

UNOFFICIAL COPY

85 333 961
8 5 3 3 3 9 6 1

Commercial National Bank of Berwyn as Trustee under Trust Agreement

Dtd. Sept. 3, 1985 and known as Trust No. 850713
(Mortgagor)

4/00

AND

The STATE BANK OF INDIA
(Mortgagee)

MORTGAGE AND SECURITY AGREEMENT

Dated as of Dec 17, 1985

This Mortgage and Security Agreement secures an obligation incurred for the construction of an improvement on land and is a construction mortgage and contains after-acquired property provisions. This Mortgage and Security Agreement also constitutes a fixture financing statement under the Uniform Commercial Code of the State of Illinois, Illinois Revised Statutes, chapter 26, Section 9-313.

This instrument was prepared by: Mail to:

*P.I.N. 03-30-418-051-0000

K

Robert E. Deignan
BAKER & MCKENZIE
2800 Prudential Plaza
Chicago, Illinois 60601
(312) 861-2860

BOX 333-CA

COOK COUNTY, ILLINOIS
FILED FOR RECORD

1985 DEC 23 AM 9:56

85333961

85 333 961

70-25-7222 1 of 3

Commercial National Bank of Boston as Trustee under Trust Agreement

Feb. Sept. 3, 1985 and known as Trust No. 870713
(Mortgage)

AND

The STATE BANK OF ILLINOIS
(Mortgage)

MORTGAGE AND SECURITY AGREEMENT

Dated as of Dec 17, 1985

This Mortgage and Security Agreement secures an obligation incurred by the construction of an improvement on land and its a construction mortgage and contains after-acquired property provisions. This Mortgage and Security Agreement also contains a fixture financing statement under the Uniform Commercial Code of the State of Illinois, Illinois Revised Statutes Chapter 52, Section 9-113.

This instrument was prepared by:

Robert E. Deignan
BANKER & MCKENZIE
2800 Prudential Plaza
Chicago, Illinois 60601
(312) 861-2800

APR 11 03-30-418-051-0000

K

BOX 323 - CA

COMMERCIAL NATIONAL BANK OF BOSTON

82 332 391

1/1

UNOFFICIAL COPY

85 333 961

THIS MORTGAGE AND SECURITY AGREEMENT dated as ^{LOE BERWIN} of DEC 17, 1985, between COMMERCIAL NATIONAL BANK ("Mortgagor") ^{AS TRUSTEE} and The STATE BANK OF INDIA, a banking association qualified ^{UNDER TRUST} to engage in banking under the laws of the State of Illinois # 850713 and its successors and assigns ("Mortgagee").

W I T N E S S E T H:

WHEREAS, Mortgagee has agreed to lend the principal sum of \$450,000 to Mortgagor to finance construction of a condominium building with 16 apartments, to be located on a portion of certain real estate legally described on Exhibit "A" attached hereto ("Real Estate") pursuant to a note dated as of even date herewith between Mortgagor and the Mortgagee and ~~pursuant to a series of notes to be issued subsequent to this Mortgage and Security Agreement~~ (the "Note").

NOW, THEREFORE, for and in consideration of the funding of the Note by Mortgagee to Mortgagor, the receipt of which is hereby acknowledged, and for other valuable consideration received, the adequacy and sufficiency of which are hereby acknowledged, and as security for the following, sometimes collectively referred to herein as the "Obligations Secured Hereby," (a) the payments to be made under the Note, including without limitation, the payment of the principal of and interest on the Note and costs and expenses incident thereto, (b) all amounts which Mortgagee in its sole discretion may advance and pay under the terms of this Mortgage and Security Agreement, and (c) the faithful performance of the covenants and agreements of Mortgagor herein contained and contained in the Note and any other securing or other agreement now or hereafter given by Mortgagee. Mortgagor does by these presents grant, mortgage and convey unto Mortgagee, its successors and assigns, the Real Estate, TOGETHER WITH:

a. all and singular, the easements, rights-of-way, licenses, privileges, tenements, appendages, hereditaments, waters, water courses, riparian rights, appurtenances, other rights, liberties and privileges at any time belonging or in any wise appertaining to the Premises (as hereinafter defined), or any part thereof, including, without limitation, any claim at law or in equity as well as any after-acquired title, franchise or license and the reversions and remainders thereof; and also all the rents,

85 333 961

THIS MORTGAGE AND SECURITY AGREEMENT dated as of the 1st day of December, 1988, between the State Bank of India (Mortgagee) and the State Bank of India, a banking association organized and engaged in banking under the laws of the State of Illinois, and its successors and assigns (Mortgagee).

W I T N E S S E T H :

WHEREAS, Mortgagee has agreed to lend the principal sum of \$250,000 to Mortgagor to finance construction of a condominium building with its apartments to be located on a portion of certain real estate legally described on Exhibit "A" attached hereto ("Real Estate") pursuant to a note dated as of even date herewith between Mortgagee and the Mortgagor and pursuant to a series of notes to be issued subsequent to this Mortgage and Security Agreement (the "Notes").

NOW, THEREFORE, for and in consideration of the lending of the Note by Mortgagee to Mortgagor, the receipt of which is hereby acknowledged, and for other valuable consideration received, the adequacy and sufficiency of which are hereby acknowledged, and as security for the following, sometimes collectively referred to herein as the "Obligations Secured Hereby," (a) the payments to be made under the Note, including without limitation, the payment of the principal of and interest on the Note and costs and expenses incident thereto, (b) all amounts which Mortgagee in its sole discretion may advance and pay under the terms of this Mortgage and Security Agreement, and (c) the faithful performance of the covenants and agreements of Mortgagor herein contained and contained in the Note and any other security or other agreement now or hereafter given by Mortgagor. Mortgagor does by these presents grant, mortgage and convey unto Mortgagee, its successors and assigns, the Real Estate, TOGETHER WITH:

All and singular, the essential, rights-of-way, licenses, privileges, easements, appurtenances, hereditaments, waters, water courses, riparian rights, appurtenances, other rights, liberties and privileges at any time belonging or in any wise appertaining to the premises (as hereinafter defined), or any part thereof, including without limitation, any

OR
M
M
OR

UNOFFICIAL COPY

0 7 3 3 3 9 6 1

- 2 -

issues, proceeds and profits now or hereafter accruing therefrom;

b. all rights and benefits of whatsoever nature derived or to be derived by the Mortgagor or either of them, under or by virtue of any part thereof, now or hereafter entered into by Mortgagor, their respective agents or employees, and the reversions and subreversions thereunder, and all rights and benefits to be derived by Mortgagor, therefrom; and all rents, issues, profits, revenues, royalties, bonuses, receipts, rights and benefits due, payable or accruing or to be accrued (including, without limitation, all deposits of money as advanced rent or for security) under any and all leases or subleases now or hereafter entered into and renewals thereof of, or under any contracts or options for the sale of all or any part of the Premises (including, without limitation, those accruing during any period allowed by law for the redemption of all or any part of the Premises after any foreclosure or other sale), together with the right, but not the obligation, to collect, receive, and receipt for all such rents and other sums and apply them to the obligations secured hereby and to demand, sue for and recover the same when due or payable; provided that the assignments made hereby shall not impair or diminish the obligations of Mortgagor or its agents or employees, under the provisions of such leases or subleases or other agreements nor shall such obligations be imposed upon Mortgagor;

c. all the estate, right, title and interest, if any, of Mortgagor (including, without limitation, any after-acquired title, franchise or license and the reversions and remainders thereof) in and to the land lying within any alley, way, roadway, strips and cores, or beds adjoining the Real Estate;

d. all property and rights of Mortgagor, if any, which are by the express provisions of this instrument required to be subjected to the lien hereof and any additional property and rights that may from time to time hereafter, by installation or writing of any kind, be subject to the lien hereof by Mortgagor or by anyone in Mortgagor's behalf, and all proceeds of insurance;

85 333 961

UNOFFICIAL COPY

issues, proceeds and profits now or hereafter accruing therefrom;

d. All rights and benefits of whatsoever nature derived or to be derived by the Mortgagor or either of them, under or by virtue of any part thereof, now or hereafter entered into by Mortgagor, their respective agents or employees, and the reversions and other interests therein, and all rights and benefits to be derived by Mortgagor, therefrom; and all rents, issues, profits, revenues, royalties, bonuses, rights, and benefits due, payable or accruing or to be so accrued (including, without limitation, all legacies of money as advanced rent or for security) under any and all leases or subleases now or hereafter entered into and renewals thereof, or under any contracts or options for the sale of all or any part of the Premises (including, without limitation, those accruing during any period allowed by law for the redemption of all or any part of the Premises after any foreclosure or other sale), together with the right, but not the obligation, to collect, receive, and receipt for all such rents and other sums and apply them to the obligations secured hereby and to demand, sue for and recover the same when due or payable; provided that the assignments made hereby shall not impair or diminish the obligations of Mortgagor or its agents or employees, under the provisions of such leases or subleases or other instruments, nor shall such obligations be imposed upon Mortgagor;

e. All the estate, right, title and interest, if any, of Mortgagor (including, without limitation, any after-acquired title, franchise or license and the reversions and remainders thereof) in and to the land lying within any alley, way, roadway, strip and gore, or beds adjoining the Real Estate;

f. All property and rights of Mortgagor, in any, which are by the express provisions of this instrument required to be subjected to the lien hereof and any additional property and rights that may from time to time hereafter, by installation or writing of any kind, be subject to the lien hereof by Mortgagor or by anyone in Mortgagor's behalf, and all proceeds of insurance;

02
33
001

UNOFFICIAL COPY

8 5 3 3 3 9 6 1

- 3 -

e. all rights of Mortgagor in and to common areas and access roads on adjacent properties heretofore or hereafter granted to Mortgagor and any after-acquired title or reversions with respect thereto;

f. all of the right, title, and/or interest of Mortgagor and of any other person or entity, in all buildings, structures and improvements now or hereafter erected or placed on the Real Estate, and all materials intended for construction, reconstruction, alterations and repairs thereof, all of which materials shall be included within the Premises and subjected to the lien hereof immediately upon the delivery thereof to the Real Estate, and, also, together with all machinery, equipment, apparatus, goods, systems, fixtures and items of personal property of every kind and nature whatsoever (excluding inventory), now or hereafter located in or upon or affixed to the Real Estate or the building or improvements located thereon, or any part thereof, and used or usable in connection with any present or future operation of the Real Estate, including, without limitation, all heating, lighting, incinerating, refrigerating, ventilating, air-conditioning, air-cooling, lifting, fire extinguishing, plumbing, cleaning, electrical, communications and power equipment, systems and apparatus; all gas, water and electrical equipment, systems, fixtures and apparatus; and all elevators, escalators, switch-boards, computers, engines, motors, tanks, pumps, screens, storm doors, storm windows, shades, blinds, awnings, floor coverings, cabinets, partitions, conduits, ducts and compressors; and all renewals, additions and accessories to and replacements of and substitutions for each and all of the foregoing [it being understood and agreed that all such machinery, equipment, accessories, replacements and substitutions are a part of the Premises and are declared to be a portion of the security for the obligations secured hereby (whether in single units or centrally controlled, and whether physically attached to the Real Estate or the buildings thereon, or not) and that the enumeration of any specific items of property shall in no wise exclude or be held to exclude any items of property not specifically enumerated]; and all revenues, receivables, income and accounts now or hereafter acquired and arising from any or all of the foregoing; and the proceeds of any and all of the foregoing; and

85 333 961

all rights of Mortgagor in and to common areas and access roads on adjacent properties heretofore or hereafter granted to Mortgagor and any after-acquired title or reversion with respect thereto;

1. All of the right, title, and/or interest of Mortgagor and of any other person or entity in all buildings, structures and improvements now or hereafter erected or placed on the Real Estate, and all materials intended for construction, reconstruction, alterations and repairs thereof, all of which materials shall be included within the Premises and subjected to the lien hereof immediately upon the delivery thereof to the Real Estate, and, also, together with all machinery, equipment, apparatus, goods, systems, fixtures and items of personal property of every kind and nature whatsoever (excluding inventory) now or hereafter located in or upon or affixed to the Real Estate or the building or improvements located thereon, or any part thereof, and used or usable in connection with any present or future operation of the Real Estate, including, without limitation, all heating, lighting, refrigerating, air-conditioning, air-cooling, air-circulating, plumbing, cleaning, electrical, communications and power equipment, systems and apparatus, all gas and electrical equipment, systems, fixtures and apparatus, and all elevators, escalators, switch-boards, computers, engines, motors, tanks, pumps, screens, storm doors, storm windows, shades, blinds, awnings, floor coverings, cabinets, partitions, conduits, ducts and compressors; and all renewals, additions and accessories to and replacements of and substitutions for each and all of the foregoing if being understood and agreed that all such machinery, equipment, accessories, replacements and substitutions are a part of the Premises and are deemed to be a portion of the security for the obligations secured hereby (whether in single units or centrally controlled, and whether physically attached to the Real Estate or the building thereon, or not) and that the enumeration of any specific items of property shall in no wise exclude or be held to exclude any items of property not specifically enumerated; and all revenues, receipts, income and accounts now or hereafter acquired and accruing from any or all of the foregoing, and the

82 322 821

UNOFFICIAL COPY

8 5 3 3 3 9 6 1

- 4 -

g. all judgments, settlements, awards and other compensation heretofore or hereafter to be made to the present and all subsequent owners of the Premises, or any part thereof, 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 without limitation, for severance and consequential damage therefor or for change in grade of streets;

the "Premises", as the term is used herein, shall include the Real Estate described on Exhibit "A" attached hereto together with the rights, properties and other things enumerated, with respect thereto, in foregoing subparagraphs a. through g.

