

UNOFFICIAL COPY

85 341 067
3 3 3 4 1 0 3 7

MORTGAGE

3700

THIS MORTGAGE, (the "Mortgage") made as of the 20th of December, 1985 by THE MIDWEST BANK AND TRUST COMPANY, a banking corporation duly authorized to accept and execute trusts and existing under the laws of the State of Illinois not personally but solely as Trustee under the provisions of a deed or deeds in trust duly recorded and delivered to said Trustee in pursuance of a Trust Agreement dated May 14, 1984 and known as Trust No. 84-05-4410, and any additional persons, trustees, corporations or entities executing this Mortgage pursuant to due authorization (collectively the "Mortgagor") to HOWARD SAVINGS AND LOAN ASSOCIATION a corporation existing under the laws of the State of Illinois (the "Mortgagee");

WITNESSETH:

WHEREAS, the Mortgagor has executed and delivered to Mortgagee a Mortgage Note (the "Note") of even date herewith payable to the order of Mortgagee in the principal sum of Nine Hundred Fifty Thousand and NO/100 (\$950,000.00) Dollars bearing interest and payable as set forth in the Note, and due on December 31, 1986.

NOW, THEREFORE, to secure the payment of the principal indebtedness under the Note and interest and premiums, if any, on the principal indebtedness under the Note (and all replacements, renewals and extensions thereof, in whole or in part) according to its tenor and effect, and to secure the payment of all other sums which may be at any time due and owing or required to be paid under the Note or this Mortgage (collectively sometimes referred to herein as "Indebtedness Hereby Secured"); and to secure the performance and observance of all the covenants, agreements and provisions contained in this Mortgage, the Note, or under any other documents evidencing, securing or guaranteeing the Indebtedness Hereby Secured (such documents hereinafter collectively called the "Loan Documents"); and to charge the properties, interests and rights hereinafter described with such payment, performance and observance, and for other valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the Mortgagor DOES HEREBY GRANT, REMISE, RELEASE, ALIEN, MORTGAGE AND CONVEY unto Mortgagee, its successors and assigns forever, the following described property, rights and interests (which are referred to herein collectively as the "Premises"); the portion of the Premises other than the Land are hereby pledged primarily and on a parity with the Land (as hereinafter defined) and not secondarily:

THE REAL ESTATE commonly known as the Western Portion of the Southwest Corner of Harlem Avenue and Circle Drive, Forest Park, Cook County, Illinois and legally described in Exhibit A attached hereto and made a part hereof;

This Document Prepared by
and should be returned to:

Robert A. Carrane
CARRANE, FREIFELD & URUBA
20 North Clark - Suite 2600
Chicago, Illinois 60602
(312) 372-2450 & 346-4034

Mail to:

BOX 333-M

(70) 847 62 0 L

85 341 067

UNOFFICIAL COPY

35041057

TOGETHER WITH all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures, machinery, appliances, equipment, furniture and personal property of every nature whatsoever now or hereafter owned by the Mortgagor, and located in or on, or attached to, or used or intended to be used in connection with or with the operation of the Land, buildings, structures or other improvements, or in connection with any construction being conducted or which may be conducted thereon, including all extensions, additions, improvements, betterments, renewals, substitutions, and replacements to any of the foregoing and all of the right, title and interest of Mortgagor, in and to any such personal property or or fixtures, together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures (the "Improvements");

TOGETHER WITH all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way belonging, relating or appertaining to the Land, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Mortgagor of, in and to the same;

TOGETHER WITH all rents, royalties, issues, profits, revenue, income and other benefits from the Premises to be applied against the Indebtedness Hereby Secured, provided, however, that permission is hereby given to Mortgagor so long as no Default has occurred hereunder, to collect, receive, take, use and enjoy such rents, royalties, issues, profits, revenue, income and other benefits as they become due and payable, but not more than one (1) months in advance thereof;

TOGETHER WITH all right, title and interest of Mortgagor in and to any and all leases now or hereafter on or affecting the Premises whether written or oral and all agreements for use of the Premises (the "Leases"); together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to Mortgagor to collect the rentals under any such Leases;

TOGETHER WITH all fixtures and articles of personal property now or hereafter owned by the Mortgagor and forming a part of or used in connection with the Land or the Improvements or the operation thereof, including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Land or the

85 341 067

Improvements in any manner; it being mutually agreed that all of the aforesaid property owned by the Mortgagor and placed on the Land or the Improvements shall, so far as permitted by law, be deemed to be fixtures, a part of the realty, and security for the Indebtedness Hereby Secured; notwithstanding the agreement and declaration hereinabove expressed that certain articles of property form a part of the realty covered by this Mortgage and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute goods (as said term is used in the Uniform Commercial Code), this instrument shall constitute a security agreement, creating a security interest in such goods, as collateral, in Mortgagee as a secured party and Mortgagor as Debtor, all in accordance with said Uniform Commercial Code as more particularly set forth in Paragraph 14 hereof; and

TOGETHER WITH all proceeds of the foregoing, including without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Premises or proceeds of any sale, option or contract to sell the Premises or any portion thereof; and Mortgagor hereby authorizes, directs and empowers Mortgagee, at its option, on behalf of Mortgagor, or the successors or assigns of Mortgagor, to adjust, compromise, claim, collect and receive such proceeds, to give proper receipts and acquittances therefor, and, after deducting expenses of collection, to apply the net proceeds as a credit upon any portion, as selected by Mortgagee, of the Indebtedness Hereby Secured, notwithstanding the fact that the same may not then be due and payable or that the Indebtedness Hereby Secured is otherwise adequately secured.

TO HAVE AND TO HOLD the Premises, unto the Mortgagee, its successors and assigns, forever, for the purposes and upon the uses herein set forth together with all right to possession of the Premises after the occurrence of any Default as hereinafter defined; the Mortgagor hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State in which the Premises are located.

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

THE MORTGAGOR FURTHER COVENANTS AND AGREES AS FOLLOWS:

1. PAYMENT OF INDEBTEDNESS AND PERFORMANCE OF COVENANTS.

Mortgagor shall (a) pay when due the Indebtedness Hereby Secured; and (b) duly and punctually perform and observe all of the terms, provisions, conditions, covenants and agreements on Mortgagor's part to be performed or observed as provided in the Note, this Mortgage, and the Loan Documents. Mortgagor shall have the privilege of making prepayments on the principal of the Note (in addition to the required payments thereunder) in accordance with the terms and conditions set forth in the Note, but not otherwise.

