

UNOFFICIAL COPY

8611062
3 6 1 1 1 0 3 2

MORTGAGE AND ASSIGNMENT OF RENTS (ILLINOIS)

THIS MORTGAGE (this "Mortgage"), dated and effective as of the 18th day of December, 1985, by DREXEL DISTRIBUTORS, INC., an Illinois corporation with its principal place of business at 5201 West Grand Avenue, Chicago, Illinois ("Mortgagor"), in favor of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association with its principal place of business at 33 North LaSalle Street, Chicago, Illinois 60690 ("Mortgagee"), has reference to the following facts and circumstances:

WHEREAS, Mortgagor is justly and truly indebted to Mortgagee in the principal sum of up to One Million Six Hundred Seventy Nine Thousand Three Hundred Twenty-Eight Dollars (\$1,679,328) as evidenced by the following:

A) That certain installment note dated September 23, 1985, payable to the order of Mortgagee in the original principal amount of \$123,520, whereby Mortgagor promises to pay said principal sum together with interest thereon at a daily rate equal to the daily rate equivalent of 2 $\frac{1}{2}$ per annum, computed on the basis of a 360-day year, in excess of the rate of interest announced or published publicly by Mortgagee as its prime or equivalent rate of interest (the "Prime Rate") in 12 successive equal weekly principal installments of \$9,501 on Monday of each week beginning with Monday, September 30, 1985, and a final installment of \$9,508 on Monday, December 23, 1985 (hereinafter "Installment Note No. 1"). Interest due under Installment Note No. 1 is payable monthly;

B) That certain installment note dated September 23, 1985, payable to the order of Mortgagee in the original principal sum of \$555,808, whereby Mortgagor promises to pay said principal sum together with interest thereon at a daily rate equal to the daily rate equivalent of 2 $\frac{1}{2}$ per annum, computed on the basis of a 360-day year, in excess of the Prime Rate, in 8 successive equal monthly principal installments of \$2,000 each on the first day of each month beginning with the first day of November, 1985 and a final installment of \$539,808 on July 1, 1986 (hereinafter "Installment Note No. 2"). Interest due under Installment Note No. 2 is payable monthly;

8611062

THIS INSTRUMENT PREPARED BY AND AFTER RECORDING SHOULD BE RETURNED TO: David S. Kurtz, Nachman, Munitz & Sweig, Ltd., 115 South LaSalle Street, Chicago, Illinois 60603.



UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

8 5 1 1 1 0 5 2

C) That certain revolving credit note (hereinafter the "Demand Note") and Loan and Security Agreement each dated September 23, 1985, pursuant to which Mortgagor may from time to time borrow, repay, and borrow again principal amounts not in excess of \$1,000,000 at any one time outstanding. Principal is payable on demand; interest thereon, at a daily rate equal to the daily rate equivalent of 2% per annum computed on the basis of a 360-day year in excess of the Prime Rate, is payable monthly, as billed.

WHEREAS, Mortgagor has guaranteed the prompt payment of all obligations and liabilities of Helen Sanichas, Nicholas Giovan, Constantine Giovan, Leone Giovan, and Chicago Title and Trust Company as trustee under a trust agreement dated July 15, 1985 and known as trust No. 1082305 to Mortgagee up to the full amount thereof outstanding at any time, pursuant to that certain written guaranty dated September 23, 1985, executed and delivered by Mortgagor to Mortgagee (the "Guaranty") as more particularly set forth in the Guaranty.

NOW THEREFORE, in consideration of the premises, and to secure the payment of the foregoing described principal and interest as and when the same becomes due and payable (whether by lapse of time, acceleration or otherwise), and the payment of all other indebtedness, obligations and liabilities of the Mortgagor to Mortgagee, whether now existing or hereafter arising, and whether fixed or contingent, Mortgagor agrees with Mortgagee as follows:

1. DEFINITIONS AND TERMS

1.1 The following words, terms, and phrases shall have the meanings set forth thereafter, and such meanings shall be applicable to the singular and plural form thereof, giving effect to the numerical difference; whenever the context so requires, the use of "it" in reference to Mortgagor shall mean Mortgagor as identified at the beginning of this Mortgage:

(A) "Charges": all national, federal, state, county, city, municipal or other government (or any instrumentality, division, agency, body or department thereof) charges, impositions, levies, assessments and taxes (whether general, special, or otherwise), water charges, sewer service charges, liens, claims or encumbrances upon or relating to the "Mortgaged Property" (hereinafter defined), "Mortgagor's Liabilities" (hereinafter defined) or "Mortgagor's Obligations" (hereinafter defined).

