

UNOFFICIAL COPY

COOK COUNTY ILLINOIS
FILED FOR RECORD

1986 NOV 17 AM 10 48

86543816

86543816

35⁰⁰

(Above space for recording information)

THIS INSTRUMENT PREPARED BY:)	John T. Huntington
)	Suite 101
)	210 W. 22nd Street
AFTER RECORDING, MAIL TO:)	Oak Brook, Illinois 60521

MORTGAGE

Us. S. Ct. - W

THIS MORTGAGE, made this 24th day of October, 1986, by BANK OF LANSING, a corporation organized under the laws of the State of Illinois, not individually, but as Trustee under the provisions of a Trust Agreement dated December 14, 1982 and known as Trust 2040-463 (herein, whether one or more, and if more than one jointly and severally, called the "Mortgagor"), whose address is:

3115 Ridge Road, Lansing, Illinois 60438

to the NORTHERN TRUST BANK/OAK BROOK, an Illinois banking corporation, whose address is 105 Oakbrook Center Mall, Oak Brook, Illinois 60521 (herein, together with its successors and assigns, including each and every holder from time to time of the Note hereinafter defined, called the "Mortgagee")

WITNESSES:

WHEREAS, Mortgagor is or will become the owner and holder of fee simple title in and to all of the following described real estate located in the County of Cook, State of Illinois, which real estate forms a portion of the premises hereinafter described:

Lots 1, 2 and the North 26 feet of Lots 3 and 4 in Lipinski's Subdivision of part of Fractional 1/4 of Section 23, Township 36 North, Range 15, East of the Third Principal Meridian, in Cook County, Illinois

Permanent Tax No.: 30-29-200-015-0000 (Volume 227)

Commonly known as: 117-121 W. 167th Street
Calumet City, Illinois 60409

1 M 880807

86543816

UNOFFICIAL COPY

3 4 3 3 1 6

AND WHEREAS, Mortgagor has, concurrently herewith, executed and delivered to Mortgagee a note (the "Note"), of even date herewith, payable to the order of Mortgagee in the amount of

FIVE HUNDRED FIFTY THOUSAND AND NO/100S

UNITED STATES DOLLARS (\$550,000.00*****) bearing interest at the rate specified therein, due in installments and accrued as provided therein, with the unpaid balance and any accrued interest

being due and payable on December 1, 1991, and otherwise in the form of Note attached hereto as Exhibit "A" and incorporated herein by reference and made a part hereof.

NOW, THEREFORE, to secure the payment of the principal of and interest on the Note according to its tenor and effect, and to secure the payment of all other sums which may at any time be due and owing or required to be paid as herein provided (the "Indebtedness Hereby Secured"), and the performance and observance of all of the covenants, agreements and provisions herein and in the Note contained, and in consideration of the premises and of the extension of credit by the Mortgagee to the Mortgagor, as evidenced by the above described Note, and for other good and valuable considerations, the receipt and sufficiency whereof are hereby acknowledged by the Mortgagor, the Mortgagor DOES HEREBY GRANT, DEMISE, RELEASE, ALIEN, MORTGAGE and CONVEY unto Mortgagee, its successors and assigns forever, the real estate above described (which, together with the property mentioned in the next succeeding paragraphs hereto, is called the "Premises");

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

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

TOGETHER with all buildings and improvements of every kind and description now or hereafter erected or placed thereon and all materials intended for construction, reconstruction, alteration and repairs of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the Premises immediately upon the delivery thereof to the aforesaid real estate, and all fixtures and articles of personal property now or hereafter owned by Mortgagor and attached to or forming a part of or used in connection with the aforesaid real estate or the operation and convenience of any building or buildings and improvements located thereon, including, but without limitation, all furniture, furnishings, equipment, apparatus, machinery, motors, elevators, fittings, screens, awnings, partitions, carpeting, curtains and drapery hardware used or useful in the operation and/or convenience of the aforesaid real property or improvements thereon and all plumbing, electrical, heating, lighting, ventilating, refrigerating, incineration, air-conditioning and sprinkler equipment, systems, fixtures and conduits (including, but not limited to, all furnaces, boilers, plants, units, condensers, compressors, ducts, apparatus and hot and cold water equipment and system), and all renewals or replacements thereof or articles in substitution therefor, in all cases whether or not the same are or shall be attached to said building or buildings in any manner, it being mutually agreed that all of the aforesaid property owned by Mortgagor and placed on the aforesaid realty shall, so far as permitted by law, be deemed to be

8816

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, all in accordance with said Illinois Uniform Commercial Code as more particularly set forth in Paragraph 17 hereof;

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

TOGETHER with all awards and other compensation heretofore or hereafter to be made to the present and all subsequent owners of the Premises for any taking by eminent domain, either permanent or temporary, of all or any part of the Premises or any easement or appurtenance thereof, including severance and consequential damage and change in grade of streets, which said awards and compensation are hereby assigned to Mortgagee, and Mortgagor hereby designates Mortgagee as its agent and directs and empowers Mortgagee, at the option of the Mortgagee, on behalf of Mortgagor, or the successors or assigns of Mortgagor, to adjust or compromise the claim for any award and to collect and receive the proceeds thereof, to give proper receipts and acquittances therefor, and, after deducting expenses of collection, to apply the net proceeds as a credit upon any portion, as selected by Mortgagee, of the Indebtedness Hereby Secured, notwithstanding the fact that the amount owing thereon may now then be due and payable or that the indebtedness is otherwise adequately secured, all subject to the provisions of Paragraph 10 hereof.