2. MAINTENANCE, REPAIR, COMPLIANCE WITH LAW, USE, ETC.

Mortgagor shall (a) promptly repair, restore, replace or rebuild any portion of the Improvements which may become damaged or be destroyed whether or not proceeds of insurance are available or sufficient for that purpose; (b) keep the Premises in good condition and repair, free from waste; (c) pay all operating costs of the Premises; (d) complete, within a reasonable time, any building or buildings or other Improvements now or at any time in the process of erection upon the Premises; (e) comply with all requirements of statutes, ordinances, rules, regulations, orders, decrees and other requirements of law relating to the Premises or any part thereof by any federal state or local authority; (f) refrain from any action and correct any condition which would increase the risk of fire or other hazard to the Improvements or any portion thereof; (g) comply with any restrictions and covenants of record with respect to the Premises and the use thereof; and observe and comply with any conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including without limitation zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions that are applicable to the Premises or its use and occupancy; and (h) cause the Premises to be managed in a competent and professional manner. Without the prior written consent of Mortgagee, Mortgagor shall not cause, suffer or permit any (i) material alterations of the Premises except as required by law or ordinance or except for material alterations the cost of which in any case is in an aggregate value of less than Twenty Five Thousand and NO/100 (\$25,000.00) Dollars or except as permitted or required to be made by the terms of any Leases approved by Mortgagee or otherwise permitted under the terms of any of the Loan Documents; (ii) change in the intended use or occupancy of the Premises, including without limitation any change which would increase any fire or other hazard; (iii) change in the identity of the person or firm responsible for managing the Premises; (iv) zoning reclassification with respect to the Premises; (v) unlawful use of, or nuisance to exist upon, the Premises; or (vi) granting of any easements, licenses, covenants, conditions or declarations of use against the Premises, other than use restrictions contained or provided for in Leases as entered into by Mortgagor or in the ordinary course of business, but nothing in said Leases can adversely affect the security of the Mortgagee or its mortgage.

3. LIENS.

A. Prohibition.

Subject to the provisions of Paragraph 4 and 15 hereof, the Mortgagor shall not create or suffer or permit any mortgage, lien, charge or encumbrance to attach to or be filed against the Premises, whether such lien or encumbrance is inferior or superior to the lien of this Mortgage, including mechanic's liens, materialmen's liens, or other claims for lien made by parties claiming to have provided labor or materials with respect to the Premises (which liens are hereby defined as "Mechanic's Liens") and excepting only the lien of real estate taxes and assessments not due or delinquent.

B. Mechanic's Liens Claims .

Notwithstanding the foregoing prohibition against Mechanic's Liens against the Premises, Mortgagor, may in good faith defer payment of Mechanic's Liens claims, provided that Mortgagor

85 341 067

shall have obtained a title insurance endorsement over such Mechanic's Lien insuring Mortgagee against loss or damage by reason of the existence of such Mechanic's Lien or mortgagor shall have deposited or caused to be deposited with Mortgagee at such place as Mortgagee may from time to time in writing appoint, and in the absence of such appointment, then at the place of payment designated in the Note, a sum of money which shall be sufficient in the reasonable judgment of Mortgagee to pay in full such Mechanic's Lien and all interest which might become due thereon, and shall keep on deposit an amount so sufficient at all times, increasing such amount to cover additional interest whenever, in the reasonable judgment of the Mortgagee, such increase is advisable. Mortgagor shall be allowed to deposit in the Mortgagee's association a certificate of deposit to be used as security on any Mechanic's Lien. In case Mortgagor shall fail to maintain or cause to be maintained sufficient funds on deposit as hereinabove provided or shall fail to pay or cause to be paid the amount of the Mechanic's Lien plus any interest finally determined to be due upon the conclusion of any contest of such claims, to the extent such amount exceeds the amount on deposit with Mortgagee, Mortgagee may, at its option, apply the money so deposited in payment of or on account of such Mechanic's Lien, or that part thereof then unpaid together with interest thereon. If the amount of money so deposited shall be insufficient for the payment in full of such Mechanic's Lien, together with all interest thereon, Mortgagor shall forthwith, upon written demand, deposit with Mortgagee a sum which, when added to the funds then on deposit, shall be sufficient to make such payment in full. In the event the contest of the Mechanic's Lien claim is ultimately resolved in favor of the claimant, Mortgagee shall apply the money so deposited in full payment of such Mechanic's Lien or that part thereof then unpaid, together with all interest thereon (provided Mortgagor is not then in Default hereunder) when furnished with evidence satisfactory to Mortgagee of the amount of payment to be made. In the event any contest is resolved in favor of Mortgagor or in the event any surplus remains in the control of Mortgagee after payment of such claim by Mortgagee, as herein provided, then all such funds remaining shall be paid to Mortgagor, provided Mortgagor is not then in Default hereunder.

4. TAXES AND LIENS.

A. Payment.

Subject to the provisions of Paragraph 8, Mortgagor shall pay or cause to be paid when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever levied or assessed against the Premises or any part thereof or any interest therein or any obligation or instrument secured hereby, and all installments thereof (all herein generally called "Taxes"), whether or not assessed against Mortgagor, and Mortgagor shall furnish to Mortgagee receipts therefore upon request on or before the date the same are due; and shall discharge any claim or lien relating to Taxes upon the Premises.

B. Contest.

Mortgagor may, in good faith and with reasonable diligence, contest or cause to be contested the validity or amount of any such Taxes, provided that:

(a) such contest shall have the effect of preventing the collection of the Taxes so contested and the sale or forfeiture of the Premises or any part thereof or interest therein to satisfy the same;

(b) Mortgagor has notified Mortgagee in writing of the intention of Mortgagor to contest the same or to cause the same to be contested before any Tax has been increased by any interest, penalties, or costs; and

(c) Mortgagor has deposited or caused to be deposited with Mortgagee, at such place as Mortgagee may from time to time in writing designate, a sum of money or other security acceptable to Mortgagee that, when added to the monies or other security, if any, deposited with Mortgagee pursuant to Paragraph 8 hereof, is sufficient, in Mortgagee's judgment, to pay in full such contested Tax and all penalties and interest that might become due thereon, and shall keep on deposit an amount sufficient, in Mortgagee's judgment, to pay in full such contested Tax, increasing such amount to cover additional penalties and interest whenever, in Mortgagee's judgment, such increase is advisable.