(B) "Documents": the definition ascribed to this term in Paragraph 2.4 below.

86111062

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

8 5 1 1 1 0 5 2

(C) "Encumbrances": all liabilities, claims, debts, exceptions, easements, restrictions, security interests, Charges, and all other types of encumbrances.

(D) "Equipment": all present and future apparatus, machinery, equipment, furniture, fixtures, and articles of personal property of any and every kind and nature whatsoever used, attached to, installed, or located in or on the "Premises" (hereinafter defined), or required for use in or on or in connection with the Premises or the management, maintenance, operation, or business thereof and all replacements thereof, substitutions therefor and accessions thereto, including without limitation any such item now or at any time hereafter situated on the Premises and used to supply or otherwise deliver heat, gas, air conditioning, water, light, electricity, power, plumbing, refrigeration, sprinkling, ventilation, mobility, communication, incineration, recreation, laundry service, all other related services, or other such services.

(E) "Event of Default": the definition ascribed to this term in Paragraph 6.1 below.

(F) "Leases": all present and future leases, agreements, tenancies, licenses and franchises of or from the Premises or the Equipment or in any way, manner or respect required, existing, used or usable in connection with the Premises or the Equipment or the management, maintenance, operation or business thereof, and all deposits of money as advance rent or for security under any or all of the Leases and all guaranties of lessee's performances thereunder.

(G) "Mortgaged Property": (a) the Premises; (b) the "Rents" (hereinafter defined); (c) the Leases; (d) the Equipment (which shall be deemed to be a part of the Premises, whether physically attached thereto or not); (e) all present and future judgments, awards of damages, and settlements made as a result or in lieu of any taking of the Premises, the Equipment or the Leases, or any part thereof, under the power of eminent domain, or for any damage thereto (whether caused by such taking or otherwise); (f) all present and future insurance policies in force or effect insuring the Premises, the Rents, the Leases, or the Equipment; and (g) all proceeds of each and every of the foregoing.

(H) "Mortgagor's Liabilities": (a) the payment of any and all monies, including without limitation the payment, when due or declared due, of all of Mortgagor's liabilities and obligations under Installment Note #1, Installment Note #2, the Demand Note, the Guaranty and pursuant to the terms and provisions of the Loan and Security Agreement; (b) the payment of any and all other debts, claims, obligations, demands, monies, liabilities, or indebtedness

8611062

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

3 5 1 1 1 0 5 2

(of any and every kind or nature) now or hereafter owing, arising, due, or payable from Mortgagor to Mortgagee under or pursuant to the terms and provisions of this Mortgage (including without limitation all advances made to protect and preserve the value of the Mortgaged Property and the priority of Mortgagee's lien thereon); and (c) the payment of any and all other debts, claims, obligations, demands, monies, liabilities or indebtedness (of any and every kind or nature) now or hereafter owing, arising, due, or payable from Mortgagor to Mortgagee, however evidenced, created, incurred, acquired, or owing, whether primary, secondary, direct, contingent, fixed, or otherwise, and arising under or pursuant to the terms and provisions of this Mortgage, Installment Note #1, Installment Note #2, the Demand Note, the Guaranty, the Loan and Security Agreement or the "Other Agreements" (hereinafter defined). Notwithstanding anything herein to the contrary, the amount of Mortgagor's Liabilities shall in no event exceed Four Million Dollars (\$4,000,000).

(I) "Mortgagor's Obligations": the prompt, full, and faithful performance, discharge, compliance and observance by Mortgagor of each and every term, condition, warranty, representation, agreement, undertaking, covenant, and provision to be performed, discharged, observed or complied with by Mortgagor contained in this Mortgage, the Note, the Security Agreement, or in the Other Agreements.

