all other items which, under the terms hereof, constitute Indebtedness Hereby Secured additional to that evidenced by the Note, with interest on such items as herein provided; Third, to interest remaining unpaid upon the Note; Fourth, to the principal remaining unpaid upon the Note; and Fifth, any overage to the Mortgagor and its successors or assigns, as their rights may appear.

25. Insurance Upon Foreclosure. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in rebuilding or restoring the buildings or improvements as aforesaid, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct. In the case of foreclosure of this Mortgage, the court, in its decree, may provide that the mortgagee's clause attached to each of the casualty insurance policies may be cancelled and that the decree creditor may cause a new loss clause to be attached to each of said casualty insurance policies making the loss thereunder payable to said decree creditors; and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statutes in such case made and provided, then in every such case, each and every successive redeemer may cause the preceding loss

# UNOFFICIAL COPY

clause attached to each casualty insurance policy to be cancelled and a new loss clause to be attached thereto, making the loss thereunder payable to such redeemer. In the event of foreclosure sale, the Mortgagee is hereby authorized, without the consent of the Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as the Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies without credit or allowance to Mortgagor for prepaid premiums thereon.

26. Waiver. The Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner whatsoever claim or take any advantage of, any stay, exemption or extension law or moratorium law now or at any time hereafter in force, nor claim, take or insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to any decree, judgment, or order of any court of competent jurisdiction; or after such sale or sales claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. The Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of the Mortgagor and of all other persons, are and shall be deemed to be hereby waived to the full extent permitted by the Provisions of Illinois Revised Statutes, Chapter 77, Sections 18(a) and 18(b), and any statute enacted in replacement or substitution thereof. The Mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay, or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to the Mortgagee, but will suffer and permit the exercise of every such right, power, and remedy as though no such law or laws have been made or enacted.

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

28. Further Assurances. The Mortgagor will do, execute, acknowledge, and deliver all and every further acts, deeds, conveyances, transfers, and assurances necessary or proper, in the sole judgment of the Mortgagee, for the better assuring, conveying, mortgaging, assigning, and confirming unto the Mortgagee all property mortgaged hereby or property intended so



# UNOFFICIAL COPY

to be; whether now owned by Mortgagor or hereafter acquired.

29. Mortgagor's Successors. In the event that the ownership of the Premises becomes vested in a person or persons other than the Mortgagor, the Mortgagee may, without notice to the Mortgagor, deal with such successor or successors in interest of the Mortgagor with reference to this Mortgage and the Indebtedness Hereby Secured in the same manner as with the Mortgagor. The Mortgagor will give immediate written notice to the Mortgagee of any conveyance, transfer, or change of ownership of the Premises, but nothing in this Paragraph 29 shall vary or negate the provisions of Paragraph 19 hereof.

30. Rights Cumulative. Each right, power, and remedy herein conferred upon the Mortgagee is cumulative and in addition to every other right, power, or remedy, express or 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 to the 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 the 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.

31. Successors and Assigns. This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon the Mortgagor and its successors and assigns (including, without limitation, each and every record owner from time to time of the Premises or any other person having an interest therein), and shall inure to the benefit of the Mortgagee and its successors and assigns. Wherever herein the Mortgagee is referred to, such reference shall be deemed to include any holder of the Note, whether so expressed or not; and each such holder of the Note shall have and enjoy all of the rights, privileges, powers, options, and benefits afforded hereby and hereunder, and may enforce all and every of the terms and provisions hereof, as fully and to the same extent and with the same effect as if such holder were herein by name specifically granted such rights, privileges, powers, options, and benefits and was herein by name designated the Mortgagee.

32. Provisions Severable. The unenforceability or invalidity of any provision or provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid.

33. Waiver of Defense. No action for the enforcement of the lien or any provision hereof shall be subject to any defense

# UNOFFICIAL COPY

which would not be good and valid to the party interposing the same in an action at law upon the Note.

34. Time of the Essence. Time is of the essence of the Note, the Loan Agreement, this Mortgage, and any other document evidencing or securing the Indebtedness Hereby Secured.