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

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

THE MORTGAGOR COVENANTS AND AGREES AS FOLLOWS:

1. Payment of Indebtedness.

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

2. Maintenance, Repair, Restoration, Liens, etc.

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

3. Other Liens.

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

4. Taxes.

The Mortgagor shall pay before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "Taxes"), whether or not assessed against the Mortgagor, if applicable to the Premises or any interest therein, or the Indebtedness Hereby Secured, or any obligation or agreement secured hereby; and Mortgagor shall, upon written request, furnish to the Mortgagee duplicate receipts therefor. The Mortgagor shall pay in full under protest in the manner provided by statute, any Taxes which the Mortgagor may desire to contest; provided, however, that if determent of payment of any such Taxes is required to conduct any contest or review, the Mortgagor shall deposit with the Mortgagee the full amount thereof, together with an amount equal to the estimated interest and penalties thereon during the period of contest, and in any event, shall pay such Taxes, notwithstanding such contest, if in the opinion of the Mortgagee the Premises shall be in jeopardy or in danger of being forfeited or foreclosed; and if the Mortgagor shall not pay the same when required to do so, the Mortgagee may do so and may apply such deposit for the purpose. In the event that any law or court decree has the effect of deducting from the value of the land for the purpose of taxation any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the Taxes or liens herein required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the interest of the Mortgagee in the Premises, or the manner of collection of Taxes, so as to affect this Mortgage or the Indebtedness Hereby Secured or the Mortgagee, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such Taxes, or reimburse the Mortgagee therefor on demand, unless such payment or reimbursement by Mortgagor is unlawful, in which event the Indebtedness Hereby Secured shall be

86543816

due and payable within thirty (30) days after written demand by Mortgagee to Mortgagor. Nothing in this paragraph 4 contained shall require the Mortgagor to pay any income, franchise or excise tax imposed upon the Mortgagee, excepting only such which may be levied against such income expressly as and for a specific substitute for Taxes pertaining to the Premises, and then only in an amount computed as if the Mortgagee derived no income from any source other than its interest hereunder.

5. Insurance Coverage.

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

- (a) Insurance against loss or damage to the Improvements by fire and any of the risks covered by insurance of the type now known as "all risk", in an amount not less than the full replacement cost of the Improvements (exclusive of the cost of excavations, foundations and footings below the lowest basement floor) and with not more than \$1,000.00 deductible from the loss payable for any casualty. The policies of insurance carried in accordance with this subparagraph shall contain the "Replacement Cost Endorsement";
- (b) Public liability against bodily injury and property damage in any way arising in connection with the Premises with such limits as the Mortgagee may require, and in any event not less than \$1,000,000.00 combined single limit coverage;
- (c) Rental or business interruption insurance in amounts sufficient to pay during any period of up to one (1) year in which the Premises may be damaged or destroyed, all amounts required herein to be paid by the Mortgagor;
- (d) During the course of any construction or repair of the Improvements on the premises, comprehensive public liability insurance (including coverage for elevators and escalators, if any, on the premises and, if any construction of new Improvements occurs after execution of this Mortgage, completed operations coverage for two years after construction of the Improvements has been completed) carried on an "occurrence basis" against claims for personal injury, including, without limitation, bodily injury, death or property damage occurring on, in or about the premises and the adjoining streets, sidewalks and passageways; such insurance to afford immediate minimum protection to a limit of not less than required by Mortgagee with respect to personal injury or death to any one or more persons or damage to property;
- (e) During the course of any construction or repair of Improvements on the premises, worker's compensation insurance (including employer's liability insurance, if requested by Mortgagee) for all employees of Mortgagor engaged on or with respect to the premises in such amount as is reasonably satisfactory to Mortgagee, or, if such limits are established by law, then in such amounts;
- (f) During the course of any construction or major repair of Improvements on the premises, builder's risk insurance (completed value form) against "all risks of physical loss", including installation floater coverage and collapse and transit coverage, during construction of such Improvements, with deductibles not to exceed \$1,000.00, in nonreporting form, covering the total value of work performed and equipment, supplies and materials furnished. Said policy of insurance shall contain the

"permission to occupy upon completion of work or occupancy" endorsement;

- (g) If any such equipment is ever located upon the premises, boiler and machinery insurance covering pressure vessels, air tanks, boilers, machinery, pressure piping, heating, air conditioning and elevator equipment and insurance against loss of occupancy or use arising from any such breakdown, in such amounts as are reasonably satisfactory to Mortgagee;
- (h) Insurance against loss or damage to the personal property by fire and other risks covered by insurance of the type now known as "all risk";
- (i) Flood insurance, if available and required under the National Flood Insurance Act of 1968, as amended; and
- (j) Such other insurance, and in such amounts as are customarily carried upon like premises in the community and as may from time to time be required by Mortgagee against the same or other hazards.

6. Insurance Policies.

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

7. Deposits for Taxes and Insurance Premiums.

In order to assure the payment of Taxes and insurance premiums payable with respect to the Premises as when the same shall become due and payable:

- (a) The Mortgagor shall, if hereinafter required by Mortgagee, deposit with the Mortgagee on the first day of each and every month, commencing with the date the first payment of interest and/or principal and interest shall become due on the Indebtedness Secured Hereby, an amount equal to:
 - (i) One-twelfth (1/12) of the Taxes next to become due upon the Premises; provided that in the case of the first such deposit, there shall be deposited in addition an amount which, when added to the aggregate amount of monthly sums next payable under this subparagraph (i), will result in a sufficient reserve to pay the Taxes next becoming due one month prior to the date when such Taxes are, in fact, due and payable, plus
 - (ii) One-twelfth (1/12) of the annual premiums on each policy of insurance upon the Premises; provided that in the case of the first such deposit, there shall be deposited in addition an amount which, when added to the aggregate amount of monthly sums next payable under this subparagraph (ii), will result in a sufficient reserve to pay the insurance premiums next becoming due one month prior to the date when such insurance premiums are, in fact, due and payable;

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

- (b) The aggregate of the monthly Tax and Insurance Deposits, together with monthly payments of interest and/or principal and interest payable on the Note shall be paid in a single payment each month, to be applied prior to default to the following items in the order stated:
- (i) Taxes and insurance premiums;
 - (ii) Indebtedness Hereby Secured other than principal and interest on the Note;
 - (iii) Interest on the Note;
 - (iv) Amortization of the principal balance of the Note.
- (c) The Mortgagee will, out of the Tax and Insurance Deposits, upon the presentation to the Mortgagee by the Mortgagor of the bills therefor, pay the insurance premiums and Taxes or will, upon the presentation of receipted bills therefor, reimburse the Mortgagor for such payments made by the Mortgagor. If the total Tax and Insurance Deposits on hand shall not be sufficient to pay all of the Taxes and insurance premiums when the same shall become due, then the Mortgagor shall pay to the Mortgagee on demand any amount necessary to make up the deficiency. If the total of such Deposits exceeds the amount required to pay the Taxes and insurance premiums, such excess shall be credited on subsequent payments to be made for such Deposits.
- (d) In the event of a default in any of the provisions contained in this Mortgage or in the Note, the Mortgagee may, at its option, without being required so to do, apply any Tax and Insurance Deposits on hand to any of the Indebtedness Hereby Secured, in such order and manner as the Mortgagee may elect. When the Indebtedness Hereby Secured has been fully paid, then any remaining Tax and Insurance Deposits shall be paid to the Mortgagor. All Tax and Insurance Deposits are hereby pledged as additional security for the Indebtedness Hereby Secured, and shall be held by the Mortgagee to be irrevocably applied for the purposes for which made as herein provided, and shall not be subject to the direction or control of the Mortgagor.
- (e) Notwithstanding anything herein to the contrary, the Mortgagee, and its loan servicing agent, or their successors and assigns, shall not be liable for any failure to apply to the payment of Taxes and insurance premiums any amounts deposited as Tax and Insurance Deposits unless the Mortgagor, while no default exists hereunder, shall have requested the Mortgagee in writing to make application of such Deposits on hand to the payment of the particular Taxes or insurance premiums for the payment of which such Deposits were made, accompanied by the bills thereof.