(J) "Other Agreements": all agreements, instruments, and documents, including without limitation loan agreements, security agreements, loan and security agreements, guarantees, mortgages, assignments of rents, deeds of trust, notes, letters of credit, advances of credit, bankers' acceptances, pledges, powers of attorney, consents, assignments, contracts, notices, copyright agreements, patent agreements, trademark agreements, leases, financing statements, and all other written matter heretofore, now, or from time to time hereafter executed by or on behalf of Mortgagor and delivered to Mortgagee or issued by Mortgagee upon the application or other request of and on behalf of Mortgagor.

(K) "Or": one or the other or both, or any one or more or all, of the things or "Persons" (hereinafter defined) in connection with which the conjunction is used.

(L) "Person": any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, institution, entity, party, or government (whether national, federal, state, county, city, municipal, or otherwise, including without limitation any instrumentality, division, agency, body, or department thereof).

(M) "Premises": all the following described real estate, and all Mortgagor's estate, right, title and interest therein, situated, lying and being in the City of

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

86111062

Chicago, County of Cook, State of Illinois, and legally described on Exhibit A attached hereto and made a part hereof and commonly known as 1946 N. Latrobe Avenue, together with all buildings, improvements, tenements, easements, hereditaments, and appurtenances now or at any time or times hereafter upon, belonging, or otherwise appertaining to or situated on said real estate, and all heretofore or hereafter acquired roads, alleys, streets, and other publicways abutting said real estate, whether before or after vacation thereof.

(N) "Rents": all present and future rents, issues, avails, profits, and proceeds of or from the Premises, the Leases or the Equipment.

2. CONVEYANCE

2.1 To secure the payment by Mortgagor of Mortgagor's Liabilities and the performance by Mortgagor of Mortgagor's Obligations, Mortgagor hereby does warrant, grant, give, bargain, confirm, assign, pledge, set over, transfer, sell, convey, remise, release, and otherwise mortgage to Mortgagee, its successors and assigns, forever, the Mortgaged Property for the purposes and uses set forth in this Mortgage; provided, nevertheless, that if Mortgagor, its successors or assigns, shall satisfy, discharge, and otherwise pay to Mortgagee, its successors or assigns, in full, Mortgagor's Liabilities and keep and perform all Mortgagor's Obligations, then this Mortgage shall become null and void and shall be released at Mortgagor's expense.

2.2 This Mortgage shall operate as and constitute a Security Agreement with respect to that portion of the Mortgaged Property constituting property or interests in property, whether real or personal, tangible or intangible, which are subject to the priority and perfection of security interest provisions of the Uniform Commercial Code or any similar and applicable law, statute, code, or other governing body of law. Therefore, to secure the payment by Mortgagor of Mortgagor's Liabilities and the performance by Mortgagor of Mortgagor's Obligations, Mortgagor hereby grants to Mortgagee a security interest in the Mortgaged Property.

2.3 Mortgagor, within ten (10) days after request by Mortgagee therefor, will certify, in writing, to Mortgagee, or to any proposed assignee of this Mortgage, the amount of principal and interest then owing and unpaid under the Guaranty, Installment Note #1, Installment Note #2, the Demand Note, the Loan and Security Agreement, or the Other Agreements and whether Mortgagor has or asserts any offsets or defenses thereto.

2.4 Mortgagor, immediately upon request by Mortgagee, at Mortgagor's sole expense, will make, execute, and deliver or will cause to be made, executed, and delivered to or for the benefit of Mortgagee, in form and substance acceptable to Mortgagee, all Documents that Mortgagee is

86111062

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

8 6 1 1 1 0 6 2

advised are or deems necessary or appropriate to evidence, document, or conclude the transactions described in or contemplated by this Mortgage, the Guaranty, Installment Note #1, Installment Note #2, the Demand Note, the Loan and Security Agreement or the Other Agreements or required to perfect or continue perfected, as valid Encumbrances, the Encumbrances granted herein or in the Other Agreements by Mortgagor to Mortgagee upon the Mortgaged Property.

"Document" means any mortgage, deed of trust or similar instrument, assignment of leases, assignment of rents, note, security agreement, guaranty, financing statement, assignment of insurance, loss payable clause, mortgage title insurance policy, letter of opinion, waiver letter, estoppel letter, consent letter, non-offset letter, insurance certificate, appraisal, survey or any other similar such agreement, instrument, or document.

