

UNOFFICIAL COPY



08192985

PREPARED BY AND WHEN
RECORDED MAIL TO:

FOR RECORDER'S USE ONLY

08192985

8739/0571 03 001 Page 1 of 22
1998-12-31 14:53:07
Cook County Recorder 63.00

Robert I. Boehm
Boehm & Associates, P.C.
120 South LaSalle Street
Suite 1520
Chicago, Illinois 60603

7788185-D1 KML

Property of Cook County Clerk's Office

MORTGAGE AND SECURITY AGREEMENT-
LASALLE NATIONAL BANK TRUST NO. 118286

22

THIS MORTGAGE AND SECURITY AGREEMENT ("Mortgage") is made as of ^{December} ~~November~~ 23, 1998, by LASALLE NATIONAL BANK, not individually, but solely as Trustee under that certain Trust Agreement dated September 28, 1993 and known as Trust No. 118286 ("Mortgagor") with a mailing address at 125 South LaSalle Street, Chicago, Illinois 60603 in favor of BANCO POPULAR, ILLINOIS (hereinafter referred to as "Mortgagee") with a mailing address at 1600 West Lake Street, Melrose Park, Illinois 60160 and pertains to the real estate described in Exhibit "A" attached hereto and made a part hereof.

I. RECITALS

1.01 Note. Pursuant to that certain Loan and Security Agreement dated the date of this Mortgage entered into by and among Mortgagee; Daniel Kravetz, Morton Geller, Anthony Fornelli and Frank Tufano (who with Mortgagor are hereinafter collectively referred to as "Borrowers") and Mortgagor (said Loan and Security Agreement as may be amended or restated from time to time shall be hereinafter referred to as the "Loan Agreement"), that certain Note (said Note as may from time to time be amended, modified, substituted, restated, renewed and/or extended shall hereinafter be referred to as the "Note") in the principal amount of \$875,000.00 payable along with interest as specified in the Note has been, or is being, contemporaneously executed and delivered by Borrowers to Mortgagee. The Note contemplates a variable rate of interest.

1.02 This Mortgage. To induce Mortgagee to both enter into the Loan Agreement and make the loan which is the subject of the Note and as security for the repayment of the Note and

BOX 333-CTI

payment and performance of all other indebtedness, obligations and liabilities of Borrowers to Mortgagee, howsoever created, arising or evidenced and whether now existing or hereafter arising including, but not limited to, under the Loan Agreement and any document entered into or given pursuant to the Loan Agreement (all of the indebtedness, liabilities and obligations referenced in this Section 1.02 shall be collectively referred to as the "Obligations"), Mortgagor has agreed to execute and deliver to Mortgagee this Mortgage. This Mortgage is given as equal security for all of the Obligations without preference or priority of any part of the Obligations by reason of priority time or of the negotiation thereof or otherwise.

This Mortgage is given to secure the Loan as evidenced and witnessed by the Note and secures not only the indebtedness from Borrowers existing on the date hereof, but all such future advances whether such advances are obligatory or to be made at the option of the Mortgagee or otherwise as are made within twenty (20) years from the date hereof to the same extent as if such future advances were made on the date of the execution of this Mortgage although there may be no indebtedness outstanding at the time any advance is made. The lien of this Mortgage as to third persons without actual notice thereof shall be valid as to all indebtedness and future advances from the time this Mortgage is filed for record in the Office of the Recorder of Deeds of Cook County. The total amount of indebtedness that may be secured by this Mortgage may increase or decrease from time to time, but the total unpaid balances of the Note secured at any one time shall not exceed the maximum principal amount of the aggregate of the Note (as amended, extended, substituted, restated, replaced or renewed from time to time) plus interest thereon and any disbursements made by the Mortgagee for the payment of taxes, special assessments or insurance on the above described real estate with interest on such disbursements.

II. THE GRANT

2.01 Now, therefore, in order to secure the payment and performance of the Obligations and the covenants and agreements herein contained, Mortgagor does hereby grant, bargain, sell, convey, mortgage and warrant to Mortgagee and its successors and assigns forever the real estate and all of its estate, right, title and interest therein situated in the state and county as more particularly described in Exhibit A attached hereto and made a part hereof (the "Premises") together with the following described property (the Premises and the following described property being collectively referred to hereinbelow as the "Property"), all of the Property being hereby pledged primarily on a parity with the Premises and not secondarily:

- (a) all buildings and other improvements of every kind and description now or hereafter erected or placed thereon and all materials intended for construction, reconstruction, alteration and repair of such improvement now or hereafter erected thereon, all of which materials shall be deemed to be included within the Property immediately upon the delivery thereof to the Premises;

- (b) all right, title and interest of Mortgagor, including any after-acquired title or reversion, in and to the rights of the ways, streets, avenues, sidewalks and alleys adjoining the Premises;
- (c) each and all of the tenements, hereditaments, easements, appurtenances, passages, waters, water courses, riparian rights, other rights, liberties and privileges of the Premises or in any way now or hereafter appertaining thereto, including homestead and any other claim at law or in equity, as well as any after acquired title, franchise or license and the reversions and remainders thereof;
- (d) all rents, issues, deposits and profits accruing and to accrue from the Premises and the avails thereof; and
- (e) all tenant's security deposits, utility deposits and insurance premium rebates to which Mortgagor may be entitled or which Mortgagor may be holding; all fixtures and personal property now or hereafter owned by Mortgagor and attached to or contained in and used or useful in connection with the Premises or the aforesaid improvements thereon including, without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, fans, fittings, floor coverings, freezers, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, shipping dock load level, sinks, sprinklers, stokers, stoves, toilets, trash compactor systems, ventilators, wall coverings, washers, wastewater facilities, windows, window coverings and wiring, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same be attached to such improvements, it being intended, agreed and declared that all such property owned by Mortgagor and placed by it on the Premises or used in connection with the operation or maintenance thereof shall,

so far as permitted by law, be deemed for the purposes of this Mortgage to be part of the real estate constituting and located on the Premises and covered by this Mortgage, and as to any of the aforesaid property that is not part of such real estate or does not constitute a "fixture," as such term is defined in the Uniform Commercial Code as enacted in Illinois, this Mortgage shall be deemed to be, as well, a security agreement under such Uniform Commercial Code for the purpose of creating a security interest in such property which Mortgagor hereby grants to Mortgagee as "secured party" as such term is defined in the Uniform Commercial Code;

to have and to hold the same unto Mortgagee and its successors and assigns forever for the purposes and uses herein set forth.