TO HAVE AND TO HOLD the Premises, together with the privileges, fixtures and appurtenances thereunto belonging, and all rents, issues, profits and proceeds therefrom, and the other properties, rights and privileges herein granted, unto Mortgagee, its successors and assigns, forever, for the uses and the purposes herein expressed. Mortgagor covenants that it is well seized for an indefeasible estate in fee simple in the Premises, and has good right and full power and authority to grant, warrant, mortgage and convey the Premises in the manner and form herein provided, thereby creating a valid mortgage lien thereon, subject only to Permitted Encumbrances, as defined in the Note; and that the Premises is free from the lien of all taxes due and payable; and that Trustee will warrant and defend the title to the Premises with the privileges and appurtenances thereunto belonging unto Mortgagee, its successors and assigns, forever, against all claims and demands whatsoever.

THIS MORTGAGE IS GIVEN TO SECURE PERFORMANCE OF EACH AND EVERY OF THE OBLIGATIONS IN ACCORDANCE WITH THE TERMS AND PROVISIONS HEREOF.

Mortgagor hereby covenants with Mortgagee, its successors and assigns that to the extent permitted by law, Mortgagor agrees not to sell, encumber or otherwise transfer all or any part of the Premises except upon conditions reasonably satisfactory to Mortgagee.

PROVIDED ALWAYS, that if the principal of and interest on the Note shall be paid at the times and in the manner provided in the Note and if all other sums and obligations secured hereby and secured by the Note, and any other securing and other agreements given by Mortgagee shall be paid, and if

85 333 961

UNOFFICIAL COPY

of all judgments, settlements, awards and other compensation hereof or hereafter to be made to the present and all subsequent owners of the Premises, on any part thereof, 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 without limitation, for severance and consequential damage therefor or for change in grade of streets;

The "Premises", as the term is used herein, shall include the Real Estate described on Exhibit "A" attached hereto together with the rights, properties and other things enumerated, with respect thereto, in foregoing subparagraphs a through g.

TO HAVE AND TO HOLD the Premises, together with the privileges, fixtures and appurtenances thereto belonging, and all rents, issues, profits and proceeds therefrom, and the other properties, rights and privileges herein granted, unto Mortgagee, its successors and assigns, forever, for the use and the purposes herein expressed. Mortgagee covenants that it is well seized for an indefeasible estate in fee simple in the Premises, and has good right and full power and authority to grant, warrant, mortgage and convey the Premises in the manner and form herein provided, thereby creating a valid mortgage lien thereon, subject only to permitted incumbrances, as defined in the Note and that the Premises is free from the lien of all taxes due and payable and that Trustee will warrant and hold the title to the Premises with the privileges and appurtenances thereto belonging unto Mortgagee, its successors and assigns, forever, against all claims and demands whatsoever.

THIS MORTGAGE IS GIVEN TO SECURE PERFORMANCE OF EACH AND EVERY OF THE OBLIGATIONS IN ACCORDANCE WITH THE TERMS AND PROVISIONS HEREOF.

Mortgagee hereby covenants with Mortgagee, its successors and assigns that to the extent permitted by law, Mortgagee shall not to sell, encumber or otherwise transfer all or any part of the Premises except upon conditions reasonably satisfactory to Mortgagee.

PROVIDED ALWAYS, that if the principal of and interest on the Note shall be paid at the times and in the manner provided in the Note and if all other sums and obligations secured

02 033 001

Mortgagor shall cause to be kept, performed and observed all of their respective covenants and conditions pursuant to the terms of the Note and this Mortgage and Security Agreement, and shall pay or cause to be paid to Mortgagee all sums of money due or to become due to it in accordance with the terms and provisions of the Note and this Mortgage and Security Agreement, then upon the final payment thereof the mortgage lien and security interest hereby granted shall cease, determine and be void and Mortgagor shall be entitled to a release of the lien of this Mortgage and Security Agreement; otherwise this Mortgage and Security Agreement shall be and remain in full force and effect.

MOREOVER, Mortgagor covenants and agrees with Mortgagee, its successors and assigns, as follows:

SECTION 1. Amounts Payable. Mortgagor hereby covenants and agrees to repay the loan in installments, as provided in the Note. The obligations of Mortgagor to make the payments required in the Note and to perform and observe the other agreements contained herein and in the Note shall be absolute and unconditional and shall not be subject to any defense or any right of set-off, counterclaim or recoupment arising out of any breach by Mortgagee of any obligation to Mortgagor, whether hereunder or otherwise, or out of any indebtedness or liability at any time owing to Mortgagor by Mortgagee and until such time as the principal of and interest on the Note shall have been paid in full and as all other sums secured hereby and secured by the Note or any securing agreement given by Mortgagee shall be paid.

SECTION 2. Maintenance and Modification of Premises and Project Site by Mortgagor. Mortgagor agrees that it will, at its own expense, maintain, preserve and keep the Premises or cause the Premises to be maintained, preserved and kept with the appurtenances and every part and parcel thereof, in good repair, working order and condition and that Mortgagor will from time to time make or cause to be made all necessary repairs, replacements and renewals therefor. Mortgagee shall have no responsibility in any of these matters or for the making of improvements or additions to the Premises.

In addition, Mortgagor shall have the privilege of remodeling the Premises or making substitutions, additions, modifications and improvements to the Premises from time to time as Mortgagor, in its discretion, may deem to be desirable for Mortgagor's use for such purposes as are permitted by the

Mortgagee shall cause to be kept, performed and observed all of their respective covenants and conditions pursuant to the terms of the Note and this Mortgage and Security Agreement, and shall pay or cause to be paid to Mortgagee all sums of money due or to become due to it in accordance with the terms and provisions of the Note and this Mortgage and Security Agreement, then upon the final payment thereof the mortgage lien and security interest hereby granted shall cease, determine and be void and Mortgagee shall be entitled to a release of the lien of this Mortgage and Security Agreement; otherwise this Mortgage and Security Agreement shall be and remain in full force and effect.

MOREOVER, Mortgagee covenants and agrees with Mortgagee, its successors and assigns, as follows:

SECTION 1. Amounts Payable. Mortgagee hereby covenants and agrees to repay the loan in installments, as provided in the Note. The obligations of Mortgagee to make the payments required in the Note and to perform and observe the other agreements contained herein and in the Note shall be absolute and unconditional and shall not be subject to any defense or any right of set-off, counterclaim or recoupment arising out of any breach by Mortgagee of any obligation to Mortgagee, whether hereunder or otherwise, or out of any indebtedness or liability at any time owing to Mortgagee by Mortgagee and until such time as the principal of and interest on the Note shall have been paid in full and as all other sums secured hereby and secured by the Note or any security agreement given by Mortgagee shall be paid.

SECTION 2. Maintenance and Modification of Premises and Project Site by Mortgagee. Mortgagee agrees that it will at its own expense, maintain, preserve and keep the premises or cause the premises to be maintained, preserved and kept with the appliances and every part and parcel thereof in good repair, working order and condition and that Mortgagee will from time to time make or cause to be made all necessary repairs, replacements and renewals thereof. Mortgagee shall have no responsibility in any of these matters or for the making of improvements or additions to the Premises.

In addition, Mortgagee shall have the privilege of remodeling the premises or making substitutions, additions, modifications and improvements to the premises from time to time as Mortgagee, in its discretion, may deem to be desirable.

02 33 001

UNOFFICIAL COPY

0 5 3 3 3 9 6 1

- 6 -

Act, as defined in the Note, and the Mortgagee, the costs of which remodeling, substitutions, additions, modifications and improvements shall be paid by Mortgagor, and the same shall be included under the terms of this Mortgage and Security Agreement as part of the Premises; provided, however, that such remodeling, substitutions, additions, modifications and improvements shall not cost more than \$25,000.00 in any calendar year and shall not interfere with the construction of the Project or in any way damage the Premises, change its exterior appearance or interfere with its intended use; and provided that any construction, remodeling, substitutions, additions, modifications and improvements of the Premises of any dollar amount shall not, upon completion of such remodeling, substitutions, additions, modifications and improvements, be of a value less than the value of the Premises immediately prior to the remodeling or the making of substitutions, additions, modifications and improvements. Any property for which a substitution or replacement is made pursuant to this Section 2 may be disposed of by Mortgagor in any manner and in the sole discretion of Mortgagor; and provided that no such substitution, modification or improvement shall be made to the Premises without the prior written consent of Mortgagee if the cost of such substitution, modification or improvement shall be \$ 25,000/- or more. Mortgagor will not permit any mechanic's or other lien to be established or remain against the Premises, or any part thereof, for labor or materials furnished in connection with any remodeling, substitutions, additions, modifications, improvements, repairs, renewals or replacements so made by Mortgagor, provided that if Mortgagor shall first notify Mortgagee of Mortgagor's intention so to do, and upon depositing with Mortgagee an indemnity acceptable to Mortgagee in an amount sufficient in Mortgagee's judgment to cover the unpaid portion of any such lien, Mortgagor may in good faith contest any mechanic's or other lien filed or established against the Premises, or any part thereof, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless Mortgagee determines in its sole judgment that by nonpayment of any such items, the lien of this Mortgage and Security Agreement as to the Premises, or any part thereof, will be materially endangered or the Premises, or any part thereof, will be subject to loss or forfeiture, in which event Mortgagor shall pay promptly and cause to be satisfied and discharged all such unpaid items. Mortgagee will cooperate fully with Mortgagor in any such contest, upon the request and at the expense of Mortgagor.

85 333 961

Act, as defined in the Note, and the Mortgage, the costs of which remodeling, substitutions, additions, modifications and improvements shall be paid by Mortgagee, and the same shall be included under the terms of this Mortgage and Security Agreement as part of the Premises; provided, however, that such remodeling, substitutions, additions, modifications and improvements shall not cost more than \$25,000.00 in any calendar year and shall not interfere with the construction of the Project or in any way damage the Premises, change the exterior appearance or interfere with its intended use; and provided that any construction, remodeling, substitutions, additions, modifications and improvements of the Premises of any dollar amount shall not, upon completion of such remodeling, substitutions, additions, modifications and improvements, be of a value less than the value of the Premises immediately prior to the remodeling or the making of substitutions, additions, modifications and improvements. Any property for which a substitution or replacement is made pursuant to this section may be disposed of by Mortgagee in any manner and in the sole discretion of Mortgagee; and provided that no such substitution, modification or improvement shall be made to the Premises without the prior written consent of Mortgagee if the cost of such substitution, modification or improvement shall be \$2,500.00 or more. Mortgagee will not permit any mechanic or other lien to be established or remain against the Premises, or any part thereof, for labor or materials furnished in connection with any remodeling, substitutions, additions, modifications, improvements, repairs, renewals or replacements, no made by Mortgagee, provided that if Mortgagee shall first notify Mortgagee of Mortgagee's intention so to do, and upon negotiating with Mortgagee an indemnity acceptable to Mortgagee in an amount sufficient in Mortgagee's judgment to cover the unpaid portion of any such lien, Mortgagee may in good faith contact any mechanic or other lien filed or established against the Premises, or any part thereof, and in such event may permit the liens so contacted to remain undischarged and unsatisfied during the period of such contact and any appeal therefrom unless Mortgagee determines in its sole judgment that by nonpayment of any such liens, the lien of this Mortgage and Security Agreement as to the Premises, or any part thereof, will be materially endangered or the Premises, or any part thereof, will be subject to loss or forfeiture, in which event Mortgagee shall pay promptly and cause to be satisfied and discharged all such unpaid items. Mortgagee

82 333 001

UNOFFICIAL COPY

8 5 3 3 3 9 6 1

- 7 -

SECTION 3. Taxes, Other Governmental Charges and Utility Charges. Mortgagor will pay as the same respectively become due, and provide satisfactory evidence of such payment to Mortgagee upon receipt by it of such evidence, all taxes and governmental charges of any kind whatsoever that may at any time be assessed or levied against or with respect to the Premises, or any part thereof, or any building, machinery, equipment or other property acquired by Mortgagor in substitution for, as a renewal or replacement of, or a modification, improvement or addition to, the Premises, or any part thereof including without limiting the generality of the foregoing, any taxes levied upon the Premises which, if not paid, will become a charge on the receipts from the Premises, or any part thereof, prior to or on a parity with the charge of this Mortgage and Security Agreement, or any interest therein or the revenues derived therefrom or hereunder; and all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Premises, or any part thereof, and all assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the Premises, or any part thereof.