8. Proceeds of Insurance.

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

- (a) In case of loss covered by policies of insurance, the Mortgagee (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be) is hereby authorized at its option either (i) to settle and adjust any claim under such policies without the consent of the

Mortgagor, or (ii) allow the Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss; provided that the Mortgagor may itself adjust losses aggregating not in excess of TEN THOUSAND UNITED STATES DOLLARS (\$10,000) if such adjustment is carried out in a competent and timely manner, and provided that in any case the Mortgagee shall, and is hereby authorized to, collect and give receipt for any such insurance proceeds; and the expenses incurred by the Mortgagee in the adjustment and collection of insurance proceeds shall be so much additional Indebtedness Hereby Secured, and shall be reimbursed to the Mortgagee upon demand.

- (b) In the event of any insured damage to or destruction of the Premises or any part thereof (herein called an "Insured Casualty"), and if, in the reasonable judgment of the Mortgagee, the Premises can be restored to an economic unit not less valuable than the same was prior to the Insured Casualty and adequately securing the outstanding balance of the Indebtedness Hereby Secured, then, if no Event of Default, as hereinafter defined, shall have occurred and be then continuing and the Mortgagor shall not be in default hereunder, the proceeds of insurance shall be applied to reimburse the Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Premises or part thereof subject to Insured Casualty, as provided for in Paragraph 8 hereof; and the Mortgagor hereby covenants and agrees forthwith to commence and diligently to prosecute such restoring, repairing, replacing or rebuilding; provided, always, that the Mortgagor shall pay all costs of such restoring, repairing, replacing or rebuilding in excess of the net proceeds of insurance made available pursuant to the terms hereof.
- (c) Except as provided in subsection (b) of this Paragraph 8, the Mortgagee may apply the proceeds of insurance consequent upon any Insured Casualty upon the Indebtedness Hereby Secured, in such order or manner as the Mortgagee may elect; provided, however, that such application of proceeds shall not be considered a voluntary prepayment of the Note which would require the payment of any prepayment premium or penalty.
- (d) In the event that proceeds of insurance, if any, shall be made available to the Mortgagor for the restoring, repairing, replacing or rebuilding of the Premises, the Mortgagor hereby covenants to restore, repair, replace or rebuild the same, to be of at least equal value and of substantially the same character as prior to such damage or destruction, all to be effected in accordance with plans and specifications to be first submitted to and approved by the Mortgagee.

9. Disbursement of Insurance Proceeds.

In the event the Mortgagor is entitled to reimbursement out of insurance proceeds held by the Mortgagee, such proceeds shall be disbursed from time to time upon the Mortgagee being furnished with (i) evidence satisfactory to it of the estimated cost of completion of the restoration, repair, replacement and rebuilding, (ii) funds (or assurances satisfactory to the Mortgagee that such funds are available) sufficient in addition to the proceeds of insurance to complete the proposed restoration, repair, replacement and rebuilding, and (iii) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, plats or survey and such other evidences of cost, payment and performance as the Mortgagee may reasonably require and approve; and the Mortgagee may, in any event, require that all plans and specifications for such restoration, repair, replacement and rebuilding be submitted to and approved by the Mortgagee prior to commencement of work. No payment made prior to the final completion of the restoration, repair, replacement and rebuilding shall exceed ninety (90%) percent of the value of the work

performed from time to time; funds other than proceeds of insurance shall be disbursed prior to disbursement of such proceeds; and at all times the undisbursed balance of such proceeds remaining in the hands of the Mortgagee, together with funds deposited for the purpose or irrevocably committed to the satisfaction of the Mortgagee must be sufficient to pay for the cost of completion of the restoration, repair, replacement or rebuilding, free and clear of all liens or claims for lien. Any surplus which may remain out of insurance proceeds held by the Mortgagee after payment of such costs of restoration, repair, replacement or rebuilding shall, at the option of Mortgagee, be applied on account of the Indebtedness Hereby Secured then most remotely to be paid, or be paid to any other party entitled thereto. No interest shall be allowed to the Mortgagor on account of any proceeds of insurance or other funds held in the hands of the Mortgagee.

10. Condemnation.

The Mortgagor hereby assigns, transfers and sets over unto the Mortgagee the entire proceeds of any award or claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation including any payments made in lieu of or in settlement of a claim or threat of condemnation. The Mortgagee may elect to apply the proceeds of the award upon or in reduction of the Indebtedness Hereby Secured then most remotely to be paid, whether due or not, or require the Mortgagor to restore or rebuild the Premises, in which event the proceeds shall be held by the Mortgagee and used to reimburse the Mortgagor for the cost of such rebuilding or restoring. If, in the reasonable judgment of the Mortgagee, the Premises can be restored to an economic unit not less valuable than the same was prior to the condemnation and adequately securing the outstanding balance of the Indebtedness Hereby Secured, the award shall be used to reimburse the Mortgagor for the cost of restoration and rebuilding; provided, always, that Mortgagor is not in default hereunder and that no Event of Default has occurred and is then continuing. If the Mortgagor is required or permitted to rebuild or restore the Premises as aforesaid, such rebuilding or restoration shall be effected solely in accordance with plans and specifications previously submitted to and approved by the Mortgagee, and proceeds of the award shall be paid out in the same manner as is provided in Paragraph 9 hereof for the payment of insurance proceeds towards the cost of rebuilding or restoration. If the amount of such award is insufficient to cover the cost of rebuilding or restoration, the Mortgagor shall pay such costs in excess of the award before being entitled to reimbursement out of the award. Any surplus which may remain out of the award after payment of such costs of rebuilding or restoration shall, at the option of the Mortgagee, be applied on account of the Indebtedness Hereby Secured then most remotely to be paid, or be paid to any other party entitled thereto. No interest shall be allowed to Mortgagor on account of any award held by Mortgagee.