3. COVENANTS, WARRANTIES AND REPRESENTATIONS

3.1 Mortgagor covenants with and warrants and represents to Mortgagee as follows:

(A) Mortgagor promptly will pay or cause to be paid, when due or declared due, Mortgagor's Liabilities and promptly, fully, and faithfully will perform, discharge, observe and comply with each and every of Mortgagor's Obligations.

(B) Mortgagor now has and hereafter shall maintain the standing, right, power, and lawful authority to own the Mortgaged Property, to carry on the business of and operate the Mortgaged Property, to enter into, execute, and deliver this Mortgage, the Guaranty, Installment Note #1, Installment Note #2, the Demand Note, the Loan and Security Agreement, and the Other Agreements to Mortgagee, to encumber the Mortgaged Property to Mortgagee as provided herein or in the Other Agreements, and to perform all Mortgagor's Obligations and to consummate all the transactions described in or contemplated by this Mortgage, the Guaranty, Installment Note #1, Installment Note #2, the Demand Note, the Loan and Security Agreement, and the Other Agreements.

(C) The execution, delivery, and performance by Mortgagor of and under this Mortgage, the Guaranty, Installment Note #1, Installment Note #2, the Demand Note, the Loan and Security Agreement, and the Other Agreements do not and will not constitute a violation of any applicable law and do not and will not conflict with or result in a default or breach of or under or an acceleration of any obligation arising, existing, or created by or under any agreement, instrument, document, mortgage, deed, trust deed, note, judgment, order, award, decree, or other restriction to which Mortgagor or any of the Mortgaged Property is or hereafter shall become a party or by which Mortgagor or any of the Mortgaged Property is or hereafter shall become bound or any law or regulatory provision now or hereafter affecting Mortgagor or any of the Mortgaged Property.

86111062

UNOFFICIAL COPY

3 6 1 1 1 0 5 2

(D) Mortgagor has duly filed and shall continue timely to file all federal, state, and other governmental tax and similar returns which Mortgagor is required by law to file with respect to the Mortgaged Property and the operation and business thereof. All taxes and other sums which are shown to be payable under such returns have been and shall be timely and fully paid, and Mortgagor shall maintain adequate reserves in amount to pay fully all such liabilities which hereafter may accrue.

(E) All the Leases, if any, are and shall remain genuine, in all respects what they purport to be, free of set-offs, counterclaims, or disputes, and valid and enforceable in accordance with their terms. All parties to the Leases have and shall have the capacity to contract thereunder. Except for security deposits provided for under the Leases and revealed by Mortgagor to Mortgagee in writing, no advance payments have been or shall be made thereunder.

(F) There is no litigation, action, claim, or proceeding pending or threatened which might, in any way, manner, or respect, materially or adversely affect the Mortgaged Property, the operation or the business thereof, Mortgagee's Encumbrances thereon, the collectibility of the obligations under the Guaranty, Installment Note #1, Installment Note #2, the Demand Note, and pursuant to the terms and conditions of the Loan and Security Agreement, the ability of Mortgagor to repay the obligations under the Guaranty, Installment Note #1, Installment Note #2, the Demand Note, and pursuant to the terms and conditions of the Loan and Security Agreement, or the financial condition of the Mortgaged Property or the operation of business thereof.

(G) The Mortgaged Property now consists of and is in the same condition, ordinary wear and tear excepted, as it was when Mortgagee last inspected it and, ordinary wear and tear excepted, it shall consist of and remain in such condition until the payment, in full, of Mortgagor's Liabilities.

(H) Mortgagor and the Mortgaged Property possess and hold and shall maintain adequate properties, interests in properties, leases, licenses, franchises, rights, and governmental and other permits, certificates, consents, and approvals to conduct and operate the business of the Mortgaged Property. None of the foregoing contains or shall contain any term or condition that is materially burdensome to said business or materially different from those of the foregoing customarily possessed or held by other parties conducting or operating a similar business.

(I) There does not exist and hereafter there shall not arise any default or breach of or under any agreement, instrument or document for borrowed money by which Mortgagor or the Mortgaged Property is bound or obligated.

80111022

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

8 6 1 1 0 6 2

(J) The location, existence, and use of the Premises and the Equipment are and shall remain in compliance with all applicable laws, rules, ordinances, and regulations, including without limitation building and zoning laws, and all covenants and restrictions of record.