Mortgagor may, at Mortgagor's expense and in Mortgagor's name, in good faith contest any such taxes, assessments and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless Mortgagee determines in its sole judgment that by nonpayment of any such items the security afforded pursuant to the terms of this Mortgage and Security Agreement will be materially endangered or the Premises, or any part thereof, will be subject to loss or forfeiture, in which event such taxes, assessments or charges shall be paid forthwith. In the event that Mortgagor shall fail to pay any of the foregoing items required by this Section 3 to be paid by Mortgagor, Mortgagee may (but shall be under no obligation to) pay the same and any amounts so advanced therefor by Mortgagee shall become an additional obligation of Mortgagor to the party making the advancement, and the Mortgagor agrees to pay such amounts, together with annual interest thereon at a rate equal to one percent (1%) plus the Chicago Prime Rate, as defined in the Note until paid and shall be secured by this Mortgage and Security Agreement.

SECTION 4. Provisions Respecting Insurance and Condemnation.

85-333 961

SECTION 3. Taxes, Other Governmental Charges and Utility Charges. Mortgagor will pay as the same respectively become due and provide satisfactory evidence of such payment to Mortgagee upon receipt by it of such evidence, all taxes and governmental charges of any kind whatsoever that may at any time be assessed or levied against or with respect to the premises, or any part thereof, or any building, machinery, equipment or other property acquired by Mortgagor in substitution for, as a renewal or replacement of, or a modification, improvement or addition to, the premises, or any part thereof, including without limitation the general liability of the foregoing, any taxes levied upon the premises which, if not paid, will become a charge on the receipts from the premises, or any part thereof, prior to or as a party with the charge of this Mortgage and Security Agreement, or any interest therein or the revenues derived therefrom or hereunder, and all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the premises, or any part thereof, and all assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the premises, or any part thereof.

Mortgagor may, at Mortgagor's expense and in Mortgagor's name, in good faith contest any such taxes, assessments and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless Mortgagee determines in its sole judgment that by nonpayment of any such items the security afforded pursuant to the terms of this Mortgage and Security Agreement will be materially endangered or the premises, or any part thereof, will be subject to loss or foreclosure, in which event such taxes, assessments or charges shall be paid forthwith. In the event that Mortgagor shall fail to pay any of the foregoing items required by this Section 3 to be paid by Mortgagor, Mortgagee may (but shall be under no obligation to) pay the same and any amounts so advanced therefor by Mortgagee shall become an additional obligation of Mortgagor to the party making the advancement, and the Mortgagor agrees to pay such amounts, together with annual interest thereon at a rate equal to one percent (1%) plus the Chicago Prime Rate, as defined in the Note until paid and shall be secured by this Mortgage and Security Agreement.

02. 333 001

(a) The Mortgagor will procure, deliver to and maintain, for the benefit of Mortgagee, a policy or policies of insurance insuring the buildings, structures and improvements now existing or hereafter erected which constitute part of the Premises against loss or damage by fire and against loss or damage by all risks embraced by coverage of a type now known as broad form of extended coverage, all risk, including, without limitations, riot and civil commotion, vandalism and malicious mischief and against such other insurable hazards as, under good insurance practices in the State of Illinois, from time to time are insured against for buildings, structures and improvements of like character and builder's risk insurance while the Project is being constructed. The amount of such insurance shall be the greater of One Hundred Percent (100%) of the full replacement cost of such buildings, structures and improvements without deduction for physical depreciation or the original principal balance of the Note, provided this shall be increased to the extent required to avoid any co-insurance provisions from taking effect. The policy or policies shall contain a replacement cost endorsement. The Mortgagor shall procure and deliver to Mortgagee and maintain for the benefit of the Mortgagee liability insurance (including, without limitation, comprehensive public liability, workers' compensation and employer's liability) with such limits for personal injury and death and property damage as the Mortgagee may reasonably require and shall cause the Mortgagee to be named as an additional insured thereunder. The Mortgagor will procure, deliver to, and maintain for the benefit of the Mortgagee such other insurance in the Premises and in such amounts from time to time the Mortgagee may reasonably require against other casualties which at the time are commonly insured against in the case of premises similarly situated (including, without limitation, flood insurance), due regard being given to the height and type of improvements, their construction, location, use and occupancy. The Mortgagor will cause standard mortgage clauses to be attached to all such fire and extended coverage policies, modified as to be consistent with the provisions of paragraph (i) below. During the construction of the Project, Mortgagor shall procure, deliver and maintain for the benefit of Mortgagee an All Risk Builder's Risk Insurance in Non-Reporting Form Policy in an amount equal to One Hundred Percent (100%) of the

(a) The Mortgagor will procure, deliver to and maintain for the benefit of the Mortgagee, a policy or policies of insurance insuring the buildings, structures and improvements now existing or hereafter erected which constitute part of the premises against loss or damage by fire and against loss or damage by all risks embraced by coverage of a type now known as broad form or extended coverage, all risk, including, without limitation, riot and civil commotion, vandalism and malicious mischief and against such other insurable hazards as, under good insurance practices in the State of Illinois, from time to time are insured against for buildings, structures and improvements of like character and building risk insurance while the project is being constructed. The amount of such insurance shall be the greater of One Hundred percent (100%) of the full replacement cost of each building, structure and improvements without deduction for physical depreciation or the original principal balance of the note provided this shall be increased to the extent required to avoid any co-insurance provisions from taking effect. The policy or policies shall contain a replacement cost endorsement. The Mortgagor shall procure and deliver to Mortgagee and maintain for the benefit of the Mortgagee liability insurance (including, without limitation, comprehensive public liability, workers' compensation and employer's liability) with such limits for personal injury and death and property damage as the Mortgagee may reasonably require and shall cause the Mortgagee to be named as an additional insured thereunder. The Mortgagor will procure, deliver to and maintain for the benefit of the Mortgagee such other insurance in the premises and in such amounts from time to time the Mortgagee may reasonably require against other casualties which at the time are commonly insured against in the case of premises similarly situated (including, without limitation, flood insurance), due regard being given to the height and type of improvements, their construction, location, use and occupancy. The Mortgagor will cause standard mortgage clauses to be attached to all such fire and extended coverage policies, modified as to be consistent with the provisions of paragraph (1) below. During the construction of the project, Mortgagee shall

02 333 001

cost of constructing the Project. The Mortgagor will deliver such policy or policies to the Mortgagee at its principal office or at such other place as it may designate in writing; and likewise will deliver to the Mortgagee renewals of such policy or policies or a renewal binder or binders one week in advance of the expiration of same, stamped "Paid" by the agent or company issuing such policies or binders. Premiums on policies so furnished shall not be financed in any manner whereby any lender, upon default or otherwise, shall have the right or privilege of surrendering the policies for cancellation. All insurance furnished hereunder shall be subject to the reasonable approval of the Mortgagee as to insurance companies, amounts, contents and substance forms of policies. All insurance required by this Section shall provide by endorsement or other manner that same may not be cancelled or amended without at least 30 days' prior written notice to the Mortgagee. If the Mortgagor fails to procure and maintain any insurance required under this Section, the Mortgagee may (but shall not be obligated to) procure and maintain such insurance in the amounts provided above or in such lesser amounts as the Mortgagee then deems appropriate and any amount paid by the Mortgagee for such insurance shall become immediately due and payable by the Mortgagor with interest at a rate per annum equal to One Percent (1%) plus the Chicago Prime Rate, as defined in the Note, until paid and shall be secured by this Mortgage and Security Agreement. The Mortgagor shall not carry separate insurance concurrent in kind or form and contributing, in the event of loss, with any insurance required hereunder.

Upon any loss or damage, the Mortgagor shall immediately notify the Mortgagee in writing, and (a) the loss, if any, under each insurance policy shall be adjusted with the insurance company by the Mortgagor, with the reasonable consent of the Mortgagee if such loss exceeds \$25,000.00, (b) if the loss is \$25,000.00 or less the loss may be adjusted with the insurance company without the consent of Mortgagee and all insurance proceeds shall be paid directly and solely to the Mortgagor and each insurance company is authorized and directed to make such payment directly and solely to the Mortgagor, and the insurance policies shall so stipulate, (c) if the loss is more than \$25,000.00 all insurance proceeds shall be paid directly and solely to the Mortgagee and each insurance company is authorized and

cost of constructing the Project. The Mortgagor will deliver each policy or policies to the Mortgagor at its principal office or at such other place as it may designate in writing; and likewise will deliver to the Mortgagor renewals of such policy or policies or a renewal binder or binders one week in advance of the expiration of same, stamped "Paid" by the agent or company issuing such policies or binders. Premiums on policies so furnished shall not be financed in any manner whereby any lender, upon default or otherwise, shall have the right or privilege of surrendering the policies for cancellation. All insurance furnished hereunder shall be subject to the reasonable approval of the Mortgagor as to insurance companies, amounts, contents and substance forms of policies. All insurance required by this section shall be provided by endorsement or other manner that same may not be cancelled or amended without at least 30 days prior written notice to the Mortgagor. If the Mortgagor fails to procure and maintain any insurance required under this section, the Mortgagor may (but shall not be obligated to) procure and maintain such insurance in the amount provided above or in such lesser amount as the Mortgagor then deems appropriate and any amount paid by the Mortgagor for such insurance shall become immediately due and payable by the Mortgagor with interest at a rate per annum equal to one percent (1%) plus the Chicago Prime Rate as defined in the Note, until paid and shall be secured by this Mortgage and Security Agreement. The Mortgagor shall not carry separate insurance concurrent in kind or form and contributing in the event of loss, with any insurance required hereunder.

Upon any loss or damage, the Mortgagor shall immediately notify the Mortgagor in writing, and (a) the loss, if any, under each insurance policy shall be adjusted with the insurance company by the Mortgagor, with the reasonable consent of the Mortgagor if such loss exceeds \$25,000.00; (b) if the loss is \$25,000.00 or less the loss may be adjusted with the insurance company without the consent of the Mortgagor and all insurance proceeds shall be paid directly and solely to the Mortgagor and each insurance company is authorized and directed to make such payment directly and solely to the Mortgagor, and the insurance policies shall so stipulate; (c) if the loss is more than \$25,000.00 all insurance proceeds shall be paid directly and solely to the

82 333 891

UNOFFICIAL COPY

8 5 3 3 9 6 1

- 10 -

directed to make such payment directly and solely to the Mortgagee and the insurance policies shall so stipulate and (d) with respect to any adjustment undertaken by the Mortgagor, the Mortgagor shall have the right to retain an independent public adjuster to make such adjustment, provided, however, that the Mortgagee shall have the right to object to such retainage and designate another independent public adjuster. The Mortgagee shall not incur any liability in connection with the adjustment or collection of insurance claims and proceeds (or the failure thereof) regardless of the cause of such failure. If any sum or sums of money are received by the Mortgagee by reason of such insurance as aforesaid, then Mortgagee shall be deemed to have initially elected to apply such proceeds as provided in Section 10(b)(i) hereof, and, subject to the provisions herein, and if no event of default shall exist, the Mortgagor shall utilize such insurance proceeds in the repair, restoration and replacement of the damaged or destroyed property and the following paragraphs (i) to (v) inclusive shall apply:

(i) In the case of loss or damage to buildings, structures or improvements located on the Premises in an amount greater than \$10,000.00 (or, if emergency and temporary repairs, in any amount), the Mortgagor shall make emergency repairs or restore and replace the damaged or destroyed property in order to reduce or prevent further loss or so as not to impede or interfere with the normal operation of the Premises. If such emergency repairs, restoration or replacements are made, the Mortgagor shall be entitled to reimbursement out of the insurance proceeds received by the Mortgagee as the result of such loss or damage. In case it is necessary to proceed immediately with repairs, restoration or replacement of the damaged property for the reason in this paragraph (i) specified, the Mortgagor agrees that it will immediately notify the Mortgagee of its intention to do so and will later submit Plans and Specifications to the Mortgagee as in paragraph (ii), provided, except that such emergency work or repair, restoration or replacement already done and performed may be incorporated as part of such Plans and Specifications and such part thereof may not be disapproved by the Mortgagee.