III. GENERAL AGREEMENTS

3.01 Principal and Interest. All of the indebtedness evidenced by the Note shall be promptly paid when due at the times and in the manner provided in the Note, the Loan Agreement and this Mortgage.

3.02 Property Taxes. Mortgagor shall pay immediately when first due and owing all general taxes, special taxes, special assessments, water charges, sewer charges and any other charges that may be asserted against the Property or any part thereof or interest therein, and shall furnish to Mortgagee, upon Mortgagee's request, duplicate receipts therefor within thirty (30) days after payment thereof. Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any such taxes or assessments, provided that:

- (a) such contest shall have the effect of preventing the collection of the tax or assessment so contested and the sale or forfeiture of the Property or any part thereof or interest therein to satisfy the same; and
- (b) Mortgagor has notified Mortgagee in writing of the intention of Mortgagor to contest the same before any tax or assessment has been increased by any interest, penalties or costs.

3.03 Tax Payments by Mortgagee. Mortgagee is hereby authorized upon ten (10) days notice to Mortgagor (or such lesser notice, including no notice, as is reasonable under the circumstances) to make or advance, in the place and stead of Mortgagor, any payment not paid

UNOFFICIAL COPY

08192985

when due relating to (a) taxes, assessments, water and sewer charges and other governmental charges, fines, impositions or liens that may be asserted against the Property or any part thereof (except liens being contested in good faith and by appropriate proceedings for which adequate reserves have been established) and may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy thereof or into the validity of any tax, assessment, lien, sale, forfeiture or title or claim relating thereto; or (b) any apparent or threatened adverse title, lien, statement of lien, encumbrance, claim, charge or payment otherwise relating to any other purpose herein and hereby authorized but not enumerated in this Paragraph 3.03 (except liens being contested in good faith and by appropriate proceedings for which adequate reserves have been established), whenever, in its judgment and discretion, such advance seems necessary or desirable to protect the full security intended to be created by this Mortgage. In connection with any such advance, Mortgagee is further authorized, at its option, to obtain a continuation report of title or title insurance policy prepared by a title insurance company of Mortgagee's choosing. All such advances and indebtedness authorized by this Paragraph 3.03 shall constitute additional indebtedness secured hereby and shall become immediately due and payable by Mortgagor to Mortgagee without notice with interest at the highest rate specified in the Note.

3.04 Insurance

(a) Hazard. Mortgagor shall keep the improvements now existing or hereafter erected on the Premises insured under a replacement cost form of insurance policy against loss or damage resulting from fire, windstorm and other hazards as may be reasonably required by Mortgagee (including, but not limited to, flood insurance in an amount necessary to comply with applicable law) and to pay promptly, when due, any premiums on such insurance. Without limitation of the immediately preceding sentence, during construction of any improvements on the Premises, Mortgagor shall maintain "Builders Risk" insurance with extended coverage over fire and other casualties using completed values for the amount of the full insurable value for all such improvements under construction at any time on the Premises including equipment and materials delivered to the Premises for incorporation into the Property. All such insurance shall be in form and of content and shall be carried in companies approved in writing by Mortgagee, and all such policies and renewals thereof (or certificates evidencing the same) marked "paid" shall be delivered to Mortgagee at least thirty (30) days before the expiration of then existing policies and shall have attached thereto standard non-contributing mortgage clauses entitling Mortgagee, as its interest may appear, to collect any and all proceeds payable under such insurance as well as standard waiver of subrogation endorsements so long as such subrogation endorsement can be obtained without additional cost to Mortgagor. Mortgagor shall not carry any separate insurance on such improvements concurrent in kind or form with any insurance required hereunder or contributing in the event of loss. In the event of a change in ownership or of occupancy of the Premises approved in writing by Mortgagee, immediate notice thereof by messenger, facsimile or overnight delivery shall be delivered to all such insurers. In the event of any casualty loss, Mortgagor shall give immediate notice thereof by messenger or facsimile to Mortgagee. Mortgagee and Mortgagor shall mutually adjust and compromise any such losses under any of the aforesaid insurance. If (i) Mortgagor and Mortgagee cannot mutually agree how to adjust and compromise any such loss for a period of ninety (90) days after such loss and/or (ii)

a Default has occurred, then Mortgagor hereby permits Mortgagee, at Mortgagee's option, to solely adjust and compromise any such loss. Mortgagee shall, after deducting any of Mortgagee's reasonable costs of collection, use, apply or disburse the balance of such insurance proceeds (i) toward repairing, restoring and rebuilding the aforesaid improvements, provided such repair, restoration or rebuilding is economically feasible and the security of this Mortgage is not thereby impaired in which event Mortgagee shall not be obliged to see to the proper application thereof nor shall the amount so released for such purposes be deemed a payment on the indebtedness secured thereby; or (ii) as a credit upon any portion of the indebtedness secured hereby with the excess, if any, paid to Mortgagor. So long as no Default shall then exist and no Default shall exist at any time during the period of any repair, restoration and/or rebuilding of the aforesaid improvements and subject to the provisions of the immediately following paragraph, upon Mortgagor's written request to Mortgagee made on or before the disbursement of such insurance proceeds to Mortgagee, such insurance proceeds shall be used to repair, restore and/or rebuild the aforesaid improvements. Unless Mortgagor and Mortgagee otherwise agree in writing, any such application of proceeds to the sums secured by this Mortgage shall not extend or postpone the due date of any portion of the indebtedness secured hereby or change the amount of any installment due on such indebtedness.