In the event Mortgagor fails to prosecute such contest with reasonable diligence or fails to maintain sufficient funds on deposit as hereinabove provided, Mortgagee may, at its option, upon ten (10) days notice to Mortgagor, apply the monies and liquidate any securities deposited with Mortgagee, in payment of, or on account of, such Taxes, or any portion thereof then unpaid, including all penalties and interest thereon. If the amount of the money and any such security so deposited is insufficient for the payment in full of such Taxes together with all penalties and interest thereon, Mortgagor shall forthwith, upon demand, either deposit with Mortgagee a sum that, when added to such funds then on deposit, is sufficient to make such payment in full, or, if Mortgagee has applied fund on deposit on account of such Taxes, restore such deposit to an amount satisfactory to Mortgagee. Provided that Mortgagor is not then in default hereunder, Mortgagee shall, if so requested in writing by Mortgagor, after final disposition of such contest and upon Mortgagor's delivery to Mortgagee of an official bill for such Taxes, apply the money so deposited in full payment of such Taxes or that part thereof then unpaid, together with all penalties and interest thereon. Any overplus remaining in the control of Mortgagee shall be paid to Mortgagor, provided Mortgagor is not then in default hereunder.

5. CHANGE IN TAX LAWS.

If, by the laws of the United States of America or of any state or municipality having jurisdiction over Mortgagee, Mortgagor or the Premises, any tax is imposed or becomes due in respect of the issuance of the Note or the recording of this Mortgage, Mortgagor shall pay such tax in the manner required by such law. In the event that any law, statute, rule, regulation, order or court decree has the effect of deducting from the value of the Premises for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes required to be paid by the Mortgagor or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the interest of Mortgagee in the Premises, or the manner of collection of taxes, so as to affect this Mortgage, the Indebtedness Hereby Secured or Mortgagee, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes, or reimburse Mortgagee therefor on demand, unless Mortgagee

85 341 067

determines, in Mortgagee's sole and exclusive judgment, that such payment or reimbursement by Mortgagor is unlawful; in which event the Indebtedness Hereby Secured shall be due and payable within sixty (60) days after written demand by Mortgagee to Mortgagor. Nothing in this Paragraph 5 shall require Mortgagor to pay any income, franchise or excise tax imposed upon Mortgagee, excepting only such which may be levied against the income of Mortgagee as a complete or partial substitute for taxes required to be paid by Mortgagor pursuant hereto, and then only in an amount computed as if the Mortgagee derived no income from any source other than its interest hereunder.

6. INSURANCE COVERAGE.

Mortgagor will insure the Premises against such perils and hazards, and in such amounts and with such limits, as Mortgagee may from time to time require, and in any event will continuously maintain the following described policies of insurance (the "Insurance Policies"):

(a) Casualty insurance against loss and damage by all risks of physical loss or damage, including fire, windstorm, and all other risks covered by the so-called extended coverage endorsement (excluding flood and earthquake) in amounts not less than one percent (100%) of the full insurable replacement value (as determined by the company issuing such insurance policy) of all Improvements from time to time on the premises and bearing a replacement cost agreed amount endorsement;

(b) Comprehensive public liability against death, bodily injury and property damage in an amount not less than One Million and NO/100 (\$1,000,000.00) Dollars.

(c) If the Federal Insurance Administration (FIA) has designated the Premises to be in a special flood hazard area and designated the community in which the Premises are located eligible for sale of subsidized insurance, first and second layer flood insurance when and as available.

(d) Builder's all risk insurance immediately prior to commencement and during all construction on the premises in a amount not less than Six Hundred Thousand and NO/100 (\$600,000.00) Dollars.

Mortgagee may, when in its reasonable judgment any type or amount of insurance is not adequate to protect Mortgagee's interest and Mortgagor fails to correct said inadequacy within 30 days after written notice thereof or when an Insurance policy has otherwise lapsed and upon written notice to Mortgagor, procure and substitute for any and all of the policies of insurance, in such amounts, and carried in such companies, as it may select, and in such event, those policies of insurance shall be included within the definition of "Insurance Policies" set forth herein.

7. INSURANCE POLICIES.

All Insurance Policies shall be in form, with companies and in amounts reasonably satisfactory to Mortgagee. All Insurance Policies required hereunder shall include a standard mortgagee clause in favor of, and with loss payable to, Mortgagee, as well as standard waiver of subrogation endorsements, and shall provide that the coverage shall not be terminated or materially modified without thirty (30) days' advance written notice to Mortgagee. Mortgagor will deliver all Insurance Policies premium prepaid, to Mortgagee and, in case of Insurance Policies about to expire, Mortgagor will deliver renewal or replacement policies not less than thirty (30) days prior to the date of expiration. Insurance Policies maintained by tenants under the Leases may, if in conformity with the requirements of this Mortgage and if approved by Mortgagee, be presented to Mortgagee in satisfaction of Mortgagor's obligation to provide the insurance coverages provided by those Insurance Policies.

8. PROCEEDS OF INSURANCE.

Mortgagor will give Mortgagee prompt notice of any loss or damage to the Premises, and

(a) In case of loss or damage covered by any of the Insurance Policies, so long as Mortgagor shall not be in Default hereunder, Mortgagor shall have the right to settle and adjust any claim under such Insurance Policies after the occurrence of such loss or damage. Upon the failure of Mortgagor to diligently and reasonably prosecute to settlement any and all claims regarding any such loss, Mortgagee (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be) is hereby authorized to settle and adjust any claim under such Insurance Policies without the consent of Mortgagor, and in which case, the expenses incurred by Mortgagee in the adjustment and collection of insurance proceeds shall be so much additional Indebtedness Hereby Secured, and shall be reimbursed to Mortgagee upon demand or may be deducted by Mortgagee from said insurance proceeds prior to any other application thereof.

9. APPLICATION OF PROCEEDS

(a) Upon occurrence of any casualty and provided the Premises are not restored in accordance with Subparagraph 9(b) below, then upon thirty (30) days prior written notice to Mortgagor, Mortgagee may apply the proceeds of any Insurance Policies consequent upon such casualty to reduce the Indebtedness Hereby Secured. In the event Mortgagee elects to apply the proceeds of Insurance Policies to the Indebtedness Hereby Secured and such proceeds do not discharge that indebtedness in full, the entire Indebtedness Hereby Secured shall become immediately due and payable with interest thereon at the Default Rate. (Default Rate shall commence to run at time of notice).