85 333 961

directed to make such payment directly and solely to the Mortgagee and the insurance policies shall so stipulate and (d) with respect to any adjustment undertaken by the Mortgagee, the Mortgagee shall have the right to retain an independent public adjuster to make such adjustment. provided, however, that the Mortgagee shall have the right to object to such retainers and designate another independent public adjuster. The Mortgagee shall not incur any liability in connection with the adjustment or collection of insurance claims and proceeds (or the failure thereof) regardless of the cause of such failure, if any sum or sums of money are received by the Mortgagee by reason of such insurance as aforesaid, then Mortgagee shall be deemed to have initially elected to apply such proceeds as provided in Section 10(d)(1) hereof, and, subject to the provisions herein, and in no event of default shall exist, the Mortgagee shall utilize such insurance proceeds in the repair, restoration and replacement of the damaged or destroyed property and the following paragraphs (i) to (v) inclusive shall apply:

(1) In the case of loss or damage to buildings, structures or improvements located on the premises in an amount greater than \$10,000.00 (or, if Mortgagee shall make emergency repairs or repairs and replace the damaged or destroyed property in order to reduce or prevent further loss or so as not to impede or interfere with the normal operation of the Premises. If such emergency repairs, restoration or replacements are made, the Mortgagee shall be entitled to reimbursement out of the insurance proceeds received by the Mortgagee as the result of such loss or damage. In case it is necessary to proceed immediately with repairs, restoration or replacement of the damaged property for the reason in this paragraph (1) specified, the Mortgagee agrees that it will immediately notify the Mortgagee of its intention to do so and will later submit Plans and Specifications to the Mortgagee as in paragraph (ii), provided, except that such emergency work or repair, restoration or replacement already done and performed may be incorporated as part of such Plans and Specifications and such part thereof may be

82 33 891

UNOFFICIAL COPY

8 5 3 3 3 9 6 1

- 11 -

(ii) If the estimated cost of any repair of damage or destruction exceeds \$10,000.00, the Mortgagor shall submit Plans and Specifications of an architect, engineer or building contractor to the Mortgagee for its approval, and shall comply with all of the provisions of the Note, as the Mortgagee shall reasonably require, before proceeding with any work required as a result of such loss or damage, except as provided under paragraph (i) above. Upon the approval of the Plans and Specifications by the Mortgagee, and upon such compliance with the provisions of the Note (but not prior thereto except to the limited extent provided for in paragraph (i) above), the Mortgagor shall proceed with the repair, restoration or replacement of the damaged or destroyed property in accordance with such Plans and Specifications.

(iii) All insurance proceeds paid to the Mortgagee on account of damage or destruction shall be held by the Mortgagee as a trust fund to be applied as hereinafter provided.

(iv) As soon as reasonably possible after any loss, damage or destruction, but in any event within 30 days after the Mortgagee shall have received any such insurance proceeds, the Mortgagor shall furnish the Mortgagee with an estimate of the cost of repairs, rebuilding and replacement (hereinafter called "restoration") prepared by an architect or other experienced construction cost estimator selected by the Mortgagor and approved by the Mortgagee, which approval shall not be unreasonably withheld or unduly delayed. If the insurance proceeds in the hands of the Mortgagee (after deducting all costs incurred by the Mortgagee in collecting said insurance proceeds) are not sufficient to pay for the cost of restoration as to estimated, the Mortgagor, within ten (10) days after submission of such estimate, shall deposit with the Mortgagee the amount estimated to be necessary to complete restoration, taking into account the amount of the insurance proceeds held by the Mortgagee, and such amount deposited with the Mortgagee shall be similarly held in trust by the Mortgagee and disbursed as hereinafter provided. If the Mortgagor shall fail to deposit the estimated amount necessary

85 333 961

(ii) If the estimated cost of any repair of damage or destruction exceeds \$10,000.00, the Mortgagor shall submit Plans and Specifications of an architect, engineer or building contractor to the Mortgagor for its approval, and shall comply with all of the provisions of the Note, as the Mortgagor shall reasonably require before proceeding with any work required as a result of such loss or damage, except as provided under paragraph (i) above upon the approval of the Plans and Specifications by the Mortgagor, and upon such compliance with the provisions of the Note (but not prior thereto except to the limited extent provided for in paragraph (i) above), the Mortgagor shall proceed with the repair, restoration or replacement of the damaged or destroyed property in accordance with such Plans and Specifications.

(iii) All insurance proceeds paid to the Mortgagor on account of damage or destruction shall be held by the Mortgagor as a trust fund to be applied as hereinafter provided.

(iv) As soon as reasonably possible after any loss, damage or destruction, but in any event within 30 days after the Mortgagor shall have received any such insurance proceeds, the Mortgagor shall furnish the Mortgagor with an estimate of the cost of repairs, rebuilding and replacement (hereinafter called "restoration") prepared by an architect or other experienced construction cost estimator selected by the Mortgagor and approved by the Mortgagor, which approval shall not be unreasonably withheld or unduly delayed. If the insurance proceeds in the hands of the Mortgagor (after deducting all costs incurred by the Mortgagor in collecting said insurance proceeds) are not sufficient to pay for the cost of restoration as so estimated, the Mortgagor, within ten (10) days after submission of such estimate, shall deposit with the Mortgagor the amount estimated to be necessary to complete restoration, taking into account the amount of the insurance proceeds held by the Mortgagor, and such amount deposited with the Mortgagor shall be

02 333 091

UNOFFICIAL COPY

8 5 3 3 3 9 6 1

- 12 -

to complete restoration as aforesaid, the Mortgagee, at its option, shall have the right, but not the obligation, to exercise its option to repay the Note and to apply such proceeds to the prepayment of the Note in accordance with its terms at the earliest possible date.

(v) If the insurance proceeds held by the Mortgagee are estimated to be sufficient to pay for the restoration or, if such proceeds are insufficient and the Mortgagor has deposited with the Mortgagee any additional amount necessary for such purpose, the Mortgagee shall payout from time to time, but not more frequently than monthly, as restoration progresses, the cost of such restoration work which has been completed, upon the written request of the Mortgagor, and such compliance with the provisions of the Note.

Nothing herein contained shall be deemed to excuse the Mortgagor from restoring all damage or destruction to the premises regardless of whether or not there are insurance proceeds adequate for such purposes.

(b) If all or any part of the Premises is damaged, taken or acquired, either temporarily or permanently, as a result of any condemnation proceeding, or by exercise of the power of eminent domain, or by agreement among the Mortgagor, and those authorized to exercise such power (it being agreed that the Mortgagor and the Mortgagee will not enter into any agreement for the taking of the Premises, or any part thereof, with anyone authorized to acquire the same in or by condemnation proceedings or by exercise of any power of eminent domain unless and until the Mortgagee shall have consented thereto in writing), or by the alteration of the grade of any street affecting the Premises, the amount of any award or payment for such taking or damage made in consideration thereof, to the extent of the full amount of the then remaining unpaid indebtedness secured hereby, is hereby assigned to the Mortgagee, who is empowered to collect and receive the same and to give proper receipts therefor in the name of the Mortgagor and the Mortgagee, and the same shall be paid forthwith to the Mortgagee. If, in the reasonable judgment of the Mortgagee, all or substantially all of the Premises shall be so damaged, taken or acquired or if, in the reasonable judgment of the Mortgagee, the Company, or

85 333 961

to complete restoration as aforesaid, the Mortgages, at its option, shall have the right, but not the obligation, to exercise its option to repay the Note and to apply such proceeds to the prepayment of the Note in accordance with its terms at the earliest possible date.

(v) If the insurance proceeds held by the Mortgages are estimated to be sufficient to pay for the restoration or, if such proceeds are insufficient and the Mortgages has deposited with the Mortgages any additional amount necessary for such purpose, the Mortgages shall payout from time to time, but not more frequently than monthly, as restoration progresses, the cost of such restoration work which has been completed, upon the written request of the Mortgages, and such compliance with the provisions of the Note.

Nothing herein contained shall be deemed to excuse the Mortgages from restoring all damage or destruction to the premises regardless of whether or not there are insurance proceeds adequate for such purposes.

(b) If all or any part of the premises is damaged, taken or acquired, either temporarily or permanently, as a result of any condemnation proceeding, or by exercise of the power of eminent domain, or by agreement among the Mortgages, and those authorized to exercise such power (if being agreed that the Mortgages and the Mortgages will not enter into any agreement for the taking of the premises, or any part thereof, with anyone authorized to acquire the same in or by condemnation proceedings or by exercise of any power of eminent domain unless and until the Mortgages shall have consented thereto in writing), or by the alteration of the grade of any street affecting the Premises, the amount of any award or payment for such taking or damage made in consideration thereof to the extent of the full amount of the then remaining unpaid indebtedness secured hereby, is hereby assigned to the Mortgages, who is empowered to collect and receive the same and to give proper receipts therefor in the name of the Mortgages and the Mortgages, and the same shall be paid forthwith to the Mortgages. If, in the reasonable judgment of the Mortgages, all or substantially all of the

02 333 201

UNOFFICIAL COPY

8 5 3 3 3 9 6 1

- 13 -

any tenant of all or a portion of the Premises, is thereby prevented from carrying on its normal operations at the Premises for nine (9) months or longer, then the Mortgagee shall be deemed to have exercised its option to cause the Note to be prepaid and the entire amount of any such award or payment shall be applied to the prepayment of the Note at the earliest possible time. If, in the reasonable judgment of the Mortgagee, less than substantially all of the Premises has been so damaged, taken or acquired and the Company, or any tenant of all or a portion of the Premises, will not thereby be prevented from carrying on their normal operations at the Premises for nine (9) months or longer, then, first, the amount of any such award or payment shall be released to the Mortgagor for the purpose of altering, restoring or rebuilding any part of the Premises which may have been altered, damaged or destroyed as a result of such damage or taking all in accordance with the requirements for repair, restoration and reconstruction set forth in Section 4(a) above, and, second, the Mortgagor shall be deemed to have exercised its option to prepay the Note and the amount of any such award or payment remaining after the completion of such alteration, restoration or rebuilding shall be applied to the prepayment of the Note at the earliest possible time. The Mortgagor further covenants and agrees to make, execute and deliver to the Mortgagee, at any time or times upon request, free, clear and discharged of any liens, claims or encumbrances of any kind whatsoever, any and all further assignments or instruments deemed reasonably necessary by the Mortgagee for the purpose of validly and sufficiently assigning all awards and other compensation heretofore and hereafter to be made to the Mortgagee for any taking, either permanent or temporary, under any proceeding.

Notwithstanding anything in this Section 4 to the contrary, if at any time an event of default shall exist, then all insurance and/or condemnation proceeds shall be applied at the election of Mortgagee, in accordance with the provisions of Section 11(b)(ii).

SECTION 5. Additional Loans. This Mortgage and Security Agreement shall also secure all loans hereafter made by the Mortgagee to Mortgagor. Nothing herein contained shall imply any obligation on the part of the Mortgagee to make any such loan. Provided, however, that in order to be secured hereunder all such loans must specifically state that they are secured hereby.

85 333 961

any tenant of all or a portion of the Premises, is thereby prevented from carrying on its normal operations at the Premises for nine (9) months or longer, then the Mortgagee shall be deemed to have exercised its option to cause the Note to be prepaid and the entire amount of any such award or payment shall be applied to the prepayment of the Note at the earliest possible time. If, in the reasonable judgment of the Mortgagee, less than substantially all of the Premises has been so damaged, taken or acquired and the company or any tenant of all or a portion of the Premises will not thereby be prevented from carrying on their normal operations at the Premises for nine (9) months or longer, then, first, the amount of any such award or payment shall be retained to the Mortgagee for the purpose of altering, restoring or rebuilding any part of the Premises which may have been altered, damaged or destroyed as a result of such damage or taking all in accordance with the requirements for repair, restoration and reconstruction set forth in Section 4(a) above, and second, the Mortgagee shall be deemed to have exercised its option to prepay the Note and the amount of any such award or payment remaining after the completion of such alteration, restoration or rebuilding shall be applied to the prepayment of the Note at the earliest possible time. The Mortgagee further covenants and agrees to make, execute and deliver to the Mortgagee at any time or times upon request, free, clear and discharged of any liens, claims or encumbrances of any kind whatsoever, any and all further assignments or instruments deemed reasonably necessary by the Mortgagee for the purpose of validly and sufficiently assigning all awards and other compensation heretofore and hereafter to be made to the Mortgagee for any taking, either permanent or temporary, under any proceeding.

Notwithstanding anything in this Section 4 to the contrary, if at any time an event of default shall exist, then all insurance and/or condemnation proceeds shall be applied to the election of Mortgagee, in accordance with the provisions of Section 11(b)(ii).

SECTION 5. Additional Loans. This Mortgage and Security Agreement shall also secure all loans heretofore made by the Mortgagee to Mortgagee. Nothing herein contained shall

00
2
333
821

SECTION 6. Modification of Rights. Without affecting the liability of Mortgagor or any other person (except any person expressly released in writing) for payment of any indebtedness secured hereby or for performance of any obligation contained herein, and without affecting the rights of Mortgagee with respect to any security not expressly released in writing, Mortgagee may, at any time and from time to time, either before or after the maturity of the Note, and without notice or consent: (a) release any person liable for the payment of all or any part of the indebtedness or for performance of any obligation; (b) make any agreement extending the time or otherwise altering the terms of payment of all or any part of the indebtedness, or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof; (c) exercise or refrain from exercising or waive any right Mortgagee may have; (d) accept additional security of any kind; (e) release or otherwise deal with any right Mortgagee may have; or (f) release or otherwise deal with any property, real or personal, securing the indebtedness, including all or any part of the Premises.