To the extent any such insurance proceeds are used toward repairing, restoring and rebuilding such improvements, such proceeds shall be made available, from time to time, upon Mortgagee's being furnished with satisfactory evidence of the estimated cost of such repairs, restoration and rebuilding and with such architect's certificates, waivers of lien, certificates, contractors' sworn statements and other evidence of the estimated cost thereof and of payments as Mortgagee may reasonably require and approve. Payments made prior to the final completion of the work shall not exceed ninety percent (90%) of the value of the work performed, from time to time, and at all times the undisbursed balance of such proceeds remaining in the hands of Mortgagee shall be at least sufficient to pay for the cost of completion of the work, free and clear of any liens. In the event of foreclosure of this Mortgage or other transfer of title to the Premises in extinguishment of the indebtedness secured hereby, all right, title and interest of Mortgagor in and to any such insurance policies then in force and any claims or proceeds thereunder shall pass to Mortgagee or any purchaser or grantee of Mortgagee. Mortgagee may at any time in its reasonable discretion, procure and substitute for any and all of such insurance policies such other policies of insurance in such amounts and carried in such companies as it may select.

(b) Liability. Mortgagor shall carry and maintain such comprehensive public liability and workmen's compensation insurance as may be reasonably required from time to time by Mortgagee in form and of content, in amounts and with companies approved in writing by Mortgagee; provided, however, that the amounts of liability coverage shall not be less than Two Million and No/100 Dollars (\$2,000,000.00) single limit. Certificates of such insurance, premiums prepaid, shall be deposited with Mortgagee and shall contain provision for twenty (20) days' notice to Mortgagee prior to any cancellation thereof.

3.05 Condemnation and Eminent Domain. Any and all awards heretofore or hereafter made or to be made to the present, or any subsequent, owner of the Property by any governmental or other lawful authority for the taking by condemnation or eminent domain of all

UNOFFICIAL COPY

08192985

or any part of the Premises, any improvement located thereon or any easement thereon or appurtenance thereof (including any award from the United States government at any time after the allowance of a claim therefor, the ascertainment of the amount thereto and the issuance of a warrant for payment thereof) are hereby assigned by Mortgagor to Mortgagee which awards Mortgagee is hereby authorized to collect and receive from the condemnation authorities, and Mortgagee is hereby authorized to give appropriate receipts therefor. Mortgagor shall give Mortgagee immediate notice of the actual or threatened commencement of any condemnation or eminent domain proceedings affecting all or any part of the Premises or any easement thereon or appurtenance thereof (including severance of, consequential damage to, or change in grade of streets) and shall deliver to Mortgagee copies of any and all papers served in connection with any such proceedings. Mortgagor further shall make, execute and deliver to Mortgagee, at any time upon request, free, clear and discharged of any encumbrance of any kind whatsoever, any and all further assignments and other instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning all awards and other compensation heretofore and hereafter made to Mortgagor for any taking, either permanent or temporary, under any such proceeding.

3.06 Maintenance of Property. No substantial building or other improvement on the Premises shall be materially altered, removed or demolished, nor shall any substantial fixtures, chattels or articles of personal property pledged pursuant to this Mortgage on, in or about the Premises be severed, removed, sold or mortgaged without the prior written consent of Mortgagee which consent will not be unreasonably withheld. In the event of the demolition or destruction in whole or in part of any of the fixtures, chattels or articles of personal property covered by this Mortgage, except with the prior written consent of Mortgagee which consent will not be unreasonably withheld, the same shall be replaced promptly by similar fixtures, chattels and articles of personal property at least equal in quality and condition to those replaced, free from any other security interest therein, encumbrances thereon or reservation of title thereto. Mortgagor shall promptly repair, restore or rebuild any building or other improvement now or hereafter situated on the Premises that may become damaged or be destroyed. Any such building or other improvement shall be so repaired, restored or rebuilt so as to be of at least equal value and of substantially the same character as prior to such damage or destruction. Mortgagor further shall not permit, commit or suffer any waste, impairment or deterioration of the Property or any part thereof; keep and maintain the Property and every part thereof in good repair and condition; effect such repairs as Mortgagee may reasonably require and, from time to time, to make all necessary and proper replacements thereof and additions thereto so that the Premises and such buildings, other improvements, fixtures, chattels and articles of personal property will, at all times, be in good condition, fit and proper for the respective purposes for which they were originally erected or installed.

3.07 Compliance with Laws. Mortgagor shall comply in all material respects with all statutes, ordinances, regulations, rules, orders, decrees and other requirements relating to the Property or any part thereof by any federal, state or local authority and shall observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including, without limitation, zoning variances, special exceptions and non-conforming uses), privileges, franchises and concessions that are applicable to the Property or

UNOFFICIAL COPY

08192985

that have been granted to, or contracted for by, Mortgagor in connection with any existing or presently contemplated use of the Property.