(K) Mortgagor is and shall remain in peaceful possession of and will forever warrant and defend the Mortgaged Property from and against any and all claims thereon or thereto of any and all parties.

(L) Mortgagor will save and hold Mortgagee harmless of and from any and all damage, loss, cost, and expense, including without limitation reasonable attorneys' fees, costs and expenses, incurred by reason of or arising from or on account of or in connection with any suit or proceeding, threatened, filed, or pending, in or to which Mortgagee is or may become or may have to become a party by reason of or arising from or on account of or in connection with Mortgagor's Liabilities, Mortgagor's Obligations, this Mortgage, the Guaranty, Installment Note #1, Installment Note #2, the Demand Note, the Loan and Security Agreement, or the Other Agreements.

3.2 Mortgagor covenants with and warrants and represents to Mortgagee that Mortgagor is lawfully seized, possessed and the owner of and has good and indefeasible, marketable fee-simple title to the Mortgaged Property, free and clear of all Encumbrances except the Encumbrances of Mortgagee.

3.3 Mortgagor covenants with and warrants and represents to Mortgagee as follows:

(A) Mortgagor will not change the use or character of or abandon the Mortgaged Property and at all times hereafter shall keep the Mortgaged Property in good condition and repair and will not commit or suffer waste and will make all necessary repairs, replacements, and renewals (including the replacement of any items of the Equipment) to the Mortgaged Property so that the value and operating efficiency thereof shall at all times hereafter be maintained and preserved. Mortgagor shall not remove any fixture or demolish any building or improvement located in or on the Premises. Mortgagor shall pay for and complete, within a reasonable time, any building or improvement at any time in the process of erection upon the Premises, shall refrain from impairing or diminishing the value of the Mortgaged Property, shall make no material alterations to the Mortgaged Property which in the opinion of Mortgagee diminishes its value, and promptly shall repair, restore, or rebuild any building or improvement now or hereafter on the Premises which may become damaged or destroyed. Mortgagor shall comply with all requirements of law and all municipal ordinances governing

8611062

UNOFFICIAL COPY

8611062

the Mortgaged Property and the use thereof. Mortgagor shall permit Mortgagee, and its agents, upon demand, access to and to inspect the Mortgaged Property at all reasonable times.

(B) Subject to the provisions of Paragraph 9.3 of the Loan and Security Agreement, Mortgagor promptly shall pay and discharge, as and when due and payable, before any penalty attaches, all Charges that may be at any time levied, assessed, or imposed upon or against the Mortgaged Property or any part thereof and shall deliver to Mortgagee duplicate receipts evidencing payment thereof at least thirty (30) days before delinquency. Subject to the provisions of Paragraph 9.3 of the Loan and Security Agreement, to prevent default hereunder, Mortgagor may pay in full, under protest, and in the manner provided by statute, any Charge which Mortgagor may desire to contest. If Mortgagee is required by legislative enactment or judicial decision to pay any Charge in or to any state, municipality or government on the Mortgaged Property (or on any interest therein), this Mortgage, the Guaranty, Installment Note #1, Installment Note #2, the Demand Note, the Loan and Security Agreement, the Other Agreements, or Mortgagor's Liabilities, all Mortgagor's Liabilities shall become and be due and payable, at the election of Mortgagee, thirty (30) days after the mailing of notice of such election to Mortgagor; provided, however, said election and right to elect will be unavailing and this Mortgage, the Guaranty, Installment Note #1, Installment Note #2, the Demand Note, the Loan and Security Agreement, and the Other Agreements will be and remain in full force and effect as though said law had not been enacted or said decision had not been rendered if, notwithstanding such law or decision, Mortgagor lawfully may pay such charge to or for Mortgagee and does, in fact, pay, when payable, so much thereof as, taken with interest as aforesaid, does not exceed the maximum amount of interest permitted by applicable law. If at any time the United States of America shall require internal revenue stamps to be affixed to this Mortgage, the Guaranty, Installment Note #1, Installment Note #2, the Demand Note, the Loan and Security Agreement, or the Other Agreements, Mortgagor will pay for the same, together with any interest or penalties imposed in connection therewith.