(b) Anything herein to the contrary notwithstanding, provided however that Mortgagor is not otherwise in Default hereunder, upon the occurrence of any casualty which (i) Mortgagor and Mortgagee agree can be repaired, corrected or restored by available insurance proceeds, or (ii) is of such an extent which cannot, in Mortgagee's judgment, be repaired, corrected or restored by available insurance proceeds, but where upon demand by Mortgagee, Mortgagor has deposited or caused to be deposited with Mortgagee or as the Mortgagee directs, within thirty (30) days from the date upon which insurance proceeds are made available, a sum of money which, when aggregated with the available insurance proceeds, shall be sufficient in the judgment of Mortgagee to pay in full the cost of repairing, correcting and restoring the Premises to be at least equal value and of substantially the same character as prior to such loss or damage, then Mortgagor may apply the available insurance proceeds for restoration, repairing, replacement or rebuilding of the Premises, which proceeds or other funds deposited with Mortgagee shall be disbursed pursuant to the provisions of Paragraph 10, except Mortgagor need not comply with said Paragraph 10 if the total cost to repair said damage is equal to or less than Twenty-Five Thousand and NO/100 (\$25,000.00) Dollars.

(c) Whether or not insurance proceeds are made available to Mortgagor, Mortgagor hereby covenants to restore, repair, replace or rebuild the Improvements, to be of at least equal value, and of substantially the same character as prior to such loss or damage, all to be effected in accordance with plans, specifications and procedures to be first submitted to and approved by Mortgagee, and Mortgagor shall pay all costs of such restoring, repairing, replacing or rebuilding.

10. DISBURSEMENT OF INSURANCE PROCEEDS.

Insurance proceeds held by Mortgagee for restoration, repairing, replacement or rebuilding of the Premises shall be disbursed from time to time upon Mortgagee being furnished with (i) evidence reasonably satisfactory to it of the estimated cost of the restoration, repair, replacement and rebuilding, (ii) funds (or assurances reasonably satisfactory to Mortgagee that such funds are available) sufficient in addition to the proceeds of insurance, to complete and fully pay for the restoration, repair, replacement and rebuilding, and (iii) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, plats of survey and such other evidences of cost, payment and performance as Mortgagee may reasonably require and approve. No payment made prior to the final completion of the restoration, repair, replacement and rebuilding shall exceed ninety percent (90%) of the value of the work performed from time to time, as such value shall be determined by Mortgagee (or its agents) in its sole and exclusive judgment; funds other than proceeds of insurance shall be disbursed prior to disbursement of such proceeds; and at all times the undisbursed balance of such proceeds remaining in the hands of Mortgagee, together with funds deposited or irrevocably committed to the satisfaction of Mortgagee by or on behalf of Mortgagor to pay the cost of such repair, restoration, replacement or rebuilding, shall be at least sufficient in the reasonable judgment of Mortgagee to pay the entire unpaid cost of the restoration, repair, replacement or rebuilding, free and clear of all liens or claims for lien. Any surplus which may remain out of insurance proceeds held by Mortgagee after payment of such costs of restoration, repair, replacement or rebuilding shall be paid to Mortgagor.

85 341 667

11. CONDEMNATION AND EMINENT DOMAIN.

Any and all awards (the "Awards") heretofore or hereafter made or to be made to the present, or any subsequent, owner of the Premises, by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Premises, (including any award from the United States government made at any time after (a) the allowance of a claim therefor, (b) the ascertainment of the amount thereto, and (c) the issuance of a warrant for payment thereof), are hereby assigned by Mortgagor to Mortgagee (to the extent of any unpaid amounts due or accrued.) Mortgagor shall have the right to settle and adjust said award. Upon the failure of Mortgagor to diligently and reasonably collect, settle or receive such award, Mortgagee is hereby authorized at its option to do so, in which case, Mortgagee is hereby authorized to give appropriate receipts and acquittances therefor. Mortgagor shall give Mortgagee prompt notice of the actual or threatened commencement of any condemnation or eminent domain proceedings affecting all or any part of the Premises and shall deliver to Mortgagee copies of any and all papers served in connection with any such proceedings. Mortgagor further agrees to make, execute, and deliver to Mortgagee, at any time upon request, free, clear, and discharged of any encumbrance of any kind whatsoever, any and all further assignments and other instruments deemed reasonably necessary by Mortgagee for the purpose of validly and sufficiently assigning all Awards and other compensation heretofore and hereafter made to Mortgagor (to which Mortgagee is entitled hereunder) for any taking, either permanent or temporary, under any such proceeding. If any portion of or interest in the Premises is taken by condemnation or eminent domain, either temporarily or permanently, and if in the reasonable judgment of Mortgagee, the Premises cannot be repaired or restored to an economic unit as hereinafter provided, having at least equivalent value to the Premises as it existed prior to the taking, then, at the option of Mortgagee, the entire Indebtedness Hereby Secured shall, after payment of such award, upon thirty (30) days prior written notice to Mortgagor, immediately become due and payable; and thereupon, after deducting from the Award for such taking all of its expenses incurred in the collection and administration of the Award, including reasonable attorney's fees, Mortgagee shall be entitled to apply the net proceeds toward repayment of such portion of the Indebtedness Hereby Secured as it deems appropriate without affecting the lien of this Mortgage. In the event of any taking of the Premises or any interest in the Premises, and if in the reasonable judgment of the Mortgagee, the Premises can be repaired or restored by the amount of any Awards plus a sum of money, which when aggregated with any Awards, shall be sufficient in the judgment of Mortgagee to restore the Premises as an economic unit having at least equivalent value to the Premises as it existed prior to the taking and Mortgagor, upon demand by Mortgagee, shall have deposited or caused to be deposited with Mortgagee such sum of money within thirty (30) days after payment of any Awards, and provided no Default has occurred and is then continuing, the Award shall be applied to reimburse Mortgagor for the cost of restoration and rebuilding the Premises in accordance with plans, specifications and procedures which must be submitted to and approved by Mortgagee, and, in the event such award is greater than Twenty Five Thousand and NO/100 (\$25,000.00) Dollars, such award shall be disbursed in the same manner as is hereinabove provided for the application of insurance proceeds, provided that any surplus after payment of such costs shall be applied on account of the Indebtedness hereby Secured. If the Award is not applied for reimbursement of such restoration costs, the Award shall be applied against the Indebtedness hereby secured, in such order or manner as Mortgagee shall elect.