3.08 Liens and Transfers. Without Mortgagee's prior written consent, Mortgagor shall neither sell, transfer, convey, assign, hypothecate or otherwise transfer the title to, or any beneficial interest in, all or any portion of the Property, whether by operation of law, voluntarily, or otherwise, contract to do any of the foregoing, nor create, suffer or permit to be created or filed against the Property or any part thereof hereafter any mortgage lien or other lien on the Property; provided, however, that Mortgagor may, within ten (10) days after the filing thereof, contest any lien claim arising from any work performed, material furnished or obligation incurred by Mortgagor upon furnishing Mortgagee security and indemnification or setting aside reserves satisfactory to Mortgagee for the final payment and discharge thereof. Without limiting the generality of the foregoing, any sale, conveyance, assignment, hypothecation or transfer prohibited in the Loan Agreement shall be deemed a sale, conveyance, assignment, hypothecation or other transfer prohibited by the foregoing sentence. Any waiver by Mortgagee of the provisions of this Paragraph 3.08 shall not be deemed to be a waiver of the right of Mortgagee in the future to insist upon strict compliance with the provisions hereof.

3.09 Subrogation to Prior Lienholder's Rights. If the proceeds of the indebtedness secured hereby, any part thereof or any amount paid out or advanced by Mortgagee is used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Property or any part thereof, then Mortgagee shall be subrogated to the rights of the holder thereof in and to such other lien or encumbrance and any additional security held by such holder and shall have the benefit of the priority of the same.

3.10 Mortgagee's Dealings with Transferee. In the event of the sale or transfer by operation of law, voluntarily or otherwise, of all or any part of the Property or of any beneficial interest therein prior to the satisfaction of the Obligations, Mortgagee shall be authorized and empowered to deal with the vendee or transferee with regard to (a) the Property or any beneficial interest therein; (b) the indebtedness secured hereby; and (c) any of the terms or conditions hereof as fully and to the same extent as it might with Mortgagor without in any way releasing or discharging Mortgagor from its covenants hereunder.

3.11 Stamp Taxes. If at any time the United States government or any federal, state, county or municipal governmental subdivision requires or imposes Internal Revenue or other documentary stamps, levies or any tax on this Mortgage or on the Obligations, then, to the extent Mortgagee has or will make any payment related thereto and to the greatest extent permitted by law, such indebtedness shall be and become due and payable by Mortgagor to Mortgagee thirty (30) days after the mailing by Mortgagee of notice of such indebtedness to Mortgagor.

3.12 Change in Laws. In the event of the enactment, after the date of this Mortgage, of any law of Illinois imposing upon Mortgagee the payment of all or any part of the taxes, assessments, charges or liens hereby required to be paid by Mortgagor or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagor's interest in the Property or the manner of collection of taxes so as to affect this Mortgage or the

UNOFFICIAL COPY

08192985

indebtedness secured hereby or the holder thereof, then Mortgagor, upon demand by Mortgagee, shall pay such taxes, assessments, charges or liens or reimburse Mortgagee therefor; provided, however, that if, in the opinion of counsel for Mortgagee it might be unlawful to require Mortgagor to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness secured hereby to become due and payable within sixty (60) days after the giving of such notice; provided, further, that nothing contained in this Paragraph shall be construed as obligating Mortgagor to pay any portion of Mortgagee's federal income tax.

3.13 Inspection of Property. Mortgagor shall permit Mortgagee and its representatives and agents to inspect the Property from time to time during normal business hours and as frequently as Mortgagee considers reasonable.

3.14 Inspection of Books and Records. Mortgagor shall keep and maintain such books and records as required by the Mortgagee and shall permit Mortgagee reasonable access to, and rights of inspection of, said books and records.

3.15 Environmental Conditions. Mortgagor hereby represents and warrants to Mortgagee that to the best of its knowledge, no hazardous or toxic substances, within the meaning of any applicable statute or regulation, whether federal, state or local, are presently stored or otherwise located on the Property except in accordance with all applicable laws, regulations and rules.

Mortgagor covenants and agrees that all hazardous and toxic substances within the definition of any applicable statute, regulation or rule (whether federal, state or local), which may be used by any person for any purpose upon the Property shall be used or stored thereon only in a safe, approved manner in accordance with all industrial standards and all laws, regulations, and requirements for such storage promulgated by any governmental authority, that the Property will not be used for the principal purpose of storing such substances, and that no such storage or use will otherwise be allowed on the Property which cause or which will increase the likelihood of causing the release of such substances onto the Property. Upon the written request of Mortgagee to Mortgagor, Mortgagee, its attorneys, employees, agents or other persons or entities designated by Mortgagee shall, from time to time and at any time, be allowed to enter upon the Property and conduct environmental examinations and environmental audits of the Property in form, manner and type as Mortgagee may then require in its sole discretion. Mortgagor shall fully cooperate and make the Property available to Mortgagee at such times as Mortgagee may reasonably request in order to conduct such environmental examinations and environmental audits.

Mortgagor shall give immediate notice of any violation of any federal, state or local statute, rule or regulation dealing with the presence or suspected presence of any hazardous or toxic substances or conditions affecting the Property. Mortgagor covenants and agrees to promptly contain and clean up any and all releases of hazardous substances on the Property to the extent required by law. Notwithstanding any language or provision of this Mortgage to the

contrary, Mortgagor hereby unconditionally gives the Mortgagee the right, but not the obligation, and Mortgagee does not so obligate itself, to undertake to contain and clean up releases of hazardous substances on the Property. Mortgagor hereby indemnifies and saves Mortgagee harmless of and from any and all loss, costs (including reasonable attorneys' fees), liability and damage whatsoever incurred by Mortgagee by reason of any violation of any applicable statute, rule or regulation for the protection of the environment which occurs upon the Property or by reason of the imposition of any governmental lien for the recovery of environmental clean-up costs related to the Property expended by reason of such violation; provided that, to the extent that Mortgagee is strictly liable under any such statute, Mortgagor's obligation to Mortgagee under this indemnity shall likewise be without regard to fault on the part of Mortgagor with respect to the violation of law which results in liability to the Mortgagee. This indemnity shall continue and remain in full force and effect beyond the term of the indebtedness or obligation which is secured by this Mortgage and shall be terminated only when there is no further obligation of any kind whether in law or in equity or otherwise of Mortgagee in connection with any such environmental clean-up costs, environmental liens or environmental matters involving the Property.