(C) Mortgagor shall keep the Mortgaged Property free and clear of all Encumbrances (including without limitation mechanic's liens and other similar liens or claims for liens) of any and every kind and nature except those described in Paragraph 3.2 above, and, subject to the provisions of Paragraph 9.3 of the Loan and Security Agreement, shall promptly pay or cause to be paid, as and when due and payable or when declared due and payable, any indebtedness which may become or be secured by such an Encumbrance and immediately upon request by Mortgagee, shall deliver to Mortgagee evidence satisfactory to Mortgagee of the payment and discharge thereof. To prevent default hereunder, Mortgagor may indemnify Mortgagee, by a means determined solely by and acceptable to Mortgagee, against loss by reason

8611062

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

3 6 1 1 0 2

of such an Encumbrance which Mortgagor may desire to contest. If, in accordance with the terms of this Mortgage, Mortgagee makes payment of any such Encumbrance, Mortgagee shall be subrogated to the rights of such claimant, notwithstanding that the Encumbrance may be released of record.

(D) Mortgagor shall not, at any time or times hereafter, pledge, hypothecate or otherwise encumber all or any portion of the Mortgaged Property or Mortgagor's interest therein. Without the prior written consent of Mortgagee, Mortgagor shall not sell or otherwise transfer all or any portion of the Mortgaged Property or Mortgagor's interest therein. Mortgagee, in its sole discretion, may deliver or withhold such consent based upon Mortgagee's determination, to its sole satisfaction, of the creditworthiness and ability of the proposed assignee, transferee, or purchaser to satisfy, perform, and discharge Mortgagor's Liabilities in a proper and timely fashion and manner. Mortgagee, in its sole discretion, may condition the delivery of its consent upon Mortgagor agreeing to provide for such additional terms and conditions in the Guaranty, Installment Note #1, Installment Note #2, the Demand Note, the Loan and Security Agreement, Mortgage or Other Agreements as may be acceptable to Mortgagee, in its sole discretion.

(E) All present and future items of fixtures, equipment, furnishings, or other tangible personal property (whether or not constituting a part of the Mortgaged Property); related or necessary to or used or usable in connection with any present or future building or improvement on the Premises, or the operation or business thereof, are and will be owned free and clear of all Encumbrances except those described in Paragraph 3.2 above, and Mortgagor will not acquire any such property subject to any Encumbrance except those Encumbrances described in Paragraph 3.2 above. Within five (5) days after request by Mortgagee, Mortgagor will execute and deliver to Mortgagee an additional security agreement and financing statement, in form and substance acceptable to Mortgagee, covering all such property.

3.4 If Mortgagor, immediately after written demand from Mortgagee, shall neglect or refuse to keep the Mortgaged Property in good operating condition and repair or to replace or maintain the same as herein agreed, to pay the premiums for the insurance which is required to be maintained hereunder, to pay and discharge all Encumbrances as herein agreed, or otherwise defaults in the performance of Mortgagor's Obligations, Mortgagee, at its sole election, may cause such repairs or replacements to be made, obtain such insurance, pay such Encumbrances or perform such Obligations. Any amounts paid by Mortgagee in taking such action, together with a per annum rate of interest thereon (computed on the basis of a 360-day year and charged for actual days elapsed) equal to 5.5% in excess of the Prime Rate, from the date of Mortgagee's payment thereof until repaid by Mortgagor to Mortgagee, shall

8611062

UNOFFICIAL COPY

3 3 1 1 1 0 5 2

be due and payable by Mortgagor to Mortgagee upon demand, and, until paid, shall constitute a part of Mortgagor's Liabilities secured by this Mortgage. Notwithstanding the foregoing, such advances by Mortgagee shall not be deemed to relieve Mortgagor from any default hereunder or impair any right or remedy consequent thereon. The exercise of the right to take such action shall be optional with Mortgagee and not obligatory upon Mortgagee and Mortgagee shall not in any case be liable to Mortgagor for failure or refusal to exercise any such right. In making any payments pursuant to the exercise of any such right, Mortgagee may rely upon any bills delivered to it by Mortgagor or any such payee and shall not be liable for any failure to make payments in any amounts other than as set forth in any such bills.