SECTION 7. Compliance With Law. Mortgagor shall comply at all times with all federal and state laws, all municipal ordinances and all rules and regulations of any governmental entity having jurisdiction over the Premises insofar as such laws, ordinances, rules and regulations pertain in any way to the acquisition, construction and use of the Premises.

SECTION 8. Additional Securing Instruments.

(a) Mortgagor will execute and deliver to Mortgagee promptly upon demand such additional securing instruments, including, but not limited to, UCC continuation statements, as may be required by Mortgagee from time to time in form and substance satisfactory to Mortgagee covering any of the Premises conveyed by this Mortgage and Security Agreement, which shall evidence a continuing first mortgage lien and security interest and shall be additional security for Mortgagor's performance of all of the terms, covenants and conditions of this Mortgage and Security Agreement, the Note secured hereby and any other securing agreements executed by the Mortgagee. Such instruments shall be recorded or filed and rerecorded or refiled at Mortgagor's expense. This Mortgage and

85
333
961

SECTION 6. Modification of Rights. Without affecting the liability of Mortgagor or any other person (except any person expressly released in writing) for payment of any indebtedness secured hereby or for performance of any obligation contained herein, and without affecting the rights of Mortgagor with respect to any security not expressly released in writing, Mortgages may, at any time and from time to time, either before or after the maturity of the Note, and without notice or consent: (a) release any person liable for the payment of all or any part of the indebtedness or for performance of any obligation; (b) make any agreement extending the time or otherwise altering the terms of payment of all or any part of the indebtedness, or modifying or waiving any obligation, or substituting, modifying or otherwise dealing with the lien or charge hereof; (c) exercise or refrain from exercising or waive any right; Mortgages may have; (d) accept additional security of any kind; (e) release or otherwise deal with any property, real or personal, securing the indebtedness, including all or any part of the Premises.

SECTION 7. Compliance With Law. Mortgagor shall comply at all times with all federal and state laws, all municipal ordinances and all rules and regulations of any governmental entity having jurisdiction over the Premises insofar as such laws, ordinances, rules and regulations pertain in any way to the acquisition, construction and use of the Premises.

SECTION 8. Additional Securing Instruments.

(a) Mortgagor will execute and deliver to Mortgagee promptly upon demand such additional securing instruments, including, but not limited to, UCC continuation statements as may be required by Mortgagee from time to time in form and substance satisfactory to Mortgagee covering any of the Premises conveyed by this Mortgage and Security Agreement, which shall evidence a continuing first mortgage lien and security interest and shall be additional security for Mortgagee's performance of all of the terms, covenants and conditions of this Mortgage and Security Agreement, the Note secured hereby and any other securing instruments executed by the Mortgagor. Such

82 222 091

Security Agreement shall secure any further sums which may become due under any such additional securing instruments.

(b) Mortgagor will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Premises or for carrying out the expressed intention of the Note and this Mortgage and Security Agreement.

SECTION 9. Inspection of the Premises. Mortgagor agrees that Mortgagee and its duly authorized agents shall have the right at all reasonable times to enter upon the Premises and to examine and inspect the Premises. Mortgagor further agrees that Mortgagee and its duly authorized agents shall have such rights of access to the Premises as may be reasonably necessary to cause to be completed the acquisition, construction, improving and equipping provided for in the Note, and thereafter for the proper maintenance of the Premises in the event of failure by Mortgagor to perform its obligations under the Note or this Mortgage and Security Agreement. Mortgagee and its duly authorized agents shall also be permitted, at all reasonable times, to examine the books and records of Mortgagor with respect to the Premises.

SECTION 10. Damage, Destruction and Condemnation; Use of Net Proceeds.

(a) If prior to full payment of the Note (i) the Premises or any portion thereof is damaged or destroyed (in whole or in part) by fire or other casualty, and the loss is greater than \$50,000.00 or (ii) title to or the temporary use of, the Premises or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, Mortgagor shall continue to be obligated to continue to pay the amounts specified in the Note.

(b) Mortgagor and Mortgagee will cause the net proceeds of any insurance proceeds or condemnation award resulting from any event described in Section 10(a) hereof to be deposited in a separate fund as provided in Sections 4(a)(iii) and 4(b) hereof to be held by Mortgagee. All net proceeds so deposited shall be applied in either or both of the following ways as shall be elected by Mortgagee, subject to the provisions of Section 4 hereof:

85 333 961

Security Agreement shall secure any further sums which may become due under any such additional securing instruments.

(b) Mortgages will from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such additional notes and such further instruments as may reasonably be required for correcting any inaccuracy or incorrect description of the Premises or for carrying out the expressed intention of the Note and this Mortgage and Security Agreement.

SECTION 9. Inspection of the Premises. Mortgages agree that Mortgages and its duly authorized agents shall have the right at all reasonable times to enter upon the Premises and to examine and inspect the Premises. Mortgages further agrees that Mortgages and its duly authorized agents shall have such rights of access to the Premises as may be reasonably necessary to cause to be completed the acquisition, construction, improving and equipping provided for in the Note, and thereafter for the proper maintenance of the Premises in the event of failure of Mortgages to perform its obligations under the Note in this Mortgage and Security Agreement. Mortgages and its duly authorized agents shall also be permitted, at all reasonable times, to examine the books and records of Mortgages with respect to the Premises.

SECTION 10. Damage, Destruction and Condemnation. Use of Net Proceeds.

(a) If prior to full payment of the Note (i) the Premises or any portion thereof is damaged or destroyed (in whole or in part) by fire or other casualty, and the loss is greater than \$50,000.00 or (ii) title to, or the temporary use of, the Premises or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, Mortgages shall continue to be obligated to continue to pay the amounts specified in the Note.

(b) Mortgages and Mortgages will cause the net proceeds of any insurance proceeds or condemnation award resulting from any event described in Section 10(a) hereof to be deposited in a separate fund as provided in Sections 4(s)(iii) and 4(p) hereof to be held by Mortgages. All net proceeds so deposited shall be applied in either or both of the following ways as shall be elected by Mortgages, subject to the provisions of Section 4 hereof:

82 33 001

(i) to the prompt repair, restoration, modification or improvement of the Premises by Mortgagor, in such manner as shall be approved by Mortgagee, and in such event the provisions of Section 4(a)(i) through 4(a)(v) shall apply. Any balance of the net proceeds from any condemnation award or settlement in lieu thereof remaining after such work has been completed may be retained by Mortgagee to be applied to the payment of principal of and interest on the Note, or if the Note has been paid in full, any balance remaining in such separate fund shall be paid to Mortgagor; any balance of the net proceeds from any insurance policy shall be paid to Mortgagor.

(ii) to prepayment of the loan and other sums secured hereby and the redemption or prepayment of the Note, in whole or in part, on the next succeeding interest payment date in inverse order of maturities of principal installments, provided that no such election to redeem or prepay by Mortgagee shall be deemed to excuse Mortgagor from repairing, restoring, modifying and improving the Premises upon such conditions as Mortgagee shall approve.

(c) In the event Mortgagee has elected to apply the net proceeds in the manner set forth in Section 10(b)(i) above, and if the net proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 10(b)(i) hereof, Mortgagor will nonetheless complete the work and will comply with Section 4(a)(iv) hereof. Mortgagor agrees that if by reason of any such insufficiency of the net proceeds, Mortgagor shall make any payments pursuant to the provisions of this Section, Mortgagor shall not be entitled to any reimbursement therefor from Mortgagee, nor shall Mortgagor be entitled to any diminution of the amounts payable under the Note.

(d) Mortgagee shall cooperate fully with Mortgagor at the expense of Mortgagor in filing any proof of loss with respect to any insurance policy covering the casualties described in Section 11(a) hereof and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Premises or any part thereof or any property of Mortgagor in

(i) to the prompt repair, restoration, modification or improvement of the Premises by Mortgagee, in such manner as shall be approved by Mortgagee, and in such event the provisions of Section 4(a)(i) through 4(a)(v) shall apply. Any balance of the net proceeds from any condemnation award or settlement in lieu thereof remaining after such work has been completed may be retained by Mortgagee to be applied to the payment of principal and interest on the Note, or if the Note has been paid in full, any balance remaining in such separate fund shall be paid to Mortgagee; any balance of the net proceeds from any insurance policy shall be paid to Mortgagee.

(ii) to repayment of the loan and other sums secured hereby and the redemption or prepayment of the Note, in whole or in part, on the next succeeding interest payment date in inverse order of maturities of principal installments, provided that no such election to redeem or prepay by Mortgagee shall be deemed to excuse Mortgagee from repairing, restoring, modifying and improving the Premises upon such conditions as Mortgagee shall approve.

(c) In the event Mortgagee has elected to apply the net proceeds in the manner set forth in Section 10(d)(i) above, and if the net proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 10(a)(i) hereof, Mortgagee will nonetheless complete the work and will comply with Section 4(a)(iv) hereof. Mortgagee agrees that if by reason of any such insufficiency of the net proceeds Mortgagee shall make any payments pursuant to the provisions of this section, Mortgagee shall not be entitled to any reimbursement therefor from Mortgages, nor shall Mortgagee be entitled to any diminution of the amounts payable under the Note.

(d) Mortgagee shall cooperate fully with Mortgagee at the expense of Mortgagee in filing any proof of loss with respect to any insurance policy covering the casualties described in Section 11(a) hereof and in the

82 333 891

connection with which the Premises is used. In no event will Mortgagee voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim or any prospective or pending condemnation proceeding with respect to the Premises, or any part thereof, without the written consent of Mortgagor. Mortgagee may adjust or settle any condemnation claim with the condemning authority.

SECTION 11. Event of Default. The terms "event of default" and "default" shall mean, whenever they are used in this Mortgage and Security Agreement, the occurrence of an event of default under the Note including, without limitation, a default in the performance of any of the terms, conditions or provisions of any one or more of this Mortgage and Security Agreement, the Note, the Guaranties, or any other securing agreement or other agreement now or hereafter given by Mortgagee.

SECTION 12. Remedies. Whenever any event of default referred to in Section 11 hereof shall have happened, Mortgagee shall have the right to exercise any one or more of the remedies granted in any one or more of the Note, Guaranties, or either of them, and/or any other document executed in connection herewith and/or any one or more of the following rights and remedies:

(a) Mortgagee shall be entitled to the immediate possession of the Premises, or any portion thereof, selected by it, together with all rents, issues and profits to be derived therefrom until the indebtedness secured by this Mortgage and Security Agreement is paid in full; provided, however, that Mortgagee shall, in no event, be liable for the failure to procure tenants, to collect rents or to prosecute actions to recover possession of the Project.

(b) Mortgagee shall be entitled to demand, and receive immediately from the Mortgagor, all leases or agreements for occupancy of the Premises, or any part thereof, together with a separate and specific assignment of each of them to Mortgagee in form approved by Mortgagee; and Mortgagee, with or without such specific assignment, may take immediate possession and assume the management of the Premises and have the right to and collect the rentals, issues, profits, and other income therefrom, execute all powers and authority reserved to

Mortgagee may adjust or settle any condemnation claim with the condemning authority. Without the written consent of Mortgagee, no proceeding with respect to the Premises, or any part thereof, shall be commenced or pending condemnation claim or any prospective or pending condemnation settlement of, any proceeding arising out of any insurance will Mortgagee voluntarily settle, or consent to the connection with which the Premises is used. In no event

SECTION 11. Event of Default. The terms "event of default" and "default" shall mean, whenever they are used in this Mortgage and Security Agreement, the occurrence of an event of default under the Note including, without limitation, a default in the performance of any of the terms, conditions or provisions of any one or more of this Mortgage and Security Agreement, the Note, the Guarantees, or any other security agreement or other agreement now or hereafter given by Mortgagee.

SECTION 12. Remedies. Whenever any event of default referred to in Section 11 hereof shall have happened, Mortgagee shall have the right to exercise any one or more of the remedies provided in any one or more of the Note, Guarantees, or either of them, and/or any other document executed in connection herewith and/or any one or more of the following rights and remedies:

(a) Mortgagee shall be entitled to the immediate possession of the Premises, or any portion thereof, together with all rents, issues and profits to be derived therefrom until the indebtedness secured by this Mortgage and Security Agreement is paid in full; provided, however, that Mortgagee shall, in no event, be liable for the failure to procure tenants, to collect rents or to prosecute actions to recover possession of the Project.