3.16 Acknowledgment of Debt. Mortgagor shall furnish from time to time a written statement, duly acknowledged, specifying the amount due under the Note and this Mortgage and disclosing whether any alleged offsets or defenses exist against the indebtedness secured hereby.

3.17 Other Amounts Secured. At all times, this Mortgage secures, in addition to the Note, any other amounts as provided herein; provided, however, that in no event shall the aggregate principal indebtedness secured by this Mortgage exceed Two Million Dollars (\$2,000,000).

3.18 Assignments of Rents and Leases. Mortgagor hereby assigns, transfers and sets over unto Mortgagee all the rents, fees or payments now or hereafter due under or by virtue of any lease, either oral or written, or any letting of, or any agreement for, the use or occupancy of any part of the Property whether heretofore, now or hereafter agreed to and all leases and modifications thereof, now existing or hereafter made, relating to the Property; together with the right to let and relet the Property or any part thereof, in Mortgagee's sole discretion, and to do anything with respect to the Property as Mortgagor might do. Any proceeds received hereunder may be applied by Mortgagee as otherwise provided in Paragraph 4.08 of this Mortgage. Mortgagor hereby directs all tenants, lessees and occupants of the Property to pay all rentals, payments or fees for use and occupancy of the Property in accordance herewith. Mortgagee shall not exercise its rights granted in this Paragraph 3.18 until a Default, as hereafter defined, shall have occurred. Mortgagor shall execute, acknowledge and deliver to Mortgagee, within ten (10) days after request by Mortgagee, such assignment of rent documents required by Mortgagee in form and of content satisfactory to Mortgagee. Mortgagor further shall pay to Mortgagee all costs and expenses incurred by Mortgagee in connection with the preparation, execution and recording of any such document.

3.19 Declaration of Subordination. At the option of 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 condemnation or eminent domain award), to any and all leases of all or any part of the Property upon the execution by Mortgagee and recording thereof at any time hereafter in the appropriate official records of Cook County a unilateral declaration to that effect.

3.20 Security Instruments. Mortgagor shall execute, acknowledge and deliver to Mortgagee, within five (5) days after request by Mortgagee, a security agreement, financing statements and any other similar security instrument required by Mortgagee in form and of content satisfactory to Mortgagee covering all property of any kind whatsoever owned by Mortgagor that, in the sole opinion of Mortgagee, is essential to the operation of the Property and concerning which there may be any doubt whether title thereto has been conveyed or a security interest therein has been perfected by this Mortgage under the laws of Illinois. Mortgagor shall further execute, acknowledge and deliver any financing statement, affidavit, continuation statement, certificate or other document as Mortgagee may reasonably request in order to perfect, preserve, maintain, continue and extend such security instruments. Mortgagor further agrees to pay to Mortgagee all costs and expenses incurred by Mortgagee in connection with the preparation, execution, recording, filing and refiling of any such documents.

3.21 Releases. Mortgagee, without notice and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens thereon, may release from the lien all or any part of the Property or release from liability any person obligated to repay any indebtedness secured hereby without in any way affecting the liability of any party to the Note or this Mortgage and without in any way affecting the priority of the lien of this Mortgage, and may agree with any party liable therefor to extend the time for payment of any part or all of such indebtedness. Any such agreement shall not in any way release or impair the lien created by this Mortgage or reduce or modify the liability of any person or entity obligated personally to repay the indebtedness secured hereby, but shall extend the lien hereof as against the title of all parties having any interest, subject to the indebtedness secured hereby, in the Property.

3.22 Interest Laws. Mortgagor hereby warrants and represents that the proceeds of the Note will be paid to an entity and/or used for the purposes specified in 815 ILCS 205/4 Illinois Compiled Statutes and that the principal obligations secured hereby constitute business loans which comes within the purview and operation of said statute. It being the intention of Mortgagee and Mortgagor to comply with the laws of Illinois, it is agreed, that notwithstanding any provision to the contrary in the Note or this Mortgage, no such provision shall require the payment or permit the collection of any amount ("Excess Interest") in excess of the maximum amount of interest permitted by law to be charged. In determining whether or not any Excess Interest is provided for, the provisions contained in the Note with respect to such determination shall control. If any Excess Interest is provided for, or is adjudicated to be provided for, in the Note or this Mortgage, then in such event (a) the provisions of this Paragraph 3.22 shall govern and control; (b) Mortgagor shall not be obligated to pay any Excess Interest; and (c) any Excess Interest that Mortgagee may have received hereunder shall, at the option of Mortgagee, (i) be applied as a credit against the then unpaid principal balance under the Note or accrued and

UNOFFICIAL COPY

08192985

unpaid interest thereon not to exceed the maximum amount permitted by law or both, (ii) be refunded to the payor thereof or any combination of the foregoing.

3.23 Waiver of Statutory Rights. To the greatest extent permitted by law, (a) Mortgagor shall not apply for, or avail itself of, any appraisal, valuation, redemption, stay, extension or exemption laws or any so-called "moratorium laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws; and (b) Mortgagor, for itself, any and all persons or entities who may claim through or under it and each and every person or entity acquiring any interest in the Property or title to the Premises subsequent to the date of this Mortgage, hereby also waives (i) any and all rights to have the Property and estates comprising the Property marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold in its entirety; and (ii) any and all rights of (1) redemption from sale under any order or decree of foreclosure of the lien hereof pursuant to the rights herein granted; and (2) homestead in the Premises which Mortgagor may now or hereafter have under the laws of Illinois; and (iii) all rights to void liens under Section 506 of the United States Bankruptcy Code (11 U.S.C. §506), or any amendment or successor thereto.