4. TAXES, INSURANCE, AND CONDEMNATION

4.1 (A) Mortgagor at all times shall keep and maintain the Mortgaged Property fully insured (without co-insurance) against loss or damage by, or abatement of rental income resulting from, fire and such other hazards, casualties, and contingencies as Mortgagee, from time to time, may require in companies, form, amounts and for such periods as are satisfactory to Mortgagee, but, in any event, for not less than the full insurable value of the Mortgaged Property. All such policies and renewals thereof shall contain, in form and substance acceptable to Mortgagee, standard mortgagee loss payable clauses naming Mortgagee as the loss payee as well as a standard waiver of subrogation and endorsement and shall be delivered, as issued, to Mortgagee, with premiums therefor paid in full by Mortgagor. All policies shall provide that they are non-cancellable by the insurer without first giving at least thirty (30) days' prior written notice to Mortgagee of any intended cancellation. Mortgagor will give immediate written notice to Mortgagee of any loss or damage to the Mortgaged Property caused by any casualty. In case of policies about to expire, Mortgagor will deliver to and deposit with Mortgagee renewal policies not less than forty-five (45) days prior to the respective dates of expiration. Mortgagor will deliver and deposit with Mortgagee receipts for the payment of the premiums on all policies and renewals thereof. In the event of foreclosure of this Mortgage or assignment hereof by Mortgagee or transfer of title to the Mortgaged Property in extinguishment of Mortgagor's Liabilities, all right, title, and interest of Mortgagor in and to any policies then in force shall pass to the purchaser, grantee, or assignee. Mortgagor will also, at all times and at its sole expense, maintain policies of rent insurance in favor of Mortgagee in an amount equal to not less than one year's aggregate gross rent from the Mortgaged Property.

(B) (1) Full power is hereby conferred on Mortgagee:

86111062

UNOFFICIAL COPY

§ 6 1 1 1 0 5 2

- (a) to settle and compromise all claims under all policies;
- (b) to demand, receive, and receipt for all monies becoming due or payable under all policies;
- (c) to execute, in the name of Mortgagor or in the name of Mortgagee, any proofs of loss, notices, or other instruments in connection with all claims under all policies; and
- (d) to assign all policies to any holder of Mortgagor's Liabilities or to the grantee of the Mortgaged Property in the event of the foreclosure of this Mortgage or other transfer of title to the Mortgaged Property.

(2) In the event of payment under any of the policies, the proceeds of the policies shall be paid by the insurer to Mortgagee and Mortgagee, in its sole and absolute discretion, may:

- (a) apply such proceeds, wholly or partially, after deducting all costs of collection, including reasonable attorneys' fees, either:
 - (i) toward the alteration, reconstruction, repair, or restoration of the Mortgaged Property or any portion thereof; or
 - (ii) as a payment on account of Mortgagor's Liabilities (without affecting the amount or time of subsequent payments required to be made by Mortgagor to Mortgagee under the Guaranty, Installment Note #1, Installment Note #2, the Demand Note, the Loan and Security Agreement, or the Other Agreements), whether or not then due or payable;

or

- (b) deliver the same to Mortgagor.

4.2 (A) Mortgagor shall pay when and to whom due and payable under applicable law, all Charges. Mortgagee does not assume any of Mortgagor's obligations under said laws to make such payments, and nothing contained herein, in the Guaranty, Installment Note #1, Installment Note #2, the Demand Note, the Loan and Security Agreement, or the Other Agreements

UNOFFICIAL COPY

3 6 1 1 1 0 3 2

shall require Mortgagee to perform any such obligations. Mortgagee shall not be obligated to make such payments, but, at its sole election and in its sole discretion, may make any or all such payments or make no payments at all.

(B) Upon the written request of Mortgagee, Mortgagor shall establish with Mortgagee an insurance escrow for deposit of funds for the payment of insurance premiums for all insurance policies required to be obtained and maintained by Mortgagor pursuant to this Mortgage with respect to the Mortgaged Property. Such insurance escrow shall be in such amount and shall be subject to such terms and conditions as Mortgagee, in its sole and absolute discretion, may determine.

4.3 (A) All awards now or hereafter made by any public or quasi-public authority to or for the benefit of Mortgagor in any way, manner or respect affecting, arising from or relating to the Mortgaged Property, or any portion thereof, by virtue of an exercise of the right of eminent domain by such authority (including without limitation any award for taking of title, possession, or right of access to a public way, or for any change of grade of streets affecting the Mortgaged Property) hereby are assigned to Mortgagee as additional security for the payment of Mortgagor's Liabilities (and for such purpose, Mortgagor hereby grants to Mortgagee a security interest therein).