85 341 067

12. ASSIGNMENT OF RENTS, LEASES AND PROFITS.

To further secure the Indebtedness Hereby Secured, Mortgagor hereby sells, assigns and transfers unto Mortgagee all of the rents, leases, issues and profits now due and which may hereafter become due under or by virtue of any Leases which may have been heretofore or may be hereafter made, agreed to, or ratified, by Mortgagee or its agents, it being the intention hereby to establish an absolute transfer and assignment of all such Leases, rents and all avails thereunder to Mortgagee. Notwithstanding anything herein to the contrary, Borrowers have the right to enforce said lease and collect rents under the terms of the loan documents as long as there is no default. Mortgagor hereby irrevocably appoints Mortgagee its agent in its name and stead (with or without taking possession of the Premises as provided in Paragraph 18 hereof) to rent, lease or let all or any portion of the Premises to any party or parties at such rental and upon such terms as said Mortgagee shall, in its discretion, determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due or that may hereafter become due under each and every of the Leases, written or oral, or other tenancy existing, or which may hereafter exist on the Premises, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Mortgagee would have upon taking possession pursuant to the provisions of Paragraph 18 hereof. Mortgagor represents and agrees that no rent has been or will be paid by any person in possession of any portion of the Premises for more than one installment in advance by tenants of the Premises, or any portion thereof and that the payment of none of the rents to accrue for any portion of the Premises has been or will be waived, released, reduced discounted or otherwise discharged or compromised by Mortgagor. Mortgagor waives any rights of set off against any person in possession of any portion of the Premises. Mortgagor agrees that it will not assign any of the rents or profits of the Premises. Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the taking of actual possession of the Premises by Mortgagee pursuant to Paragraph 18 hereof. In the exercise of the powers herein granted Mortgagee, no liability shall be asserted or enforced against Mortgagee, all such liability being expressly waived and released by Mortgagor. Mortgagor further agrees to assign and transfer to Mortgagee all future leases upon all or any part of the Premises and to execute and deliver, at the request of Mortgagee, all such further assurances and assignments as Mortgagee shall from time to time reasonably require. Although it is the intention of the parties that the assignment contained in this paragraph shall be a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Mortgagee shall not exercise any of the rights or powers conferred upon it by this paragraph until a default shall exist under this Mortgage which default has not been cured within any applicable notice and grace period. From time to time, at Mortgagee's written request, Mortgagor will furnish Mortgagee with executed copies of each of the Leases and with estoppel letters not more frequently than once a year from each tenant under each of the Leases, which estoppel letters shall be in a form reasonably satisfactory to Mortgagee and shall be delivered within thirty (30) days after Mortgagee's written demand

95 341 067

therefor, however, Mortgagor shall only be required to use its best efforts in obtaining said estoppel letters. In the event Mortgagee requires that Mortgagor execute and record a separate Collateral Assignment of Rents or separate assignment of any of the Leases to Mortgagee, the terms and provisions of those assignments shall control in the event of a conflict between the terms of this Mortgage and the terms thereof.

13. MORTGAGEE'S PERFORMANCE OF MORTGAGOR'S OBLIGATIONS.

In case of Default, Mortgagee, either before or after acceleration of the Indebtedness Hereby Secured or the foreclosure of the lien hereof and during the period of redemption, if any, may, but shall not be required to, make any payment or perform any act herein required of Mortgagor (whether or not Mortgagor is personally liable therefor) in any form and manner deemed expedient to Mortgagee. Mortgagee may, but shall not be required to, complete construction, furnishing and equipping of the Improvements and rent, operate and manage the Premises and such Improvements and pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Premises shall be operational and useable for their intended purposes. All monies paid, and all expenses paid or incurred in connection therewith, including reasonable attorney's fees and other monies advanced by Mortgagee to protect the Premises and the lien hereof, or to complete construction, furnishing and equipping or to rent, construction, furnishing and equipping or to rent, operate and manage the Premises or to pay any such operating costs and expenses thereof or to keep the Premises operational and useable for their intended purpose shall be so much additional Indebtedness Hereby Secured, whether or not the Indebtedness Hereby Secured, as a result thereof, shall exceed the face amount of the Note, and shall become immediately due and payable on demand, and with interest thereon at the Default Rate specified in the Note (herein called the "Default Rate"). Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any Default nor shall the provisions of this Paragraph or any exercise by Mortgagee of its rights hereunder prevent any default from constituting a Default. Mortgagee, in making any payment hereby authorized (a) relating to Taxes, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; (b) for the purchase, discharge, compromise or settlement of any lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted; or (c) in connection with the completion of construction, furnishing or equipping of the Premises or the rental, operation or management of the Premises or the payment of operating costs and expenses thereof, may do so in such amounts and to such persons as Mortgagee may deem appropriate. Nothing contained herein shall be construed to required Mortgagee to advance or expend monies for any purpose mentioned herein, or for any other purpose.

14. SECURITY AGREEMENT

Mortgagor and Mortgagee agree that this Mortgage shall constitute a Security Agreement within the meaning of the Illinois Uniform Commercial Code (hereinafter referred to as the "Code") with respect to (i) any and all sums at any time on deposit for the benefit of Mortgagee or held by the Mortgagee (whether deposited by

85 341 067

or on behalf of the Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage or the Loan Documents (hereinafter "Sums on Deposit") and (ii) any personal property owned by Mortgagor, as set forth in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the Premises or may not constitute a "fixture" (within the meaning of Section 9-313 of the Code), (which property is hereinafter referred to as "Personal Property") and all replacements of such Personal Property, substitutions for such Personal Property, additions to such Personal Property, and the proceeds thereof (but excluding any fixtures, equipment or personal property owned by any tenant or any other third party occupant of the Land or Premises); all of said Personal Property and the replacement, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as the "Collateral"), and that a security interest in and to the Collateral and Sums on Deposit is hereby granted to the Mortgagee, and the Collateral and all of the right, title and interest of Mortgagor therein, as hereby assigned to the Mortgagee, all to secure payment of the Indebtedness Hereby Secured. All of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this Paragraph shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:

(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, other liens and encumbrances benefiting Mortgagee, and no other party.

(b) The Collateral and the proceeds of this loan is to be used by Mortgagor solely for business purposes.

(c) The Collateral will be kept at the Land, and, except for Obsolete Collateral (as hereinafter defined), will not be removed therefrom without the consent of Mortgagor, which consent shall not be unreasonably withheld (being the Secured Party as that term is used in the Code). The Collateral may be affixed to the Land but will not be affixed to any other real estate.