IV. DEFAULTS AND REMEDIES

4.01 Events Constituting Defaults. Each of the following events shall constitute a default (a "Default") under this Mortgage:

- (a) Mortgagor shall default in the payment when due of any amount which hereafter shall become due and owing to Mortgagee under the Note;
- (b) Except for the default set forth in clause (a) above, default (and continuance thereof for five (5) days after written notice thereof to Mortgagor by Mortgagee) in the payment of any amount due and owing by Mortgagor pursuant to this Mortgage;
- (c) Any representation or warranty made by Mortgagor in this Mortgage shall at any time prove to have been incorrect in any material respect when made;
- (d) Mortgagor shall default in the performance or observance of any term, covenant, condition or agreement to be performed by Mortgagor under this Mortgage (not constituting a Default under any other clause of this Section 4.01) and such default shall continue unremedied for five (5) days after

written notice thereof shall have been given by Mortgagee to Mortgagor; or

- (e) Any default or event of default (howsoever such terms are defined) under the Loan Agreement, the Note or any of the Documents (as defined in the Loan Agreement) shall occur.

4.02 Acceleration of Maturity. At any time during the existence of any Default and at the option of Mortgagee, the entire principal amount then outstanding under the Note and all other sums due from Mortgagor under this Mortgage shall without notice become immediately due and payable.

4.03 Foreclosure of Mortgage. Upon occurrence of any Default or at any time thereafter, in addition to any and all other remedies available to Mortgagee under applicable law, Mortgagee may proceed to foreclose the lien of this Mortgage by judicial proceedings in accordance with the laws of Illinois. Any failure by Mortgagee to exercise such option shall not constitute a waiver of its right to exercise the same at any other time.

4.04 Mortgagee's Continuing Remedies. The failure of Mortgagee to exercise either or both of its remedies to accelerate the maturity of the indebtedness secured hereby and/or to foreclose the lien hereof following any Default as aforesaid or to exercise any other remedy granted to Mortgagee hereunder or under applicable law in any one or more instances or the acceptance by Mortgagee of partial payments of such indebtedness shall neither constitute a waiver of any such Default or of Mortgagee's remedies hereunder or under applicable law nor establish, extend or affect any grace period for payments due under the Note, but such remedies shall remain continuously in force. Acceleration of maturity, once claimed hereunder by Mortgagee, may at Mortgagee's option be rescinded by written acknowledgment to that effect by Mortgagee and shall not affect Mortgagee's right to accelerate maturity upon or after any future Default.

4.05 Litigation Expenses. In any proceeding to foreclose the lien of this Mortgage or enforce any other remedy of Mortgagee under the Loan Agreement, the Note or this Mortgage or in any other proceeding whatsoever in connection with any of the Property in which Mortgagee is named as a party, there may be allowed and included as additional indebtedness in the judgment or decree resulting therefrom all expenses paid or incurred in connection with such proceeding by or on behalf of Mortgagee constituting attorneys' or paralegals' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, survey costs and costs (which may be estimated as to items to be expended after entry of such judgment or decree) of procuring all abstracts of title, title searches and examinations, title insurance policies, Torrens certificates and any similar data and assurances with respect to title to the Premises as Mortgagee may deem reasonably necessary either to prosecute or defend in such proceeding or to evidence to bidders at any sale pursuant to such judgment the true condition of the title to or value of the Premises or the Property. All expenses of the foregoing nature and such expenses as may be incurred in the protection of any of the Property and the maintenance of

the lien of this Mortgage thereon, including without limitation the fees of any attorney employed by Mortgagee in any litigation affecting the Note, this Mortgage or any of the Property or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding in connection therewith shall be immediately due and payable by Mortgagor.

4.06 Performance by Mortgagee. In the event of any Default, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient by Mortgagee, and Mortgagee may, but need not, make full or partial payments of principal or interest on encumbrances, if any; purchase, discharge, compromise or settle any tax lien or other prior or junior lien or title or claim thereof; redeem from any tax sale or forfeiture affecting the Property; or contest any tax or assessment thereon. All monies paid for any of the purposes authorized herein and all expenses paid or incurred in connection therewith, including attorney's and paralegals' fees, and any other monies advanced by Mortgagee to protect the Property and the lien of this Mortgage shall be additional indebtedness secured hereby and shall become immediately due and payable by Mortgagor to Mortgagee without notice with interest at the highest rate specified in the Note. Inaction of Mortgagee shall never be construed to be a waiver of any right accruing to it by reason of any default by Mortgagor.

4.07 Right of Possession. In any case in which, under the provisions of this Mortgage, Mortgagee has a right to institute foreclosure proceedings, whether or not the entire principal sum secured hereby becomes immediately due and payable as aforesaid or whether before or after the institution of proceedings to foreclose the lien hereof or before or after sale thereunder, Mortgagor shall, forthwith upon demand of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to take actual possession of, the Property or any part thereof, personally or by its agent or attorneys, and Mortgagee, in its discretion, may enter upon and take and maintain possession of all or any part of the Property together with all documents, books (or copies thereof), records (or copies thereof), papers and accounts of Mortgagor or the then owner of the Property relating thereto, and may exclude Mortgagor, such owner and any agents and servants thereof wholly therefrom and may, as attorney-in-fact or agent of Mortgagor or such owner, or in its own name as Mortgagee and under the powers herein granted:

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

ground that would entitle Mortgagor to cancel the same;

- (c) elect to disaffirm any lease or sublease of all or any part of the Property made subsequent to this Mortgage or subordinated to the lien hereof;
- (d) extend or modify any then existing leases and make new leases of all or any part of the Property which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the loan evidenced by the Note and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor, all persons whose interests in the Property are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the indebtedness secured hereby, satisfaction of any foreclosure decree or issuance of any certificate of sale or deed to any such purchaser; and
- (e) make all necessary or proper repairs, decorations, renewals, replacements, alterations, additions, betterments and improvements in connection with the Property as may be reasonably necessary to insure and reinsure the Property and all risks incidental to Mortgagee's possession, operation and management thereof and to receive all rents, issues, deposits, profits and avails therefrom.