11. Stamp Tax.

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

12. Prepayment Privilege.

At such time as the Mortgagor is not in default under the terms of the Note, or under the terms of this Mortgage, the Mortgagor shall have the privilege of making a prepayment of a portion of or the entire unpaid principal balance of the Note (in addition to the required payments thereunder) in accordance with the terms and conditions set forth in the Note, but not otherwise.

13. Effect of Extensions of Time 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 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 the Mortgagee, notwithstanding any such extension, variation or release. Any person, firm or corporation taking a junior mortgage, or other lien upon the Premises or any interest therein, shall take the said lien subject to the rights of the Mortgagee to amend, modify and supplement this Mortgage, the Note, the Assignments and the Construction Loan Agreement herein referred to, and to extend the maturity of the Indebtedness Hereby Secured, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien.

14. Mortgagee's Performance of Mortgagor's Obligations.

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

8543816

15. Inspection of Premises and Records.

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

16. Financial Statements.

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

17. Illinois Uniform Commercial Code.

This Mortgage constitutes a Security Agreement under the Illinois Uniform Commercial Code (herein called the "Code") with respect to any part of the Premises which may or might now or hereafter be or be deemed to be personal property, fixtures or property other than real estate (all for the purposes of this Paragraph 17 called "Collateral"); all of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this Paragraph 17 shall not limit the generality or applicability of any other provision of this Mortgage but shall be in addition thereto:

- (a) The Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances.
- (b) The Collateral is to be used by the Mortgagor solely for business purposes and is being installed upon the Premises for Mortgagor's own use or as the equipment and furnishings furnished by Mortgagor, as landlord, to tenants of the Premises.
- (c) The Collateral will be kept at the real estate comprised within the Premises, and will not be removed therefrom without the consent of the Mortgagee (being the Secured Party as that term is used in the Code) or any other person and the Collateral may be affixed to such real estate but will not be affixed to any other real estate.
- (d) The only persons having any interest in the Premises are the Mortgagor, the Mortgagee and permitted tenants and users thereof.
- (e) No Financing Statement covering any of the Collateral or any proceeds thereof is on file in any public office; and Mortgagor will at its own cost and expenses, upon demand, furnish to the Mortgagee such further information and will execute and deliver to the Mortgagee such financing statements and other documents in form satisfactory to the Mortgagee and will do all such acts and things as the Mortgagee may at any time or from time to time reasonably request or 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 adverse liens or encumbrances and the Mortgagor

will pay the cost of filing the same or filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by the Mortgagee to be necessary or desirable.

- (f) Upon any Event of Default hereunder and at any time thereafter, the Mortgagee at its option may declare the Indebtedness Hereby Secured immediately due and payable, all as more fully set forth in Paragraph 19 hereof, and thereupon Mortgagee shall have the remedies of a secured party under the Code, including, but without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as the Mortgagor can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and the Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of the Mortgagor's obligations as provided in the Code. The Mortgagee, without removal may render the Collateral unusable and dispose of the Collateral on the Premises. The Mortgagee will give Mortgagor at least five (5) 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 registered or certified mail or equivalent, postage prepaid, to the address of Mortgagor shown in Paragraph 38 of this Mortgage at least five (5) days before the time of the sale or disposition. The Mortgagee may buy at any public sale, and if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, Mortgagee may buy at private sale. Any such sale may be held as part of and in conjunction with any foreclosure sale of the real estate comprised within the Premises, the Collateral and real estate to be sold as one lot if Mortgagee so elects. The net proceeds realized upon any such disposition, after deduction for the expenses or retaking, holding, preparing for sale, selling or the like and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied against the Indebtedness Hereby Secured. The Mortgagee will account to the Mortgagor for any surplus realized on such disposition.
- (g) The remedies of the Mortgage hereunder are cumulative and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of any of the other remedies of the Mortgagee, including having the Collateral deemed part of the realty upon any foreclosure thereof so long as any part of the Indebtedness Hereby Secured remains unsatisfied.
- (h) The terms and provisions contained in this Paragraph 17 shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.
- (i) This Mortgage is intended to be a financing statement within the purview of Section 9-402(6) of the Code with respect to the Collateral and the goods described at the beginning of this Mortgage, which goods are or are to become fixtures relating to the Premises. The addresses of the Mortgagor (Debtor) and Mortgagee (Secured Party) are set forth in Paragraph 38 hereof. This Mortgage is to be filed for record with the Recorder of Deeds of the County or Counties where the Premises are located. The Mortgagor is the record owner of the Premises.

18. Restrictions on Transfer.

It shall be an Event of Default hereunder if, without the prior written consent of the Mortgagee, any one or more of the following shall occur:

- (a) If the Mortgagor shall create, effect or consent to or shall suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of the Premises or any part thereof or interest therein, including the equity of redemption, 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, subject to the first and prior lien hereof, of at least equal value and utility;
- (b) If the Mortgagor is a Trustee, then if any beneficiary of the Mortgagor shall create, effect or consent to, or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of all or any portion of such beneficiary's beneficial interest in the Mortgagor;
- (c) If the Mortgagor is a corporation, or if any corporation is a beneficiary of a trustee mortgagor, then if any shareholder of such corporation shall create, effect or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of any such shareholder's shares in such corporation; provided that if such corporation is a corporation whose stock is publicly traded on a national securities exchange or on the "Over The Counter" market, then this subparagraph 18(c) shall be inapplicable;
- (d) If the Mortgagor is a partnership or joint venture, or if any beneficiary of a trustee mortgagor is a partnership or joint venture, then if any partner or joint venturer in such partnership or joint venture shall create, effect or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of all or any part of the partnership interest or joint venture interest, as the case may be, of such partner or joint venturer;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided that the foregoing provisions of this Paragraph 18 shall not apply to (i) liens securing the Indebtedness Hereby Secured, (ii) the lien of current taxes and assessments not in default, and (iii) any transfers of the Premises, or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership or joint venture interests, as the case may be, in the Mortgagor or any beneficiary of a trustee mortgagor by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate, personal representatives and/or committee. The provisions of this Paragraph 18 shall be operative with respect to, and shall be binding upon, any persons who, in accordance with the terms hereof or otherwise shall acquire any part of or interest in or encumbrance upon the Premises, or such beneficial interest in, shares of stock of, or partnership or joint venture interest in, the Mortgagor or any beneficiary of a trustee mortgagor.