(d) The only persons having any interest in the Premises are Mortgagor, Mortgagee, Mortgagor's beneficiaries, and tenants in possession of the Premises.

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

(f) Upon Default hereunder, 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 may, so far as Mortgagor can give authority therefor, enter (if this can be done without breach of the peace), upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and 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. Mortgagee may render the Collateral unusable without removal and may dispose of the Collateral on the Premises. Mortgagee may require 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 thirty (30) days written notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereby is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified return receipt requested United States mail or equivalent, postage prepaid, to the address of Mortgagor hereinafter set forth at least thirty (30) days before the time of the sale or disposition. Mortgagee may buy at any public sale and if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, Mortgagee may buy at private sale. Any such sale may be held as part of and in conjunction with any foreclosure sale of the Premises and if Mortgagee so elects, the Premises, including the Collateral, may be sold as one lot. 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 against the Indebtedness Hereby Secured in such order or manner as Mortgagee shall select. Mortgagee will account to Mortgagor for any surplus realized on such disposition.

(g) The terms and provisions contained in this Paragraph 14 shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

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

(i) To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover and include all Leases between Mortgagor or its agents, as lessor, and various tenants named therein, as lessee, including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacements of said Leases, together with all of the right, title and interest of Mortgagor, as lessor thereunder, including, without limiting the generality of the foregoing, the present and continuing right to make claim for, collect, receive and receipt for any and all of the rents, income, revenues, issues and profits and moneys payable as

damages or in lieu of the rent and moneys payable as the purchase price of the Premises or any part thereof or of awards or claims for money and other sums of money payable or receivable thereunder howsoever payable, and to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which Mortgagor or any lessor is or may become entitled to do under the Leases.

15. RESTRICTIONS ON TRANSFER.

Mortgagor shall not, without the prior written consent of Mortgagee, create, effect, contract for, consent to, suffer or permit any "Prohibited Transfer" (as defined herein). Any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties, rights or interests which occurs, is granted, accomplished, or effectuated without the prior written consent of Mortgagee shall constitute a "Prohibited Transfer".

(a) the Premises or any part thereof or interest therein, excepting only sales or other dispositions of Collateral (herein called "Obsolete Collateral") no longer useful in connection with the operation of the Premises, provided that prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by Collateral of at least equal value and utility which is subject to the lien hereof with the same priority as with respect to the Obsolete Collateral and except for any personal property not owned by the Mortgagor;

(b) all or any portion of the beneficial interest or power of direction in or to the trust under which Mortgagor is acting, if Mortgagor is a Trustee; (except as provided and permitted in the Note)

16. DEFAULTS.

If one or more of the following events (herein called "Defaults") shall occur:

(a) If any default be made in the due and punctual payment of interest and principal or other monies required under the Note as and when the same is due and payable and any applicable period of grace expressly allowed for the cure of such default in the Note shall have expired;

(b) The occurrence of a Prohibited Transfer;

(c) If default shall continue for thirty (30) days after notice thereof in the due and punctual performance or observance of any agreement or condition herein contained or in any Loan Document; provided however, that Mortgagor's reasonably diligent and good faith efforts to alleviate or cure any non-monetary defaults hereunder or under any other Loan Document shall extend the cure period hereunder or under any other Loan Documents to a reasonable amount of time necessary to cure such defaults, but in no event shall the cure period extend beyond ninety (90) days after notice of default by Mortgagee to Mortgagor;

85 341 067

(d) If (and for the purpose of this Subparagraph 16(d) only, the term Mortgagor shall mean and include not only Mortgagor, but also any beneficiary of a trustee Mortgagor, any general partner in a partnership Mortgagor or in a partnership which is a beneficiary of a trustee Mortgagor, any owner of more than ten percent (10%) of the stock in a corporate Mortgagor or in a corporation which is the beneficiary of a trustee Mortgagor and each person who, as guarantor, co-maker or otherwise, shall be or become liable for or obligated upon all or any part of the Indebtedness Hereby Secured or any of the covenants or agreements contained herein):

(i) Mortgagor shall file a voluntary petition in bankruptcy or for arrangement, reorganization or other relief under any chapter of the Federal Bankruptcy Act or any similar law, state or federal, now or hereafter in effect;

(ii) Mortgagor shall file an answer or other pleading in any proceeding admitting insolvency, bankruptcy, or inability to pay its debts as they mature;

(iii) Within sixty (60) days after the the filing against Mortgagor of any involuntary proceeding under the Federal Bankruptcy Act or similar law, state or federal, now or hereafter in effect, such proceedings shall not have been vacated

(iv) All or a substantial part of Mortgagor's assets are attached, seized, subjected to a writ or distress warrant, or are levied upon, unless such attachment, seizure, writ, warrant or levy is vacated within sixty (60) days,

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

- (vi) Any order appointing a receiver, trustee or liquidator of Mortgagor or all or a major part of Mortgagor's property or the Premises is not vacated within sixty (60) days following the entry thereof;

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

17. FORECLOSURE.

When the Indebtedness Hereby Secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof in accordance with the laws of the State in which the Premises are located and to exercise any other remedies of Mortgagee provided in the Note, this Mortgage, the Loan Documents, or which Mortgagee may have at law, in equity or otherwise. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness Hereby Secured in the decree of sale, all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Premises. All expenditures and expenses of the nature mentioned in this Paragraph, and such other expenses and fees as may be incurred in the protection of the Premises and rents and income therefrom and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceedings affecting this Mortgage, the Note or the Premises, including probate and bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be so much additional Indebtedness Hereby Secured and shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate until paid. The Mortgagor may at any time prior to the entry of a Judgment of Foreclosure and Sale cure any and all amounts in arrears and due under the Mortgage Note by a tender in cash of all such amounts due and this Mortgage shall be thereby reinstated.