4.08 Priority of Payments. Any rents, issues, deposits, profits and avails of the Property received by Mortgagee after taking possession of all or any part of the Property, or pursuant to any assignment thereof to Mortgagee under the provisions of this Mortgage, shall (unless otherwise required pursuant to order of court) be applied in payment or on account of the following in the order listed:

- (a) operating expenses of the Property (including reasonable compensation to Mortgagee, any receiver of the Property, any agent or agents to whom management of the Property has been delegated,

and also including lease commissions and other compensation for and expenses of, seeking and procuring tenants and entering into leases, establishing claims for damages, if any, and paying premiums on insurance hereinabove authorized);

- (b) taxes, special assessments and water and sewer charges now due or that may hereafter become a lien thereon prior to the lien of this Mortgage;
- (c) any and all reasonable repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Property (including, without limitation, the cost of placing the Property in such condition as will, in the judgment of Mortgagee or any receiver, make it readily rentable or salable);
- (d) any indebtedness secured by this Mortgage or any deficiency that may result from any foreclosure sale pursuant hereto, and
- (e) any remaining funds to Mortgagor or its successors or assigns as their interests and rights may appear.

4.09 Appointment of Receiver. Upon or at any time after the filing of any complaint to foreclose the lien of this Mortgage, the court may, upon application, appoint a receiver of the Property. Such appointment may be made either before or after foreclosure sale without notice; without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the indebtedness secured hereby; without regard to the value of the Property at such time and whether or not the same is then occupied as a homestead; and without bond being required of the applicant. Such receiver shall have the power to take possession, control and care of the Property and to collect all rents, issues, deposits, profits and avails thereof during the pendency of such foreclosure suit. In the event of a sale and a deficiency where Mortgagor has not waived its statutory rights of redemption, during the full statutory period of redemption, as well as during any further times when Mortgagor or its devisees, legatees, heirs, executors, administrators, legal representatives, successors or assigns, except for the intervention of such receiver, would be entitled to collect such rents, issues, deposits, profits and avails, Mortgagee shall have all other powers that may be necessary or useful in such cases for the protection, possession, control, management and operation of the Property during the whole of any such period. To the extent permitted by law, such receiver may be authorized by the court to extend or modify any then existing leases and to make new leases of the Property or any part thereof which extensions, modifications and new leases may provide for terms to expire or for options to lessees to extend or renew terms to expire beyond the maturity date of the indebtedness secured hereby, it being understood and agreed that any such leases and the options or other such provisions to be contained therein shall be binding upon

UNOFFICIAL COPY

08192985
Mortgagor and all persons whose interests in the Property are subject to the lien hereof and upon the purchaser or purchasers at any such foreclosure sale, notwithstanding any redemption from sale, discharge of indebtedness, satisfaction of foreclosure decree or issuance of certificate of sale or deed to any purchaser.

4.10 Foreclosure Sale. In the event of any foreclosure sale of the Property, the same may be sold in one or more parcels. Mortgagee may be the purchaser at any foreclosure sale of the Property or any part thereof.

4.11 Application of Proceeds. The proceeds of any foreclosure sale of the Property, or any part thereof, shall be distributed and applied in the following order of priority: (a) on account of all costs and expenses incident to the foreclosure proceedings including all such items as are mentioned in Paragraph 4.05 hereof; (b) all other items that, under the terms of this Mortgage, constitute secured indebtedness additional to that evidenced by the Note; (c) all indebtedness remaining unpaid under the Note; and (d) the balance to Mortgagor or its successors or assigns as their interests and rights may appear.

4.12 Application of Deposits. In the event of any Default, Mortgagee may, at its option without being required to do so, apply any money or securities that constitute deposits made to or held by Mortgagee or any deposits pursuant to any of the provisions of this Mortgage toward payment of any of Mortgagor's obligations under the Note or this Mortgage 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 Property. Such deposits are hereby pledged as additional security for the prompt payment of the indebtedness evidenced by the Note and any other indebtedness secured hereby and shall be held to be applied irrevocably by such depository for the purposes for which made hereunder and shall not be subject to the direction or control of Mortgagor.

4.13 Remedies Severable and Cumulative. All provisions contained herein pertaining to any remedy of Mortgagee shall be and are severable and cumulative, and the holder of the Obligations may recover judgment thereon, issue execution therefor and resort to every other right or remedy available at law or in equity without first exhausting and without affecting or impairing the security or any right or remedy afforded hereby.

4.14 Rent. During the continuance of any Default and if Mortgagee or any judicially appointed representative has a right to exclude Mortgagor from all or any part of the Property, Mortgagor agrees to pay the fair and reasonable rental value for the use and occupancy of the Property or any portion thereof which are in its possession and being occupied for such period and, upon default of any such payment, will vacate and surrender possession of the Property to Mortgagee or to a receiver, if any, and in default thereof may be evicted by any summary action or proceeding for the recovery or possession of premises for non-payment of rent however designated.

V. MISCELLANEOUS

5.01 Notices. Any notice that Mortgagee or Mortgagor may desire or be required to give to the other shall be in writing, personally delivered, sent by facsimile machine or sent by overnight courier to the intended recipient thereof at its address hereinabove set forth or at such other address as such intended recipient may, from time to time, by notice in writing designate to the sender pursuant hereto. Any such notice shall be deemed to have been delivered one (1) business day after being sent by overnight courier or on the day that such writing is delivered in person or sent by facsimile machine to an officers of Mortgagee or Mortgagor (as the case may be). Except as otherwise specifically required herein, notice of the exercise of any right or option granted to Mortgagee by this Mortgage is not required to be given.