19. Events of Default.

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

- (a) If default be made and shall continue for five (5) days in the due and punctual payment of the Note or any installment thereof, either principal or interest, as when the same is due and payable, or if default be made and shall continue to five (5) days in the making of any payment of monies required to be made hereunder or under the Note; or
- (b) If an Event of Default pursuant to Paragraph 18 hereof shall occur and be continuing without notice or period of grace of any kind; or
- (c) If default be made in the delivery to the Mortgagee of the financial statements required pursuant to Paragraph 16 hereof and be continuing ten (10) days after notice thereof by Mortgagee to the Mortgagor; or
- (d) If (and for the purpose of this subsection (d) of this Paragraph 19 only, the term Mortgagor shall mean and include not only Mortgagor but any beneficiary of a trustee mortgagor and each person who, as guarantor, co-maker or otherwise, shall be or become liable for or obligated upon all or any part of the Indebtedness Hereby Secured or any of the covenants or agreements contained herein),
 - (i) Mortgagor shall file a petition in voluntary bankruptcy under any chapter of the federal bankruptcy code, or any similar law for the relief of debtors, state or federal, now or hereafter in effect, or
 - (ii) Mortgagor shall file an answer admitting insolvency or inability to pay its debts, or
 - (iii) Within thirty (30) days after the filing against Mortgagor of any involuntary proceeding under the federal bankruptcy code or similar law for the relief of debtors, such proceedings shall not have been vacated or stayed, or
 - (iv) Mortgagor shall be adjudicated a bankrupt, or a trustee or receiver shall be appointed for the Mortgagor for all or a material part of the Mortgagor's property or the Premises, in any involuntary proceeding, or any court shall have taken jurisdiction of all or the major part of the Mortgagor's property or the Premises in any involuntary proceeding for the reorganization, dissolution, liquidation or winding up of the Mortgagor, and such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within thirty (30) days, or
 - (v) Mortgagor shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due or shall consent to the appointment of a receiver of trustee or liquidator of all or a material part of its property, or the Premises; or
- (e) If any default shall exist under the provisions of Paragraph 26 hereof or under the Assignments referred to in said Paragraph; or
- (f) If any default shall exist under the provisions of Paragraph 33 or under the Construction Loan Agreement referred to therein; or
- (g) If the Premises shall be abandoned;

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

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

20. Possession by Mortgagee.

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

21. Foreclosure.

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

22. Receiver.

Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the Court in which such complaint is filed may appoint a receiver of the Premises. Such appointment may be made either before or after sale, without regard to solvency or insolvency of the Mortgagor at the time of application for such receiver, and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not; and the Mortgagee

hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have the power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when the Mortgagor, except for the intervention of such receiver, would be entitled to collection of such rents, issues and profits and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court may, from time to time, authorize the receiver to apply the net income from the Premises in his hands in payment in whole or in part of:

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

23. Proceeds of Foreclosure Sale.

The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Paragraph 21 hereof; Second, all other items which, under the terms hereof, constitute Indebtedness Hereby Secured additional to that evidenced by the Note, with interest on such items as herein provided; Third, to interest remaining unpaid upon the Note; Fourth, to the principal remaining unpaid upon the Note; and Fifth, any overage to the Mortgagor and its successors or assigns, as their rights may appear.

24. Insurance Upon Foreclosure.

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

25. Waiver.

Mortgagor waives the benefit of all laws now existing or that hereafter may be enacted providing for (i) any appraisal before sale of any portion of the premises, and (ii) in any way extending the

86543816

time for the enforcement of the collection of the Note or the debt evidenced thereby or creating or extending a period of redemption from any sale made in collecting said debt. To the full extent Mortgagor may do so, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, and Mortgagor, for Mortgagor, Mortgagor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the premises, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the secured indebtedness and marshalling in the event of foreclosure of the liens hereby (and in the supplementary collateral) created. If any law referred to in this Section and now in force, of which Mortgagor, Mortgagor's heirs, devisees, successors and assigns or other person may take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section. Mortgagor expressly waives and relinquishes any and all rights and remedies which Mortgagor may have or be able to assert by reason of the laws of the State of Illinois pertaining to the rights and remedies of sureties. Without limiting the foregoing, but in addition thereto and in amplification thereof, the Mortgagor hereby expressly waives any and all rights of redemption from sale under any order, judgment, or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, excepting only decree or judgment creditors of the Mortgagor acquiring any interest in or title to the premises subsequent to the date thereof, it being the intent hereof that any and all such rights of redemption of the Mortgagor and all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Chapter 77, Sections 18 (a) and 18 (b) of the Illinois Revised Statutes.

26. Assignment.

As further security for the Indebtedness Hereby Secured, the Mortgagor has, concurrently herewith, executed and delivered to the Mortgagee a separate instrument (herein called the "Assignment") dated as of the date hereof, wherein and whereby, among other things, the Mortgagor has assigned to the Mortgagee, pursuant to the Assignment, all of the rents, issues and profits with respect to the Premises, and any and all leases now or hereafter executed by Mortgagor, as lessor or landlord, with respect to the Premises. All of the terms and conditions of said Assignment are hereby incorporated herein by reference as fully and with the same effect as if set forth herein at length. The Mortgagor agrees that it will duly perform and observe all of the terms and provisions on its part to be performed and observed under the Assignment. Nothing herein contained shall be deemed to obligate the Mortgagee to perform or discharge any obligation, duty or inability of Mortgagor under the Assignment, and the Mortgagor shall and does hereby indemnify and hold the Mortgagee harmless from any and all liability, loss or damage which the Mortgagee may or might incur by reason of the Assignment; and any and all such liability, loss or damage incurred by the Mortgagee, together with the costs and expenses, including reasonable attorneys' fees, incurred by the Mortgagee in the defense of any claims or demands therefor (whether successful or not) shall be so much additional Indebtedness Hereby Secured, and the Mortgagor shall reimburse the Mortgagee therefor on demand, together with interest at the Default Rate from the date of demand to the date of payment.)