(b) Mortgagee shall be entitled to demand and receive immediately from the Mortgagor all leases or assignments for occupancy of the Premises, or any part thereof, together with a separate and specific assignment of each of them to Mortgagee in form approved by Mortgagee, with or without such specific assignment, may take immediate possession and assume the management of the Premises and have the right to and collect the rents, issues, profits, and other income

02 333 001

UNOFFICIAL COPY

8 5 3 3 3 9 6 1

- 18 -

the lessor under the lease terms, including any right or power therein to forfeit or cancel such lease, and modify the provisions of present leases and make new leases or rental contracts in the name of the owner of the Premises, or otherwise, all without waiving or curing any event of default; and the lessees and other occupants of the Premises are hereby authorized and directed, upon demand, to pay to Mortgagee, or any person designated by it for that purpose, all amounts due or to become due from them under the leases and any extensions or renewals thereof or by reason of such occupancy. Mortgagee shall be entitled to disaffirm and/or terminate any or all leases or subleases, including without limitation the Lease.

(c) Mortgagee may from time to time waive its right hereunder to collect rents and other income, but any such waiver shall not prejudice Mortgagee's right to make such collections thereafter so long as and whenever an event of default exists. Mortgagee shall have the right, but shall not be required, to sue for collection of rents, possession of the Premises or other remedy, but shall not be liable for failure to collect rents or other income and shall be held accountable for only such amounts as are actually received. Funds received by Mortgagee shall be applied at its discretion to expenses of collection including reasonable attorney's fees, necessary repairs, taxes and insurance on the Premises, and on account of the indebtedness hereby secured.

(d) Mortgagee shall have the right to immediately foreclose this Mortgage and Security Agreement. The acceptance of one or more payments on the indebtedness, or any other sums secured by this Mortgage and Security Agreement prior to any foreclosure sale, shall not constitute a waiver by Mortgagee of its right to accelerate the maturity of the aforesaid indebtedness and all other sums secured hereby.

(e) Mortgagee shall also have, without limitation, all of the rights and remedies provided by Section 17 hereof.

(f) Mortgagee shall be entitled to the appointment of a receiver for the Premises.

85 333 961

the lessor under the lease terms, including any right or power therein to forfeit or cancel such lease, and modify the provisions of present lease and make new lease or rental contracts in the name of the owner of the premises, or otherwise, all without waiving or cutting any event of default; and the lessee and other occupants of the premises are hereby authorized and directed, upon demand, to pay to Mortgagee, or any person designated by it for that purpose, all amounts due or to become due from them under the lease and any extensions or renewals thereof or by reason of such occupancy. Mortgagee shall be entitled to disaffirm and/or terminate any or all leases or subleases, including without limitation the lease.

(c) Mortgagee may from time to time waive its right hereunder to collect rents and other income, but any such waiver shall not prejudice Mortgagee's right to make such collections thereafter as long as and whenever an event of default exists. Mortgagee shall have the right, but shall not be required, to sue for collection of rents, possession of the premises or other remedy, but shall not be liable for failure to collect rents or other income and shall be held accountable for only such amounts as are actually received. Funds received by Mortgagee shall be applied at its discretion to expenses of collection, including reasonable attorney's fees, necessary repairs, taxes and insurance on the premises, and on account of the indebtedness hereby secured.

(d) Mortgagee shall have the right to immediately foreclose this Mortgage and Security Agreement, the acceptance of one or more payments on the indebtedness, or any other sums secured by this Mortgage and Security Agreement prior to any foreclosure sale, shall not constitute a waiver by Mortgagee of its right to accelerate the maturity of the indebtedness and all other sums secured hereby.

02 22 01

UNOFFICIAL COPY

8 5 3 3 3 9 6 1

- 19 -

(g) Mortgagee shall have the right to assert and enforce any and all other rights and remedies that law and/or equity provide.

Taking of possession of the Premises or the foreclosure of this Mortgage and Security Agreement shall not constitute a waiver by Mortgagee of any event of default hereunder or of its right to accelerate the maturity of the aforesaid indebtedness.

SECTION 13. Waiver. Upon the occurrence of an event of default, to the extent that such rights may then lawfully be waived, neither Mortgagor nor anyone claiming through or under them shall set up, claim or seek to take advantage of any appraisement, valuation, stay, extension or redemption laws now or hereafter in force in order to prevent or hinder the enforcement of this Mortgage, and Mortgagor, for itself and all who claim through or under it, hereby waives, to the extent that it lawfully may do so, the benefit of all such laws. Without limiting the generality of the foregoing, Mortgagor hereby waives any and all rights of redemption from sale, any order, judgment, or decree of foreclosure of this Mortgage and Security Agreement or under any sale pursuant to any statute, order, decree or judgment of any court, on its own behalf or on behalf of each and every person acquiring any interest in or title to the Premises, or any part thereof, subsequent to the date of this Mortgage and Security Agreement.

SECTION 14. No Remedy or Security Exclusive.

(a) No remedy conferred upon or reserved to Mortgagee in this Mortgage and Security Agreement, the Note or any other securing or other agreement given by Mortgagee, is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other such remedy given hereunder, or now or hereafter existing, at law or in equity. Each and every such remedy granted to Mortgagee shall be exercisable by Mortgagee at its option without any obligation of Mortgagee to give notice to any party except as may be expressly required and without regard to the adequacy or inadequacy of any security for the mortgage indebtedness, or the solvency or insolvency of Mortgagor. No delay or omission of Mortgagee to exercise any right or power accruing upon any event of default shall impair any such right and power, or shall be

85 333 961

(v) Mortgages shall have the right to assert and enforce any and all other rights and remedies that law and/or equity provide.

Taking of possession of the Premises or the foreclosure of this Mortgage and Security Agreement shall not constitute a waiver by Mortgagee of any event of default hereunder or of its right to accelerate the maturity of the aforesaid indebtedness.

SECTION 13. Waiver. Upon the occurrence of an event of default, to the extent that such rights may then lawfully be waived, neither Mortgagee nor anyone claiming through or under them shall set up claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereafter in force in order to prevent or hinder the enforcement of this Mortgage, and Mortgagee for itself and all who claim through or under it, hereby waives to the extent that it lawfully may do so, the benefit of all such laws. Without limiting the generality of the foregoing, Mortgagee hereby waives any and all rights of redemption from sale, any order, judgment, or decree of foreclosure of this Mortgage and Security Agreement or under any sale pursuant to any statute, order, decree or judgment of any court, on its own behalf or on behalf of each and every person acquiring any interest in or title to the Premises, or any part thereof, subsequent to the date of this Mortgage and Security Agreement.

SECTION 14. No Remedy or Security Exclusive.

(a) No remedy conferred upon or reserved to Mortgagee in this Mortgage and Security Agreement, the Note or any other security or other agreement given by Mortgagee, is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other such remedy given hereunder, or now or hereafter existing, at law or in equity. Each and every such remedy granted to Mortgagee shall be exercisable by Mortgagee at its option without any obligation of Mortgagee to give notice to any party except as may be expressly required and without regard to the adequacy or inadequacy of any security for the mortgage indebtedness, or the solvency or insolvency of Mortgagee. No delay or omission of Mortgagee to exercise any right or power conferred upon or reserved to

82 333 001

UNOFFICIAL COPY

8 5 3 3 3 9 6 1

- 20 -

construed to be a waiver of any such event of default, or an acquiescence therein. Each power and remedy given by this Mortgage and Security Agreement may be exercised, independently and/or concurrently, from time to time, as often as may be deemed expedient to Mortgagee.

(b) If the sums, or obligations, secured by this Mortgage and Security Agreement are now or hereafter further secured by security agreements, pledges, contracts of guaranty or other security, including without limitation, the Assignment of Rents, Mortgagee may, at its option, exhaust any one or more of such securities and/or the security hereunder, either concurrently or independently, and in such order as Mortgagee shall determine.

SECTION 15. Update of Evidence of Title. In the event of any default herein by Mortgagor, Mortgagee may, at the expense of Mortgagor, procure title insurance or other evidence of title to the Premises with interest upon such expense at the rate of One Percent (1%) plus the Chicago Prime Rate as defined in the Note.

SECTION 16. Security Interest. This Mortgage and Security Agreement shall cover all property now or hereafter affixed to or located upon the Real Estate, which, to the fullest extent permitted by law, shall be deemed fixtures and a part of the Real Estate and any other personal property now or hereafter owned by the Mortgagor, and located at the Real Estate (such fixtures and other personal property, and the personal property described in f. of the granting clause of this Mortgage and Security Agreement, collectively referred to herein as "Collateral"). To the extent any property covered by this Mortgage and Security Agreement consists of rights in action of personal property covered by the Illinois Uniform Commercial Code, such rights are considered part of the Collateral, this Mortgage and Security Agreement constitutes a Security Agreement and is intended to create and Mortgagor does hereby grant to Mortgagee a security interest in the Collateral in favor of Mortgagee. This Mortgage and Security Agreement shall be self-operative with respect to such property, but Mortgagor agrees to execute and deliver on demand such security agreement, financing statement and other instruments as Mortgagee may request in order to impose the lien hereof more specifically upon any of such property. This Mortgage and Security Agreement shall be filed and recorded where records concerning real estate are filed and recorded.

85 333 961

continued to be a waiver of any such event of default, or an acquiescence therein. Each power and remedy given by this Mortgage and Security Agreement may be exercised, independently and/or concurrently, from time to time, as often as may be deemed expedient to Mortgagee.

(c) If the sum, or sums, or obligations, secured by this Mortgage and Security Agreement are now or hereafter further secured by security agreements, pledges, contracts of guaranty or other security, including without limitation, the Assignment of Rent, Mortgagee may, at its option, exhaust any one or more of such securities and/or the security hereunder, either concurrently or independently, and in such order as Mortgagee shall determine.

SECTION 14. Update of Evidence of Title. In the event of any default herein by Mortgagee, Mortgagee may, at the expense of Mortgagee, procure title insurance or other evidence of title to the premises with interest upon such expense at the rate of one percent (1%) plus the Chicago Prime Rate as defined in the Note.

SECTION 15. Security Interest. This Mortgage and Security Agreement shall cover all property now or hereafter situate to or located upon the Real Estate, which, to the fullest extent permitted by law, shall be deemed fixtures and a part of the Real Estate and any other personal property now or hereafter owned by the Mortgagee, and located at the Real Estate (such fixtures and other personal property, and the personal property described in it, of the granting clause of this Mortgage and Security Agreement, collectively referred to herein as "Collateral"). To the extent any property covered by this Mortgage and Security Agreement consists of rights in action or personal property covered by the Illinois Uniform Commercial Code, such rights are considered part of the Collateral. This Mortgage and Security Agreement constitutes a Security Agreement and is intended to create and Mortgagee does hereby grant to Mortgagee a security interest in the Collateral in favor of Mortgagee. This Mortgage and Security Agreement shall be self-operative with respect to such property, but Mortgagee agrees to execute and deliver up

82 333 821

The following provisions of this paragraph shall not limit the generality or applicability of any other provision of this Mortgage but shall be in addition to:

(a) Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof and other than the Permitted Encumbrances;

(b) The Collateral is to be used by the Mortgagor solely for business purposes, and has been or is being installed upon the Premises for Mortgagor's own use or as the equipment and furnishings furnished by Mortgagor, as landlord, or sublandlord, to tenants or subtenants of the Premises.

(c) The Collateral will be kept at 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) and the Collateral may be affixed to the Project Site but will not be affixed to any other real estate.

(d) Mortgagor represents and warrants that only persons having any interest in the Premises are the Mortgagor and the Mortgagee.

(e) Mortgagor represents and warrants that no Financing Statements encumbering any of the Collateral or any proceeds thereof are on file in any public office except pursuant hereto.

(f) Upon the occurrence of any Event of Default hereunder (regardless of whether the Code has been enacted in the jurisdiction where rights or remedies are asserted) and at any time thereafter (such Event of Default not having previously been cured), Mortgagee at its option may declare the obligations secured hereby immediately due and payable, and thereupon Mortgagee shall have the remedies of a secured party under the Code, including without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose so far as Mortgagor can give authority therefor, with or without judicial process, may 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

85 333 961

The following provisions of this paragraph shall not limit the generality or applicability of any other provision of this Mortgage but shall be in addition to

(a) Mortgage (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the collateral, subject to no liens, charges or encumbrances other than the lien hereof and other than the permitted encumbrances

(b) The collateral is to be used by the Mortgagee solely for business purposes, and has been or is being installed upon the Premises for Mortgagee's own use or as the equipment and furnishings furnished by Mortgagee as landlord, or sublandlord, to tenants or subtenants of the Premises.

(c) The collateral will be kept at 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) and the collateral may be affixed to the Project site but will not be affixed to any other real estate.

(d) Mortgagee represents and warrants that only persons having any interest in the Premises are the Mortgagee and the Mortgagee.

(e) Mortgagee represents and warrants that no financing statements encumbering any of the collateral or any proceeds thereof are on file in any public office except pursuant hereto.