18. RIGHT OF POSSESSION.

When the Indebtedness Hereby Secured shall become due, whether by acceleration or otherwise, or in any case in which, under the provisions of this Mortgage, Mortgagee has a right to institute foreclosure proceedings, Mortgagor shall, forthwith upon demand of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to take actual possession of, the Premises or any part thereof, personally or by its agent or attorneys, and Mortgagee, in

its discretion, may enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers, and accounts of Mortgagor or the then owner of the Premises relating thereto, and may exclude Mortgagor, such owner, and any agents and servants thereof wholly therefrom and may, on behalf of Mortgagor or such owner, or in its own name as Mortgagee and under the powers herein granted:

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

(b) cancel or terminate any Lease or sublease of all or any part of the Premises for any cause or on any ground that would entitle Mortgagor to cancel the same;

(c) elect to disaffirm any Lease or sublease of all or any part of the Premises made subsequent to this Mortgage without Mortgagee's prior written consent;

(d) extend or modify any then existing Leases and make new Leases of all or any part of the Premises, which extensions, modifications, and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the loan evidenced by the Note and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor, all persons whose interests in the Premises are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Indebtedness Hereby Secured, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;

(e) make all necessary or proper repairs, decorations, renewals, replacements, alterations, additions, betterments, and improvements in connection with the Premises as may seem judicious to Mortgagee, to insure and reinsure the Premises and all risks incidental to Mortgagee's possession, operation, and management thereof, and to receive all rents, issues, deposits, profits, and avails therefrom; and

(f) apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Premises, to the payment of Taxes, Premiums and other charges applicable to the Premises, or in reduction of the Indebtedness Hereby Secured in such order and manner as Mortgagee shall select.

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

19. RECEIVER.

Upon the filing of a complaint to foreclose this Mortgage or at any time thereafter, the court in which such complaint is filed may appoint a receiver of the Premises. Such

appointment may be made either before or after sale, with such notice as may be required by law, without regard to solvency or insolvency of Mortgagor at the time of application for such receiver, and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not; and Mortgagee hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have the power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collection of such rents, issues and profits, and such receiver shall have all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court may, from time to time, authorize the receiver to apply the net income from the Premises in payment in whole or in part of: (a) the Indebtedness Hereby Secured or the indebtedness secured by a decree foreclosing this Mortgage, or any tax, special assessment, or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to the foreclosure sale; or (b) the deficiency in case of a sale and deficiency.

20. FORECLOSURE SALE.

The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Paragraph 18 hereof; Second, all other items which, under the terms hereof, constitute Indebtedness Hereby Secured additional to that evidenced by the Note, with interest on such items as herein provided; Third, to interest remaining unpaid upon the Note; Fourth, to the principal remaining unpaid upon the Note, and lastly, any overplus to Mortgagor and its successors or assigns, as their rights may appear.

21. INSURANCE DURING FORECLOSURE.

In case of an insured loss after foreclosure proceedings or notice thereof have been instituted, the proceeds of any Insurance Policy, if not applied in rebuilding or restoring the Improvements, as aforesaid, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct. In the case of foreclosure of this Mortgage, the court, in its decree, may provide that the mortgagee's clause attached to each of the casualty Insurance Policies may be cancelled and that the decree creditor may cause a new loss clause to be attached to each of said casualty Insurance Policies making the loss thereunder payable to said decree creditors; and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statutes in such case made and provided, then in every such case, each and every successive redeemer may cause the preceding loss clause attached to each casualty Insurance Policy to be cancelled and a new loss payable clause to be attached thereto, making the loss thereunder payable to such redeemer. In the event of foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all Insurance Policies to the purchaser at the sale, or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the Insurance Policies without credit or allowance to Mortgagor for prepaid premiums thereon.

85 341 067

22. WAIVER OF RIGHT OF REDEMPTION AND OTHER RIGHTS.

To the full extent permitted by law, Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner whatsoever claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor claim, take or insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale or sales claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date hereof, it being the intent hereof that any and all such right of redemption of Mortgagor and of all other persons, are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Mortgagor agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Mortgagee, but will suffer and permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note.

23. CONSTRUCTION LOAN AGREEMENT PROVISIONS.

Mortgagor agrees as follows:

A. Loan Agreement.

Any improvements to be erected on the Premises shall be completed in accordance with the provisions of the Loan Agreement described in the Construction Loan Agreement of even date hereof (the "Loan Agreement"), which is hereby incorporated into this Mortgage to the same extent as if fully set forth herein.

B. Defaults and Remedies.

The occurrence of any event of default under the Loan Agreement not cured within the time, if any, permitted therein shall constitute a default under this Mortgage, entitling the holder of the Note to all of the rights and remedies conferred upon such holder by the terms of this Mortgage or by law. Upon default by Mortgagor in any of the terms, provisions, or covenants of the Loan Agreement, after due notice given if required thereby, the holder of the Note may, but need not, declare the entire unpaid principal indebtedness of any and all interest accrued under the Note to be immediately due and payable, without notice to Mortgagor.

C. Advances Secured.

Any advances made and indebtedness arising and accruing under the Loan Agreement, from time to time, whether or not the total amount thereof may exceed the face amount of the Note, shall be secured by this Mortgage and shall be payable on demand with interest at the Default Rate (as defined in the Note).

D. Conflicting Provisions.

In the event of a direct conflict between the provisions of this Mortgage or the Note and those of the Loan Agreement (including without limitation provisions relating to notice or waiver thereof), those of the Loan Agreement shall govern and prevail over those of this Mortgage and the Note. The Loan Documents shall be construed, to the extent practicable, to give full meaning and effect to each provision of a Loan Document.

24. RIGHTS CUMULATIVE.

Each right, power and remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter provided by law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient to Mortgagee. The exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein. Except as otherwise specifically required herein, notice of the exercise of any right, remedy or power granted to Mortgagee by this Mortgage is not required to be given.

25. SUCCESSORS AND ASSIGNS.

A. Holder of the Note.

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

B. Covenants Run With Land; Successor Owners.

All of the covenants of this Mortgage shall run with the Land and be binding on any successor owners of the Land. In the event that the ownership of Premises or any portion thereof

becomes vested in a person or persons other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest of Mortgagor with reference to this mortgage and the Indebtedness Hereby Secured in the same manner as with Mortgagor without in any way releasing or discharging Mortgagor from its obligations hereunder. Mortgagor will give immediate written notice to Mortgagee of any conveyance, transfer or change of ownership of the Premises, but nothing in this Paragraph shall vary or negate the provisions of Paragraph 16 hereof.

26. EFFECT OF EXTENSIONS AND AMENDMENTS.

If the payment of the Indebtedness Hereby Secured, or any part thereof, be extended or varied, or if any part of the security or guaranties therefor be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability, and the lien and all provisions hereof, shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding any such extension, variation or release. Any person, firm or corporation taking a junior mortgage, or other lien upon the Premises or any part thereof or any interest therein, shall take the said lien subject to the rights of Mortgagee to amend, modify, extend or release the Note, this Mortgage or any of the Loan Documents, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien.