27. Mortgagee in Possession.

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

28. Further Assurances.

The Mortgagor will do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurances necessary or proper, in the sole judgment of the Mortgagee, for the better assuring, conveying, mortgaging, assigning and confirming unto the Mortgagee all property mortgaged hereby or property intended so to be; whether now owned by Mortgagor or hereafter acquired.

29. Mortgagor's Successors.

In the event that the ownership of the Premises becomes vested in a person or persons other than the Mortgagor, the Mortgagee may, without notice to the Mortgagor, deal with such successor or successors in interest of the Mortgagor with reference to this Mortgage and the Indebtedness Hereby Secured in the same manner as with the Mortgagor. The Mortgagor will give immediate written notice to the Mortgagee of any conveyance, transfer or change of ownership of the Premises, but nothing in this Paragraph shall vary or negate the provisions of Paragraph 18 hereof.

30. Rights Cumulative.

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

31. Successors and Assigns.

This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon the Mortgagor and its successors and assigns (including, without limitation, each and every record owner from time to time of the Premises or any other person having an interest therein), and shall inure to the benefit of the Mortgagee and its successors and assigns. Wherever herein the Mortgagee is referred to, such reference shall be deemed to include the holder from time to time of the Note, whether so expressed or not; and each such from-time-to-time holder of the Note, whether so expressed or not, 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 from-time-to-time holder were herein by name specifically granted such rights, privileges, powers, options and benefits and was herein by name designated the Mortgagee.

32. Business Purpose Statement.

The undersigned Mortgagor represents and agrees that the loan evidenced by this Mortgage is a business loan within the purview of the laws and regulations of the State of Illinois and of the United States and is transacted solely for the business purpose of the Mortgagor (or, if the Mortgagor is a Trust, then of the beneficiaries of the Mortgagor) and for its or their investment or profit, as contemplated by such laws and regulations.

33. Construction Loan Agreement.

~~This Mortgage and the Note secured hereby have been executed and delivered to secure monies advanced or to be advanced to or on behalf of the Mortgagor to be used in the construction of certain improvements on the mortgaged premises in accordance with the terms of a certain Construction Loan Agreement of even date herewith between the Mortgagor and the Mortgagee. Notice is hereby given of the provisions of the Construction Loan Agreement, which provisions will remain in effect until such time as such Agreement is terminated by either (i) the completion of such improvements, or (ii) the payment of all the Indebtedness Hereby Secured.~~

34. Provisions Severable.

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

35. Waiver of Defense.

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 to the party interposing the same in an action at law upon the Note.

36. Time of the Essence.

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

37. Notices.

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

(a) If to the Mortgagee: Northern Trust Bank/Oak Brook
One Oakbrook Terrace
Oakbrook Terrace, Illinois 60181

Attention: Real Estate Loan Dept.

(b) If to the Mortgagor: Trust 2040-463
Bank of Lansing
3115 Ridge Road
Lansing, Illinois 60438

With copy to: Mr. William E. McDonnell
McDonnell & Associates
168 E. Lake Street
Elmhurst, Illinois 60126

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

38. 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.

39. Option to Subordinate.

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

40. Additional Provisions

This Mortgage secures a BALLOON obligation and on the Maturity Date a substantial portion of the principal amount of the obligation will remain unpaid by the monthly payments provided in the Note which is secured hereby. Reference is made to the terms of the Note, a form of which is attached hereto as Exhibit "A".

41. Trustee Exculpation.

This Mortgage is executed by the Trustee solely as Trustee in the exercise of the authority conferred upon it as Trustee as aforesaid, and no personal liability or responsibility shall be assumed by, nor at any time be asserted or enforced against it, its agents or employees on account hereof, or on account of any promises, covenants, undertakings or agreements herein contained, either express or implied; all such liability, if any, being expressly waived and released by every person now or hereafter claiming any right or security hereunder. It is understood and agreed that the Trustee shall have no obligation to see to the performance or non-performance of any of the covenants or promises herein contained, and shall not be liable for any action or non-action taken in violation of any of the covenants herein contained.

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

BANK OF LANSING, as Trustee as
aforesaid, and not individually

By: *Jerome M. Gardberg*
Its: **JEROME M. GARDBERG**
VICE PRESIDENT &
ATTEST: **TRUST OFFICER**

(SEAL)

By: *Randall V. Noort*
Its: **RANDALL VAN NOORT**
BRANCH MANAGER

86543816

UNOFFICIAL COPY

1 6 7 4 3 3 1 6

STATE OF ILLINOIS)
) SS
COUNTY OF)

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT

JEROME M. GARDBERG, personally known to me be be the VICE PRESIDENT & TRUST OFFICER of the BANK OF LANSING,

a corporation, and RANDALL VAN NOORT, personally known to me to be the BRANCH MANAGER of said

corporation, 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 officers they signed and delivered the said instrument as such officers of the corporation and caused the corporate seal of the corporation to be affixed thereto, pursuant to authority given by the Board of Directors of the corporation, as their free and voluntary act and as the free and voluntary act of the corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 4th day of November 1986.

My commission expires:

7-3-89

Diana Mason
Notary Public

THIS INSTRUMENT PREPARED BY:) John T. Huntington
) Suite 101
) 210 W. 22nd Street
AFTER RECORDING, MAIL TO:) Oak Brook, Illinois 60521

UNOFFICIAL COPY

EXHIBIT "A"

PROMISSORY NOTE AND SECURITY AGREEMENT

US \$550,000.00

Oak Brook, Illinois
October 24, 1986

FOR VALUE RECEIVED, the BANK OF LANSING, a corporation duly organized and existing under the laws of the State of Illinois, and duly authorized to accept and execute trusts in the State of Illinois, not personally but as Trustee under the provisions of a deed or deeds in trust recorded and delivered to said Company in pursuance of a Trust Agreement dated December 14, 1982 and known as Trust Number 2040-463 (hereinafter sometimes called "Borrower"), and WILLIAM E. MC DONNELL and JOSEPH T. MORETTI, whose address is in care of McDonnell & Associates, 168 E. Lake Street, Elmhurst, Illinois 60126 (hereinafter sometimes called "Co-maker"), hereby promises to pay to the order of the NORTHERN TRUST BANK/OAK BROOK (hereinafter sometimes called the "Bank" or the "Note Holder", which latter term shall include the transferees, successors and assigns of the Bank), in the manner hereinafter provided, the principal sum of FIVE HUNDRED FIFTY THOUSAND AND NO/100S DOLLARS (\$550,000.00), together with interest from the date of disbursement on the balance of principal remaining from time to time unpaid at the following rates per annum, in each case computed daily on the basis of a 360 day year for each day all or any part of the principal balance hereof shall remain unpaid:

1. The balance of principal remaining from time to time unpaid hereunder prior to default shall bear interest at the rate (hereinafter sometimes called the "Regular Rate") of NINE AND THREE QUARTERS PER CENT (9.75%) per annum;
2. In the event there shall occur (i) any default hereunder or any default or Event of Default under the terms of any instrument given to secure the payment hereof, or (ii) maturity of the indebtedness evidenced hereby, whether by lapse of time, acceleration, declaration or otherwise, then in any such event, the entire principal balance hereof shall thereafter bear interest at an annual rate (hereinafter sometimes called the "Default Rate") equal to THREE PER CENT (3.0%) in excess of the Regular Rate.

Principal and interest at the Regular Rate upon this Note shall be paid in installments (including interest, and the balance of such payment in principal) as follows:

FOUR THOUSAND NINE HUNDRED ONE AND 26/100S DOLLARS (\$4,901.26) or more on the 1st day of January, 1987, and FOUR THOUSAND NINE HUNDRED ONE AND 26/100S DOLLARS (\$4,901.26) or more on the 1st day of each consecutive month thereafter until and including November 1, 1991. On December 1, 1991 the remaining principal balance, together with all accrued but theretofore unpaid interest shall be due and payable.

THIS IS A BALLOON OBLIGATION AND ON THE MATURITY DATE A SUBSTANTIAL PORTION OF THE PRINCIPAL AMOUNT OF THIS OBLIGATION WILL REMAIN UNPAID BY THE MONTHLY PAYMENTS ABOVE SPECIFIED.

BORROWER AND CO-MAKER UNDERSTAND AND AGREE THAT THE OBLIGATION IS PAYABLE IN FULL ON THE MATURITY DATE. THE LENDER IS UNDER NO OBLIGATION TO REFINANCE THE LOAN AT THAT TIME. THE BORROWER AND CO-MAKER WILL BE REQUIRED TO MAKE PAYMENT OUT OF OTHER ASSETS THEY MAY OWN, OR THEY WILL HAVE TO FIND A LENDER WILLING TO LEND THEM THE MONEY AT PREVAILING MARKET RATES, WHICH MAY BE CONSIDERABLY HIGHER OR LOWER THAN THE INTEREST RATE ON THIS OBLIGATION. IF THE OBLIGATION IS REFINANCED AT MATURITY, THE BORROWER AND CO-MAKER MAY HAVE TO PAY SOME OR ALL CLOSING COSTS NORMALLY ASSOCIATED WITH A NEW LOAN EVEN IF THEY OBTAIN FINANCING FROM THE SAME LENDER.

Funds representing the proceeds of the indebtedness evidenced hereby disbursed by the Holder to or for the benefit of Borrower or to escrows, as may be necessary in connection with disbursement of such indebtedness shall, for all purposes, be deemed disbursed and outstanding hereunder from and after the date such funds are transmitted (by mail, wire transfer, deposit, personal delivery or otherwise) to Borrower or for Borrower's benefit or to such escrows, and interest shall accrue thereon from and after the date of such transmission, notwithstanding that such funds may not be paid out of such escrows or that payout thereof from such escrows may be delayed.

In the event the first payment is due more than one month after the date of transmittal, interest accruing for the period from the date of transmittal to the last day of the month in which transmittal occurs shall, at the option of the Note Holder, be paid by Borrower either (1) on or prior to the date of transmittal, or (2) together with the first regular installment of principal and interest. In the event the first payment is due less than one month after the date of transmittal, unearned interest for the period prior to the date of transmittal shall, at the option of the Note Holder, be rebated to Borrower either (1) on the date of transmittal, or (2) at the time the first regular installment of principal and interest is due.

Without limiting the applicability of the Default Rate of interest, Borrower shall pay to the Note holder a late charge of five per cent (5.0%) of any monthly installment not received by the Note holder within fifteen days after the installment is due to defray the expense of handling any such delayed payments.

All payments on account of the indebtedness evidenced by this Note shall be first applied to any late charges accruing hereunder, then to interest on the unpaid principal balance, and any remainder to principal.

Principal and interest shall be payable at 105 Oakbrook Center Mall, Oak Brook, Illinois 60521, or such other place as the holder of this Note may designate.

If any payment under this Note is not paid when due and remains unpaid after a date specified by a notice to Borrower, the entire principal amount outstanding and accrued interest thereon shall at once become due and payable at the option of the Note holder. The date specified shall not be less than ten (10) days from the date such notice is mailed. The Note holder may exercise this option to accelerate during any default by Borrower regardless of any prior forbearance. If suit is brought to collect this Note, the Note holder shall be entitled to collect all reasonable costs and expenses of suit, including, but not limited to, reasonable attorneys' fees.

Borrower may prepay the principal amount outstanding in whole or in part. The Note Holder may require that any partial prepayments (1) be made on the date monthly installments are due and (2) be in the amount of that part of one or more monthly installments which would be applicable to principal. Any partial prepayments shall be applied against the principal amount outstanding and shall not postpone the due date of any subsequent monthly installments, unless the Note Holder shall otherwise agree in writing.

The indebtedness evidenced by this Note is secured by the following collateral, and reference is made to the documents evidencing the same for additional rights as to acceleration of the indebtedness evidenced by this Note:

86543816

1. Mortgage, of even date herewith, to the NORTHERN TRUST BANK/OAK BROOK, as Mortgagee, on real estate (the "Premises"), legally described in said Mortgage, and commonly known as 117-121 W. 167th Street, Calumet City, in the County of Cook, and State of Illinois;
2. Assignment of Rents and Leases, of even date herewith, assigning to said NORTHERN TRUST BANK/OAK BROOK all of the rents, issues and profits of and from the Premises and leases thereof;
3. Security Agreement, of even date herewith, granting to said NORTHERN TRUST BANK/OAK BROOK, a security interest in all machinery, apparatus, fixtures, equipment, appliances and other property installed or located on the Premises, replacements thereof, and proceeds of condemnation or insurance policies with respect to the Premises, all as more completely enumerated and set forth in the Security Agreement; and
4. Collateral Assignment, of even date herewith, to said NORTHERN TRUST BANK/OAK BROOK, of the entire beneficial interest under Bank of Lansing land trust agreement dated December 14, 1982 and known as Trust No. 2040-463.