(f) Upon the occurrence of any Event of Default hereunder (regardless of whether the Code has been enacted in the jurisdiction where rights or remedies are asserted) and at any time thereafter (such Event of Default not having previously been cured), Mortgagee at its option may declare the obligations secured hereby immediately due and payable, and thereupon Mortgagee shall have the remedies of a secured party under the Code, including without limitation, the right to take immediate and exclusive

02 333 811

the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); 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 satisfaction of Mortgagor's obligations, as provided in the Code. If the Mortgagee should elect to proceed separately as to any such Collateral, the Mortgagor agrees upon Mortgagee's request to make available such Collateral to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to Mortgagee and Mortgagor. Notification of the time and place of any public sale or of the time after which any private sale or other disposition is to be made shall be deemed reasonable and properly given if mailed at least ten (10) calendar days before such public sale, private sale or other disposition in the manner provided in Section 21 hereof. Mortgagor shall not be entitled to redeem any Collateral held or obtained by the Mortgagee hereunder unless it tenders fulfillment of all obligations secured by this Mortgage and Security Agreement as well as an amount sufficient to reimburse Mortgagee for all expenses reasonably incurred by Mortgagor in retaking, holding and preparing the Collateral for disposition, and in arranging for any public or private sale or other disposition, including, without limitations, Mortgagee's reasonable attorney fees and legal expenses. Mortgagee without removal may render the Collateral unusable and dispose of the Collateral and the Mortgaged Premises. Mortgagee may require the Mortgagor to assemble the Collateral and make it available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. Mortgagee will give Mortgagor at least ten (10) calendar 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 certified mail or equivalent, postage pre-paid, to the address of Mortgagor shown in Section 20 hereof, at least ten (10) calendar days before the time of the sale or disposition. Mortgagee may buy any Collateral put up at any public sale if the requirements of the Code are satisfied and may sell any Collateral at private sale if the above notice requirement is satisfied. Any such sale or sales may occur from time to time and each such sale may include all or any part of the Collateral, and at

the Collateral is entitled to real estate, such removal shall be subject to the conditions stated in the Code; 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 Mortgagee's right of redemption in satisfaction of Mortgagee's obligations, as provided in the Code. If the Mortgagee should elect to proceed separately as to any such Collateral, the Mortgagee agrees upon Mortgagee's request to make available such Collateral to Mortgagee for its possession at a place to be designated by Mortgagee, which is reasonably convenient to Mortgagee and Mortgagee. Notification of the time and place of any public sale or of the time after which any private sale or other disposition is to be made shall be deemed reasonable and properly given if mailed at least ten (10) calendar days before such public sale, private sale or other disposition in the manner provided in Section 21 hereof. Mortgagee shall not be entitled to redeem any Collateral held or obtained by the Mortgagee hereunder unless it tenders fulfillment of all obligations secured by this Mortgage and Security Agreement as well as an amount sufficient to reimburse Mortgagee for all expenses reasonably incurred by Mortgagee in retaining, holding and preparing the Collateral for disposition, and in arranging for any public or private sale or other disposition, including, without limitation, Mortgagee's reasonable attorney fees and legal expenses. Mortgagee without removal may render the Collateral unusable and dispose of the Collateral and the Mortgagee Premises. Mortgagee may require the Mortgagee to assemble the Collateral and make it available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. Mortgagee will give Mortgagee at least ten (10) calendar 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 certified mail or equivalent, postage pre-paid, to the address of Mortgagee shown in Section 25 hereof, at least ten (10) calendar days before the time of the sale or disposition. Mortgagee may buy any Collateral put up at any public sale if the requirements of the Code are satisfied and may sell any Collateral at private sale if the above notice requirement is satisfied. Any such sale or sales may occur from time to time and each such

3381

any such time or times may be held as part of and in conjunction with any foreclosure sale of all or any part of the Premises to be sold as one lot if Mortgagee so elects. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling or the like and the reasonable attorney's fees and legal expenses incurred by Mortgagee, shall be applied in satisfaction of the obligations secured hereby. Mortgagee will account to Mortgagor for any surplus realized on such disposition.

(g) The remedies of Mortgagee hereunder are cumulative. 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 Premises upon any foreclosure thereof, so long as any part of the obligations secured hereby remains unsatisfied.

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

SECTION 17. Uniform Commercial Code Security Interest and Financing Statement. This Mortgage and Security Agreement or a reproduction hereof, is sufficient as a financing statement and, as a financing statement, it covers goods which are or are to become fixtures within the Premises. In addition, Mortgagor will execute and deliver to the Mortgagee, upon Mortgagee's request, any financing statements or amendments thereof or continuation statements thereto that the Mortgagee may require to perfect a security interest in the Collateral. The Mortgagor shall pay all costs of filing such instruments. The following information sets forth information required by the Illinois Uniform Commercial Code.

1. Debtor and Address S & H Enterprises Inc.
4010 Winston Drive
Hoffman Estate, Illinois 60195

2. Secured Party: STATE BANK OF INDIA
19 South LaSalle Street
Chicago, Illinois 60603

any such time or times may be held as part of and in conjunction with any foreclosure sale of all or any part of the premises to be sold as one lot or mortgages so effected. The net proceeds realized upon any such disposition after deduction for the expenses of carrying, holding, preparing for sale, selling on the lot and the reasonable attorney's fees and legal expenses incurred by the Mortgages shall be applied in satisfaction of the obligations secured hereby. Mortgages will account to Mortgages for any surplus realized on such disposition.

(d) The remedies of Mortgages hereunder are cumulative. The exercise of any one or more of the remedies provided for herein under the Code shall not be construed as a waiver of any of the other remedies of the Mortgage, including having the collateral deemed part of the premises upon any foreclosure thereof, so long as any part of the obligations secured hereby remains unperfected.

(e) The terms and provisions contained in this paragraph, unless the context otherwise requires, shall have the meaning and be construed as provided in the Code.

Section 17. Uniform Commercial Code Security Interest and Financing Statement. This Mortgage and Security Agreement or a reproduction thereof, is sufficient as a financing statement and, as a financing statement, it covers goods which are or are to become fixtures within the premises. In addition, Mortgages will execute and deliver to the Mortgages, upon Mortgages' request, any financing statements or amendments thereof or continuation statements thereto that the Mortgages may require to perfect a security interest in the collateral. The Mortgages shall pay all costs of filing such instruments. The following information sets forth information required by the Illinois Uniform Commercial Code.

I. Debtor and Address
S & H Enterprises, Inc.
4010 Winston Drive
Northbrook, Illinois 60062

82 333 891

- 3. Maturity date (if any): *Nov 1, 1986*

- 4. This financing statement covers the following types and of property:
 - Fixtures and Equipment
 - Those items described as fixtures on Exhibit "B" and all other items which now are or hereafter may become fixtures in this Mortgage and Security Agreement, and located on the real estate described in Exhibit "A" hereto.

SECTION 18. Business Loan. Mortgagor represents and agrees that the proceeds of the Note shall be used for purposes specified in Paragraph 6004(1)(a) and (c) of Chapter 17 of the Illinois Revised Statutes and the principal obligation secured hereby constitutes a business loan as the term is used in such paragraph.

SECTION 19. Notices. Mortgagor hereby requests that a copy of any notice of default and every notice of sale hereunder be mailed to it as provided by law addressed as follows: 4010 W. Madison Blvd. Hillman - Chats 60141. Mortgagor may, from time to time, change the address to which notices hereunder shall be sent by both request to Mortgagee. Except as otherwise required by statute, every provision for notice, demand or request to Mortgagor herein shall be deemed fulfilled by written notice, demand or request mailed to Mortgagor by registered or certified mail to the address set forth above.

SECTION 20. Late Payment Charges. Should any payment secured hereby be not paid after the same becomes due and payable, it is recognized by Mortgagor that the Mortgagee will incur extra expenses for both the administrative cost of handling delinquent payments and the cost of funds incurred by

Property of Cook County Clerk's Office

85 333 961

3. Maturity date (if any):
Nov 1, 1988

4. This financing statement covers the following types and of property:

Fixtures and equipment
Those items described as
fixtures on Exhibit "B" and
all other items which now are
or hereafter may become
fixtures in this Mortgage and
Security Agreement, and
located on the real estate
described in Exhibit "A"
hereof.

SECTION 16. Business Loan. Mortgagor represents
and agrees that the proceeds of the Note shall be used for
purposes specified in Paragraphs 4(a), (b) and (c) of Chapter
17 of the Illinois Revised Statutes and the principal
obligation secured hereby constitutes a business loan as the
term is used in such paragraph.

SECTION 17. Notices. Mortgagor hereby requests
that a copy of any notice of default and every notice of sale
hereunder be mailed to it as provided by law addressed as
follows: 1110 N. Lake Street, Chicago, Ill. 60642
Mortgagor may, from time to time, change the address to which
notices hereunder shall be sent by both request to Mortgagor.
Except as otherwise provided by statute, every provision for
notice, demand or request to Mortgagor herein shall be deemed
fulfilled by written notice, demand or request mailed to
Mortgagor by registered or certified mail to the address set
forth above.

SECTION 18. Late Payment Charges. Should any
payment secured hereby be not paid after the same becomes due
and payable, it is recognized by Mortgagor that the Mortgagor

82 333 391

Mortgagee after such due date as a result of not having received such payment when due. Because the exact amount of such extra expenses is impossible to ascertain, it is agreed that a charge of One Percent (1%) of the amount of the delinquent payment would be a fair approximation of the administrative expense so incurred by Mortgagee. Therefore, Mortgagor shall, in such event, without further notice, and without prejudice to the right of Mortgagee to collect any other amounts provided to be paid herein or by the Note secured hereby or to declare a default hereunder, pay to Mortgagee as Mortgagee's sole monetary recovery to cover such expenses incurred as a result of delinquent payments, a liquidated damages "late charge" of Five Percent (5%) of the amount of such delinquent payment.

SECTION 21. Nonwaiver. The acceptance by Mortgagee of any sum after the same is due shall not constitute a waiver of the right, either to require prompt payment, when due, of all other sums hereby secured or to declare a default as herein provided. The acceptance by Mortgagee of any sum in an amount less than the sum then due shall be deemed an acceptance on account only and upon condition that it shall not constitute a waiver of the obligation of Mortgagor to pay the entire sum then due, and Mortgagor's failure to pay the entire sum then due shall be and continue to be a default notwithstanding such acceptance of such amount on account, as aforesaid, and Mortgagee shall be at all times thereafter and until the entire sum then due shall have been paid, and notwithstanding the acceptance by Mortgagee thereafter of further sums on account, or otherwise, entitled to exercise all rights in this instrument conferred upon the Mortgagor, or either of them, upon the occurrence of a default, and the right to proceed with a foreclosure of this Mortgage and Security Agreement, shall in no way be impaired, whether any such amounts are received prior or subsequent to the commencement of a foreclosure proceeding or to such notice.

SECTION 22. Waiver of Statute of Limitations. The pleading of any statute of limitations as a defense to any obligation secured by this Mortgage and Security Agreement is hereby waived to the full extent permitted by law.

SECTION 23. Attorney's Fees. In the case of any action or any proceedings to collect any sums payable under the Note, this Mortgage and Security Agreement and any other securing agreement given by Mortgagee, or to protect the lien of Mortgagee, or in any other case permitted by law in which

Mortgagee after such due date as a result of not having received such payment when due. Because the exact amount of such extra expense is impossible to ascertain, it is agreed that a charge of One Percent (1%) of the amount of the delinquent payment would be a fair approximation of the administrative expense so incurred by Mortgagee. Therefore, Mortgagee shall, in such event, without further notice, and without prejudice to the right of Mortgagee to collect any other amounts provided to be paid herein or by the Note secured hereby or to declare a default hereunder, pay to Mortgagee as Mortgagee's sole monetary recovery to cover such expenses incurred as a result of delinquent payments, a liquidated damages "late charge" of Five Percent (5%) of the amount of such delinquent payment.

SECTION 21. Waiver of Statute of Limitations. The acceptance by Mortgagee of any sum after the same is due shall not constitute a waiver of the right, either to require prompt payment, when due, of all other sums hereby secured or to declare a default as herein provided. The acceptance by Mortgagee of any sum in an amount less than the sum then due shall be deemed an acceptance on account only and upon condition that it shall not constitute a waiver of the obligation of Mortgagor to pay the entire sum then due, and Mortgagor's failure to pay the entire sum then due shall be and continue to be a default notwithstanding such acceptance of such amount on account, as aforesaid, and Mortgagee shall be at all times thereafter and until the entire sum then due shall have been paid, and notwithstanding the acceptance by Mortgagee thereafter of further sums on account, or otherwise, entitled to exercise all rights in this instrument conferred upon the Mortgagor, or either of them, upon the occurrence of a default, and the right to proceed with a foreclosure of this Mortgage and Security Agreement, shall in no way be impaired, whether any such amounts are received prior or subsequent to the commencement of a foreclosure proceeding or to such notice.