27. FUTURE ADVANCES.

At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures as part of the Indebtedness Hereby Secured the payment of any and all loan commissions, service charges, liquidated damages, reasonable attorney's fees, expenses and advances due to or incurred by Mortgagee in connection with the Indebtedness Hereby Secured, all in accordance with the Note, this Mortgage, and the Loan Documents.

28. EXECUTION OF SEPARATE SECURITY AGREEMENTS, FINANCING STATEMENTS, ETC., ESTOPPEL LETTER.

Mortgagor will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, conveyances, notes, mortgages, security agreements, financing statements and assurances as Mortgagee shall reasonably require for the better assuring, conveying, mortgaging, assigning and confirming unto Mortgagee all property mortgaged hereby or property intended so to be, whether now owned by Mortgagor or hereafter acquired. Without limitation of the foregoing, Mortgagor will assign to Mortgagee, upon written request, as further security for the Indebtedness Hereby Secured, its interests in all agreements, contracts, licenses and permits affecting the Premises, such assignments to be made by instruments reasonably satisfactory to Mortgagee, but no such assignment shall be construed as a

85
341
067

consent by the Mortgagee to any agreement, contract, license or permit or to impose upon Mortgagee any obligations with respect thereto. Once a year, Mortgagor will furnish to Mortgagee, within ten (10) days after Mortgagee's written request, a written and duly acknowledged statement of the amount due under the Note and under this Mortgage and whether any alleged offsets or defenses exist against the Indebtedness Hereby Secured.

29. SUBROGATION.

If any part of the Indebtedness Hereby Secured is 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 Mortgagee shall be subrogated to the rights of the holder thereof in and to such other lien or encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.

30. OPTION TO SUBORDINATE.

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

31. GOVERNING LAW.

The place of negotiation, execution, and delivery of this Mortgage and the location of the Premises being the State of Illinois, this Mortgage shall be construed and enforced according to the laws of the State, without reference to the conflicts of law principles of that State.

32. BUSINESS LOAN.

Mortgagor certifies and agrees that the proceeds of the Note will be used for the purposes specified in Illinois Revised Statutes, Chapter 17, Section 6404, and that the principal obligation secured hereby constitutes a "business loan" coming within the definition and purview of said section.

33. INSPECTION OF PREMISES AND RECORDS.

Mortgagee and its representatives and agents shall have the right to inspect the Premises and all books, records and documents relating thereto at all reasonable times and upon reasonable notice, and access thereto shall be permitted for that purpose. Mortgagor shall keep and maintain full and correct books and records showing in detail the income and expenses of the Premises and, within ten (10) days after written demand therefor by Mortgagee, shall permit Mortgagee or its agents to examine such books and records and all supporting vouchers and data at any time and from time to time at its offices at the address hereinafter identified or at such other location as may be mutually agreed upon.

34. FINANCIAL STATEMENTS.

If required by Mortgagee, Mortgagor will, within ninety (90) days after the end of each fiscal year of Mortgagor, furnish to Mortgagee copies of its annual report statements prepared in accordance with generally accepted principles of accounting consistently applied.

35. TIME IS OF THE ESSENCE.

Time is of the essence of the Note, this Mortgage, and all of the Loan Documents.

36. CAPTIONS AND PRONOUNS.

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

37. RELEASE

Mortgagee will release one of two Certificates of Deposits (both in the amount of \$100,000.00) which are pledged as additional collateral and security for the Loan upon the issuance to Mortgagor of an end-loan permanent financing commitment regarding the Premises, provided however such end-loan commitment is first approved by Mortgagee in its unconfined discretion.

38. NOTICES.

Any notice, demand or other communication which any party hereto may desire or may be required to give to any other party hereto shall be in writing, and shall be deemed given if and when personally delivered, or on the third business day after being deposited in United States registered or certified mail, return receipt requested, postage prepaid, addressed to a party at its address set forth below, or to such other address as the party to receive such notice may have designated to all other parties by notice in accordance herewith:

(a) If to Mortgagee:

HOWARD SAVINGS AND LOAN ASSOCIATION
1700 North Milwaukee
Glenview, Illinois 60025
Attn: John G. Prodromos

UNOFFICIAL COPY

with copy to:

CARRANE, FREIFELD & URUBA
20 North Clark - Suite 2600
Chicago, Illinois 60602
Attn: Robert A. Carrane

(b) If to Mortgagor:

THE MIDWEST BANK AND TRUST COMPANY
1606 N. Harlem Avenue
Elmwood Park, Illinois
Attn: Land Trust Department

with a copy to:

Bern Grizaffi and Anita Grizaffi
c/o BERN REALTY
7765 West North Avenue
River Forest, Illinois 60305

and

George Breyer
1443 North Astor
Chicago, Illinois 60610

Except as otherwise specifically required herein, notice of the exercise of any right, power or option granted to Mortgagee by this Mortgage is not required to be given.

39. TRUSTEE'S EXCULPATORY CLAUSE.

This Mortgage is executed by the undersigned, not personally, but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said Trustee hereby warrants in its individual capacity that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on said Trustee personally to pay the Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant, representation, agreement or condition either express or implied herein contained, or with regard to any warranty contained in this Mortgage except the warranty made in this Paragraph, all such liability, if any, being expressly waived by Mortgagee and by every person now or hereafter claiming any right or security hereunder; provided that nothing herein contained shall be construed in any way so as to affect or impair the lien of this Mortgage or Mortgagee's right to the foreclosure thereof, or construed in any way so as to limit or restrict any of the rights and remedies of Mortgagee in any such foreclosure proceedings or other enforcement of the payment of the Indebtedness Hereby Secured out of and from the security given therefor in the manner provided herein, or construed in any way so as to limit or restrict any of the rights and remedies of Mortgagor under any other document or instrument evidencing, securing or guarantying the Indebtedness Hereby Secured.

MORTGAGE

The Land

Lots 3, 4 and 5 in Block 1 in Railroad Addition to Harlem in the Southeast Quarter of Section 12, Township 39 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois.

Commonly known as: The Western Portion of the Southwest Corner of Harlem Avenue and Circle Drive Forest Park, Cook County, IL

Permanent Tax I.D. No.

15 12 405 002 - N 1/2 of lot 4
 15 12 405 003 - lot 4 + S 1/2 of 5
 15 12 405 004 lot 3
 15 12 405 019 N 66' of N 1/2 of lot 5
 15 12 405 020 S 40' of N 1/2 of lot 5
 BB