As additional, but not as exclusive, security, Borrower hereby grants to the NORTHERN TRUST BANK/OAK BROOK, a general lien upon, or right of set-off against, the balance of any account of Borrower or any Co-maker hereof on deposit with said Bank, and any other funds or assets of Borrower or any Co-maker hereof at any time in the custody or control of the Bank.

The Borrower also agrees to pay, in addition thereto, all costs, expenses, and reasonable attorneys' fees at any time paid or incurred in endeavoring to collect the indebtedness evidenced hereby, or any part thereof, and in and about enforcing this instrument.

It shall be an Event of Default hereunder on account of which the Note holder may declare the entire indebtedness evidenced by this Note to be immediately due and payable if, without the prior written consent of the Note holder, any one or more of the following shall occur:

(a) If the Borrower shall create, effect or consent to or shall suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of the Premises or any part thereof or interest therein, including the equity of redemption, excepting only sales or other dispositions of property no longer useful in connection with the operation of the Premises, provided that prior to the sale or other disposition thereof, such property has been replaced by property, subject to the first and prior lien of any instrument given to secure payment hereof, of at least equal value and utility;

(b) If the Borrower is a Trustee, then if any beneficiary of the Borrower shall create, effect or consent to, or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of all or any portion of such beneficiary's beneficial interest in the Borrower, except such as is given to secure the indebtedness evidenced hereby;

(c) If the Borrower is a corporation, or if any corporation is a beneficiary of a trustee borrower, then if any shareholder of such corporation shall create, effect or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of

any such shareholder's shares in such corporation; provided that if such corporation is a corporation whose stock is publicly traded on a national securities exchange or on the "Over The Counter" market, then this subparagraph (c) shall be inapplicable;

(d) If the Borrower is a partnership or joint venture, or if any beneficiary of a trustee borrower is a partnership or joint venture, then if any partner or joint venturer in such partnership or joint venture shall create, effect or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of all or any part of the partnership or joint venture interest, as the case may be, of such partner or joint venturer;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided that the foregoing provisions of this paragraph shall not apply to (i) liens securing the indebtedness evidenced hereby, (ii) the lien of current taxes and assessments not in default, and (iii) any transfers of the Premises, or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership or joint venture interests, as the case may be, in the Borrower or any beneficiary of Borrower by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate, personal representatives and/or committee. The provisions of this paragraph shall be operative with respect to, and shall be binding upon, any persons who, in accordance with the terms hereof or otherwise shall acquire any part of or interest in or encumbrance upon the Premises, or such beneficial interest in, shares of stock of, or partnership or joint venture interest in, the Borrower or any beneficiary of Borrower. If the Note holder exercises such option to accelerate, it shall mail to Borrower notice of acceleration which shall provide a period of not less than ten (10) days from the date the notice is mailed within which Borrower may pay the sums declared due. If Borrower fails to pay such sums prior to the expiration of such period, the Note holder may, without further notice or demand on Borrower, invoke any remedies permitted hereunder and in the documents evidencing the collateral securing this indebtedness.

The undersigned Co-makers of this Note represent and warrant that the loan evidenced by this Note is a business loan within the purview of the laws and regulations of the State of Illinois and of the United States and is transacted solely for the business purpose of the undersigned Co-makers and for their investment or profit, as contemplated by such laws and regulations.

Presentment, notice of dishonor, and protest are hereby waived by all makers, sureties, guarantors and endorsers hereof. This Note shall be the joint and several obligation of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their successors and assigns.

Any notice to Borrower provided for in this Note shall be given by mailing such notice by certified mail addressed to Borrower in care of McDonnell & Associates, 168 E. Lake Street, Elmhurst, Illinois 60126, or to such other address as Borrower may designate by notice to the Note holder. Any notice to the Note holder shall be given by mailing such notice by certified mail, return receipt requested, to the Note holder at 105 Oakbrook Center Mall, Oak Brook, Illinois 60521, or to such other address as the holder may designate by notice to the Borrower.

86543816

UNOFFICIAL COPY

86543816

This Note is executed by the aforementioned Trustee, not personally, but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee. No individual liability shall be asserted or be enforceable against the Trustee or any person interested beneficially or otherwise in said property specifically described in said Mortgage or Trust Deed given to secure the payment hereof, or in the property or funds at any time subject to said Trust Agreement, because or in respect of this Note or the execution, issue or transfer thereof, all such liability, if any, being expressly waived by each taker and holder hereof, but nothing herein contained shall modify or discharge the individual liability expressly assumed by any co-maker, surety or guarantor hereof. Each original and successive Note holder accepts this Note upon the express condition that no duty shall rest upon the Trustee to sequester the rents, issues and profits arising from the premises described in said Mortgage or Trust Deed, or the proceeds arising from the sale or other disposition thereof, but that in case of default in the payment of this Note or of any installment hereof the sole remedy of the Note holder shall be by foreclosure of the collateral given to secure the indebtedness evidenced by this Note, in accordance with the terms and provisions set forth in the documents evidencing the collateral or by action to enforce the personal liability of any co-maker, surety or guarantor hereof, or both.

IN WITNESS WHEREOF, the aforementioned Borrower as Trustee as aforesaid and not personally has caused this Note to be signed by its ~~VICE PRESIDENT & TRUST OFFICER~~ and its corporate seal to be hereunto affixed and attested by its ~~BRANCH MANAGER~~, and the undersigned co-makers, sureties or guarantors hereof have executed this Note, all as of this 24th day of October, 1986.

BANK OF LANSING, as Trustee as aforesaid and not individually

(SEAL)

ATTEST:

By: *Jerome M. Gardberg*
Its: JEROME M. GARDBERG
VICE PRESIDENT & TRUST OFFICER

By: *Randall S. Van Noort*
Its: RANDALL VAN NOORT
BRANCH MANAGER

CO-MAKERS:

William E. Mc Donnell
WILLIAM E. MC DONNELL,
Individually

Joseph T. Moretti
JOSEPH T. MORETTI,
Individually

86543816