SECTION 22. Waiver of Statute of Limitations. The pleading of any statute of limitation as a defense to any obligation secured by this Mortgage and Security Agreement is hereby waived to the full extent permitted by law.

SECTION 23. Attorney's Fees. In the case of any action or any proceedings to collect any sums payable under the Note, this Mortgage and Security Agreement and any other

82 333 891

attorney's fees may be collected from Mortgagor or charged upon the Premises, Mortgagor agrees to pay reasonable attorney's fees.

SECTION 24. Time of Essence. Time is of the essence of the performance by Mortgagor of its obligations hereunder.

SECTION 25. Invalidity. Nothing herein or in the Note contained nor any transaction related thereto shall be construed or shall so operate, either presently or prospectively, (a) to require Mortgagor to pay interest at a rate greater than is at any time lawful in such case to contract for but shall require payment of interest only to the extent of such lawful rate, or (b) to require Mortgagor to make any payment or do any act contrary to law. Any provision or provisions of this Mortgage which are unenforceable, invalid or contrary to law, or the inclusion of which would affect the validity or enforceability of this Mortgage, shall be of no force or effect, and in such event each and all of the remaining provisions of this Mortgage shall subsist and remain and be fully effective according to the tenor of this Mortgage the same as though any such invalid, unenforceable or unlawful provision or provisions had never been included in this Mortgage. If it should be held that the interest payable under the Note or otherwise is in excess of the maximum permitted by law, the interest chargeable thereunder (whether included in the face amount or otherwise) shall be reduced to the maximum amount permitted by law, and any excess of the maximum amount permitted by law shall be cancelled automatically and, at the option of Mortgagee, if theretofore or thereafter paid, shall be either refunded to the Mortgagor (without interest accruing with respect thereto from the date of payment to the date of refund), or credited against any disbursement of Note proceeds theretofore made by Mortgagee and unpaid by Mortgagor, or credited against other of the obligations secured hereby, then due and payable or unperformable but unpaid or unperformed, or credited against unpaid interest (including default interest) theretofore accrued under the Note and then due and payable or credited to the principal balance of the Note and applied to the payment of the last maturing installment or installments of the Note (whether or not then due and payable) and not to the payment of interest not then due and payable.

attorney's fees may be collected from Mortgagor or charged upon the Premises, Mortgagor agrees to pay reasonable attorney's fees.

SECTION 24. Time of Essence. Time is of the essence of the performance by Mortgagor of its obligations hereunder.

SECTION 25. Invalidity. Nothing herein or in the Note contained nor any transaction related thereto shall be construed or shall so operate, either presently or prospectively, (a) to require Mortgagor to pay interest at a rate greater than is at any time lawful in such case as contract for but shall require payment of interest only to the extent of such lawful rate or (b) to require Mortgagor to make any payment or do any act contrary to law. Any provision or provisions of this Mortgage which are unenforceable, invalid or contrary to law or the inclusion of which would affect the validity or enforceability of this Mortgage, shall be of no force or effect and in such event each and all of the remaining provisions of this Mortgage shall subsist and remain and be fully effective according to the tenor of this Mortgage the same as though any such invalid, unenforceable or unlawful provision or provisions had never been included in this Mortgage. If it should be held that the interest payable under the Note or otherwise is in excess of the maximum permitted by law, the interest chargeable thereunder (whether included in the face amount or otherwise) shall be reduced to the maximum amount permitted by law and any excess of the maximum amount permitted by law shall be cancelled automatically and, as the option of Mortgagor, if therefor or thereafter paid, shall be either refunded to the Mortgagor (without interest accruing with respect thereto from the date of payment to the date of refund), or credited against any disbursement of Note proceeds thereafter made by Mortgagor and unpaid by Mortgagor, or credited against other of the obligations secured hereby, then due and payable or unperformed but unpaid or unperformed, or credited against unpaid interest (including default interest) therefore secured under the Note and then due and payable or credited to the principal balance of the Note and applied to the payment of the last maturing installment or installments of the Note (whether or not then due and payable) and not to the payment

82 233 001

SECTION 26. Waiver of Defense. No action for the enforcement of the lien hereof or of any provision hereof shall be subject to any defense which would not be good and valid to the party interposing the same in an action at law upon the Note.

SECTION 27. Sale of Separate Parcels; Releases. The right is hereby reserved by Mortgagee from time to time to make partial release or releases of part or parts of the Premises without notice to, or the consent, approval or agreement of, other parties in interest, including junior lienors, which partial release or releases shall not impair in any manner the validity or the priority of this Mortgage and Security Agreement on the portion of the Premises not so released. In case of any foreclosure sale of the Premises, the same may be sold in one or more parcels or portions.

SECTION 28. Inspection of Premises. Mortgagor shall permit Mortgagee or its agents to inspect the Premises from time to time at normal business hours and as frequently as Mortgagee considers reasonable.

SECTION 29. Subrogation. If the proceeds of the Note, or any part thereof, or any amount paid out or advanced by the Mortgagee, be used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior lien or encumbrance upon the Premises, or any part thereof, then the Mortgagee shall be subrogated to such other lien or encumbrance and to any additional security held by the holder thereof and shall have the benefit of the priority of all of same.

SECTION 30. Controlling Law. This Mortgage and Security Agreement, the rights of Mortgagee hereunder and under the Note shall be construed and enforced according to the laws of the State of Illinois.

SECTION 31. Definition of Terms. Unless otherwise expressly stated, the word "Mortgagor" as used herein includes successors in interest of each Mortgagor, and the word "Mortgagee" as used herein includes successors in interest of Mortgagee, including any assigns of the Note. Whenever used herein, the singular number shall include the plural, the plural shall include the singular, any gender used shall be applicable to all genders and the term "Mortgagee" shall include the payee of the Note hereby secured and any holder, transferee or endorsee thereof, whether by operation of law or otherwise.

SECTION 26. Waiver of Defense. No action for the enforcement of the lien hereof or of any provision hereof shall be subject to any defense which would not be good and valid to the party, incurring the same in an action at law upon the Note.

SECTION 27. Sale of Separate Parcels; Release. The right is hereby reserved by Mortgagee from time to time to make partial release or releases of part or parts of the Premises without notice to or the consent, approval or agreement of other parties in interest, including junior liens, which partial release or releases shall not impair in any manner the validity or the priority of this Mortgage and Security Agreement on the portion of the Premises not so released. In case of any foreclosure sale of the Premises, the same may be sold in one or more parcels or portions.

SECTION 28. Inspection of Premises. Mortgagee shall permit Mortgagee or its agents to inspect the Premises from time to time at normal business hours and as frequently as Mortgagee considers reasonable.

SECTION 29. Substitution. If the proceeds of the Note, or any part thereof, or any amount paid out or advanced by the Mortgagee, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Premises, or any part thereof, then the Mortgagee shall be substituted to such other lien or encumbrance and to any additional security held by the holder thereof and shall have the benefit of the priority of all of same.

SECTION 30. Controlling Law. This Mortgage and Security Agreement, the rights of Mortgagee hereunder and under the Note shall be construed and enforced according to the laws of the state of Illinois.

SECTION 31. Definition of Terms. Unless otherwise expressly stated, the word "Mortgagee" as used herein includes successors in interest of each Mortgagee, and the word "Mortgagee" as used herein includes successors in interest of Mortgagee, including any assignee of the Note. Whenever used herein, the singular number shall include the plural, the plural shall include the singular, any gender used shall be applicable to all genders and the term "Mortgagee" shall include the devise of the Note hereby secured and any other

GE 233 301

UNOFFICIAL COPY

3 5 3 3 3 9 6 1

- 28 -

IN WITNESS WHEREOF, Mortgagor and Mortgagee have caused this instrument to be duly executed and attested in their corporate names by their duly authorized officers and Mortgagee and Mortgagor have evidenced their acceptance of this instrument by having caused this instrument to be duly executed in their corporate names and attested, all by its duly authorized officers, all as of the date first above written.

COMMERCIAL NATIONAL BANK OF BERWYN NOT PERSONALLY BUT AS TRUSTEE UNDER TRUST

NO. 850713

[SEAL]

By [Signature]
Its Vice President

Attest:

By [Signature]
Its Assistant Secretary

85 333 961

STATE BANK OF INDIA

[SEAL]

By S. H. Bhargava Dec. 17, 1985
Its President-Manager (Corporate Banking)

Attest:

By [Signature]
Assistant Secretary
Credit Officer

Executed and delivered by Commercial National Bank of Berwyn not in its individual capacity, but solely in the capacity of trustee for the purpose of binding the trust for which it is acting, and subject to the express condition, anything herein to the contrary notwithstanding, that no personal liability or responsibility is assumed by Commercial National Bank of Berwyn, or any of the beneficiaries of the aforesaid

Trust No. 850713

UNOFFICIAL COPY

- 29 -

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On this 17 day of November, 1985, before me, a Notary Public in and for said County and State, personally appeared Mr. S. A. Bhagali, who being known to me to be the Manager (Corporate Banking) of STATE BANK OF INDIA, executed the within and foregoing instrument and who, being by me duly sworn, did depose, acknowledge and say: that he is the Manager (Corporate Banking) of STATE BANK OF INDIA, the Bank described in and which executed the foregoing instrument; that the instrument was executed and attested on behalf of the Bank by authority of its Board of Directors; and that he acknowledges the execution of the instrument to be the voluntary act and deed of the Bank by it voluntarily executed.

IN WITNESS WHEREOF, I have hereunto set by hand and official seal this 17 day of November, 1985.

(SEAL)

S. A. Bhagali

Notary Public

My Commission expires: _____

My Commission Expires Oct 10, 1988

85 333 961

COOK COUNTY CLERK'S OFFICE

UNOFFICIAL COPY

Property of Cook County Clerk's Office

RECEIVED
 COUNTY OF COOK
 CLERK OF SUPERIOR COURT
 CHIEF CLERK
 100 N. LAUREL ST.
 CHICAGO, ILL. 60602
 TELEPHONE 312-743-3000
 FAX 312-743-3001
 WWW.COOKCOUNTYCLERK.COM

UNOFFICIAL COPY

8 5 3 3 9 6 1

STATE OF ILLINOIS)
)
COUNTY OF Cook) ss

I, the undersigned, a Notary Public in and for said County and State, DO HEREBY CERTIFY that John P. Dunne President of Commercial National Bank of Berwyn and John P. Smithwick Vice President of Commercial National Bank of Berwyn and John P. Smithwick Assistant Secretary of Commercial National Bank of Berwyn and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Vice President and Assistant Secretary, respectively, of Commercial National Bank of Berwyn they signed and delivered this instrument, and caused the corporate seal of the corporation to be affixed thereto, pursuant to authority given by the Shareholders of corporation as their free and voluntary act, and as the free and voluntary act and deed of the corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 17th day of December, 1985.

(SEAL)

Barbara S. Jazela

Notary Public

My Commission expires: 9-6-88

85 333 961

Property of Cook County Clerk's Office

STATE OF ILLINOIS
COUNTY OF COOK

I, the undersigned, a Notary Public in and for said County and State, DO HEREBY CERTIFY that John E. Burns, known to me, and John E. Burns, known to me, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Vice President and Assistant Secretary of Commercial National Bank of Chicago they signed and delivered this instrument, and caused the corporate seal of the corporation to be affixed thereto, pursuant to the provisions of the laws of the State of Illinois, and that the said instrument is a true and correct copy of the original thereof as the same appears from the records of said bank.

1900

Notary

UNOFFICIAL COPY

Exhibit 'A'

LOT 2 IN ETHAN ALLEN TERRACE BEING A RESUBDIVISION OF LOT 2 IN BLOCK 4
LOTS 1 AND 2 IN BLOCK 5, LOTS 1 AND 2 IN BLOCK 6 AND LOT 1 IN BLOCK 7
IN MINERS ADDITION TO THE TOWN OF DUNTON BEING A SUBDIVISION OF THE
NORTH 1/2 OF THE SOUTH EAST 1/4 OF THE SOUTH EAST 1/4 OF SECTION 30,
TOWNSHIP 42 NORTH, RANGE 11.

X 355 W. Miners St

Arlington Hts Ill

X 03-30-448-051-0000

K

85 353 961

Property of Cook County Clerk's Office

UNOFFICIAL COPY

100-111-100

Property of Cook County Clerk's Office

LOT 5 IN BLOCK 2 AND LOT 6 IN BLOCK 2 IN MINERS ADDITION TO THE TOWN OF DUNTON BEING A SUBDIVISION OF THE NORTH 1/2 OF THE SOUTH EAST 1/4 OF THE SOUTH EAST 1/4 OF SECTION 30 TOWNSHIP 43 NORTH RANGE 11E

100-111-100

100-111-100