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

36. Notices. Except as otherwise provided in Paragraph 18 hereof, any notice which any party hereto may desire or may be required to give to any other party shall be in writing, and the mailing thereof by registered or certified or equivalent mail, postage prepaid, return receipt requested, to the respective addresses of the parties set forth below, or to such other place as any party hereto may by notice in writing designate for itself, shall constitute service of notice hereunder two (2) business days after the mailing thereof:

(a) If to the Mortgagee: Foster Bank, 5225 North Kedzie Avenue, Chicago, Illinois 60625

(b) If to the Mortgagor, to the address set forth under Mortgagor's signature hereto.

Any such other notice may be served by personal delivery thereof to the other party, which delivery shall constitute service of notice hereunder on the date of such delivery.

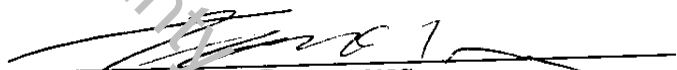
37. Joint and Several. If there is more than one Mortgagor, all representations and warranties herein shall be the joint and several representations and warranties of both or all such Mortgagors and all obligations, covenants, agreements, releases, and waivers hereunder shall be the joint and several obligations, covenants, agreements, releases, and waivers of both or all such Mortgagors.

38. Option to Subordinate. At the option of the Mortgagee, this Mortgage shall become subject and subordinate in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases of all or any part of the Premises upon the execution by Mortgagee and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds in and for the county or counties wherein the Premises are situated, of a unilateral declaration to the effect.

# UNOFFICIAL COPY

39. Hazardous Waste. Mortgagor warrants, represents and agrees that: (i) an inspection of the premises has been made and mortgagor has no knowledge of environmental or hazardous waste problems; (ii) there are and will be no environmental, health or safety hazards and no on-site storage, treatment or disposal of hazardous substances or material, as is now defined or may be defined by any governmental authority, has been or will be made; (iii) there are no pending actions, proceedings or notices of potential actions or proceedings from any governmental agency regarding the condition of the Premises or environmental, health or safety laws, and the business conducted on the Premises has and will lawfully dispose of its waste; and (iv) there are no PCB's, asbestos or hazardous waste substances present on the Premises and none will be on the Premises in the future. Mortgagor, at Mortgagor's sole cost and expense shall indemnify and hold Lender harmless from all liability, costs and expenses, including, but not limited to, all costs of the handling, treatment, removal, storage, decontamination, clean-up, transport or disposal of any hazardous waste, arising out of the violation of any federal, state or local statutes or ordinances concerning hazardous waste; the foregoing indemnity shall further apply to any residual contamination of any property or natural resources arising in connection with the generation, use, handling, transport, or disposal of any such hazardous waste.

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

  
 TAE KYU ONG

  
 KUM OK ONG

Address for Notices:

2771 Longmeadow Drive  
 Northbrook, Illinois

STATE OF ILLINOIS            )  
   )    SS:  
 COUNTY OF COOK             )

I, the undersigned, a Notary Public in and for the County

# UNOFFICIAL COPY

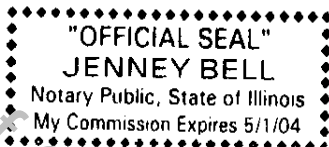
and the State aforesaid, DO HEREBY CERTIFY that TAE KYU ONG and KUM OK ONG, personally known to me to be the same person(s) whose name(s) is(are) subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that (he) (she) they signed and delivered the said instrument as (his) (her) their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial, seal this 12 day of December, 2003.

SEAL

  
NOTARY PUBLIC

My Commission Expires:



Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## EXHIBIT A

LOTS 9 AND 10 IN SUBDIVISION NO. 27, THE HULBERT FULLERTON AVE.,  
HIGHLANDS SUBDIVISION NUMBERS 21 TO 29 BOTH INCLUSIVE, BEING A  
SUBDIVISION IN THE NORTHWEST QUARTER (1/4) OF SECTION 28,  
TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL  
MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 3000 NORTH LARAMIE AVENUE, CHICAGO, ILLINOIS

PERMANENT INDEX NO.: 13-28-115-037-0000

Property of Cook County Clerk's Office