5.02 Covenants Run with Land. All of the covenants of this Mortgage shall run with the land constituting the Premises.

5.03 Governing Law. The validity and interpretation of this Mortgage shall be governed and construed in accordance with the laws of Illinois. To the extent that this Mortgage may operate as a security agreement under the Uniform Commercial Code, Mortgagee shall have all rights and remedies conferred therein for the benefit of a "secured party" as such term is defined therein.

5.04 Severability. If any provision of this Mortgage or any paragraph, sentence, clause, phrase or word or the application thereof in any circumstance is held invalid, the validity of the remainder of this Mortgage shall be construed as if such invalid part were never included herein.

5.05 Non-Waiver. Unless expressly provided in this Mortgage to the contrary, no consent or waiver, express or implied, by Mortgagee to or of any breach or default by Mortgagor in the performance by Mortgagor of any obligations contained herein shall be deemed a consent to or waiver by Mortgagee of such performance in any other instance or any other obligations hereunder.

5.06 Headings. The headings of sections and paragraphs in this Mortgage are for convenience or reference only and shall not be construed in any way to limit or define the content, scope or intent of the provisions hereof.

5.07 Grammar. As used in this Mortgage, the singular shall include the plural, and masculine, feminine and neuter pronouns shall be fully interchangeable where the context so requires.

5.08 Deed in Trust. If title to the Property or any part thereof is now, or hereafter becomes, vested in a trustee, any prohibition or restriction contained herein against the creation of any lien on the Property shall be construed as a similar prohibition or restriction against the creation of any lien on, or security interest in, the beneficial interest or power of direction of such trust.

5.09 Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon Mortgagor and its successors, assigns, legal representatives and all other persons or entities claiming under or through Mortgagor, and the word, "Mortgagor," when used herein shall include all such persons and entities and any others liable for the payment of the indebtedness secured hereby or any part thereof whether or not they have executed the Note or this Mortgage. The word, "Mortgagee," when used herein, shall include Mortgagee's successors, assigns and legal representatives including all other holders, from time to time, of the Note.

5.10 Release. Mortgagee shall release this Mortgage and the Mortgage lien by proper instrument upon presentation of satisfactory evidence that all indebtedness secured by this Mortgage has been fully paid.

5.11 Fees and Expenses. Mortgagor shall pay all of the reasonable and necessary fees and expenses of Mortgagee with respect to the preparation of this Mortgage, the Note and any other documents, instruments or agreements deemed necessary by Mortgagee in connection with this transaction, including, without limitation, reasonable attorneys' and paralegals' fees.

VI. EXCULPATION

6.01 Exculpation. This Mortgage is executed by Mortgagor, not personally but as trustee as aforesaid, in the exercise of the power and authority conferred and fixed in it as such trustee, and it is expressly understood and agreed that nothing herein contained shall be constituted as creating any liability on Mortgagor as trustee as aforesaid or on Mortgagor personally to pay the Obligations or any interest that may accrue thereon or any indebtedness accruing hereunder or to perform any covenant either express or implied herein contained all such liability on Mortgagor, if any, being expressly waived by Mortgagee and by every person now or hereafter claiming any right or security hereunder. Each and all of the representations, warranties, covenants, undertakings and agreements made by the Mortgagor as trustee as aforesaid are made for the purpose of binding (and shall be enforceable against) the beneficiaries of the aforesaid trust and their respective heirs, legal representatives, executors, successors and assigns (as the case may be). So far as Mortgagor as trustee as aforesaid and its successors and the Mortgagor personally are concerned, Mortgagee and the holder or holders of the Note and the owner or owners of the indebtedness accruing hereunder shall look solely to the Premises for the payment thereof, by the enforcement of the lien hereby created, in the manner herein and in the Note provided or by action to enforce the personal liability of any guarantor or co-maker of the Note.

UNOFFICIAL COPY

08192985

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed as of the date hereinabove first written.

LASALLE NATIONAL BANK, not individually, but solely as Trustee under Trust Agreement dated September 28, 1993 and known as Trust No. 118286

By: *Rosmary Cole*
—/E SMOE RESIDENT

Title: _____

1100\1184\Mortsec.Doc

Property of Cook County Clerk's Office

UNOFFICIAL COPY

08192985

EXHIBIT "A"

PARCEL NO. 1:

LOTS 17 TO 30, BOTH INCLUSIVE, IN BLOCK 2, IN CROISSANT PARK MARKHAM EIGHTH ADDITION, BEING A SUBDIVISION OF THE SOUTH ½ OF THE SOUTHWEST ¼ OF SECTION 13, TOWNSHIP 36 NORTH, RANGE 13, EAST OF THIRD PRINCIPAL MERIDIAN, SOUTH OF THE IDIAN BOUNDARY LINE, IN COOK COUNTY, ILLINOIS.

PARCEL NO. 2:

THE WEST ½ OF THE VACATED ALLEY LYING EAST OF AND ADJOINING SAID LOTS 17 TO 23 AS VACATED BY ORDINANCE 94-0-1500, RECORDED APRIL 3, 1998 AS DOCUMENT 98266797.

Property Address: Northeast Corner of 159th and Kedzie Streets, Markham, Illinois

Permanent Index Nos.:

Parcel No. 1	28-13-324-017
	28-13-324-018
	28-13-324-019
	28-13-324-020
	28-13-324-021
	28-13-324-022
	28-13-324-023

Parcel No. 2	28-13-324-037
	28-13-324-038
	28-13-324-039
	28-13-324-040
	28-13-324-041
	28-13-324-042
	28-13-324-043