(B) Mortgagee shall and hereby is authorized, directed and empowered to collect and receive the proceeds of any such awards from the authorities making the same and to give proper receipts therefor (in Mortgagor's name, in Mortgagee's name, or in both names), and may, in its sole and absolute discretion, use such proceeds for any one or more of the following purposes:

(1) apply the same, or any part thereof, to Mortgagor's Liabilities, whether or not then matured and without affecting the amount or time of subsequent payments required to be made by Mortgagor to Mortgagee under the Guaranty, Instalment Note #1, Instalment Note #2, the Loan and Security Agreement, or the Other Agreements;

(2) use the same, or any part thereof, to satisfy, perform, or discharge any of Mortgagor's Obligations;

(3) use the same, or any part thereof, to replace, repair, or restore any or all of the Mortgaged Property to a condition satisfactory to Mortgagee; or

8611062

UNOFFICIAL COPY

Property of Cook County Clerk's Office

10/11/2010 10:10:10 AM

UNOFFICIAL COPY

8 6 1 1 1 0 5 2

(4) release the same to Mortgagor.

(C) Mortgagor, immediately upon request by Mortgagee, shall make, execute, and deliver or cause to be made, executed, and delivered to or for the benefit of Mortgagee any and all assignments and other instruments sufficient to assign, and cause the payment directly to Mortgagee of, all such awards, free and clear of all Encumbrances except those Encumbrances described in Paragraph 3.2 above. Notwithstanding any taking by eminent domain, alteration of the grade of any street or other injury to or decrease in value of the Mortgaged Property by any public or quasi-public authority or corporation, Mortgagor shall continue to pay all Mortgagor's Liabilities, as and when due and payable, until any such award or payment shall have been actually received by Mortgagee, and any reduction in Mortgagor's Liabilities resulting from the application by Mortgagee of such award or payment as herein set forth shall be deemed to take effect only on the date of such receipt. If, prior to the receipt by Mortgagee of such award or payment, the Mortgaged Property shall have been sold on foreclosure of this Mortgage, Mortgagee shall have the right to receive such award or payment to the extent of any deficiency found to be due upon such sale, with legal interest thereon, whether or not a deficiency judgment on this Mortgage shall have been sought or recovered or denied, and of the reasonable attorneys' fees, costs, expenses, and disbursements incurred by Mortgagee in connection with the collection of such award or payment.

5. LEASES AND RENTS

5.1 So long as there shall not have occurred an Event of Default under this Mortgage, or any event which, with notice or lapse of time or both would become an Event of Default under this Mortgage, Mortgagor shall have the right to collect all the Rents arising from the Leases or renewals thereof and shall hold the same, in trust, to be applied first to the payment of all Charges upon the Mortgaged Property, second to the cost of the maintenance of insurance policies upon the Mortgaged Property required hereby, third to the maintenance and repairs required hereby and lastly to the payment of Mortgagor's Liabilities, before using any part of the Rents for any other purposes.

5.2 At all times, Mortgagee and any of Mortgagee's agents shall have the right to verify the validity, amount, or any other matter relating to any or all of the Leases, by mail, telephone, telegraph, or otherwise, in the name of Mortgagor, Mortgagee, or a nominee of Mortgagee.

5.3 Unless Mortgagee notifies Mortgagor thereof in writing that it dispenses with any one or more of the following requirements, Mortgagor shall: (a) promptly upon

86111052

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

3 5 1 1 0 5 2

Mortgagor's receipt or learning thereof, inform Mortgagee, in writing, of any assertion of any claims, offsets, or counterclaims by any of the obligors of the Leases; (b) not permit or agree to any material extension, compromise, or settlement or make any material change or modification of any kind or nature of or with respect to the Leases or the terms thereof; and (c) promptly upon Mortgagor's receipt or learning thereof, furnish to and inform Mortgagee of all material adverse information relating to or affecting the financial condition of any obligor of the Leases.

5.4 Within fifteen (15) days after demand therefor by Mortgagee, Mortgagor shall deliver to Mortgagee, in form and substance acceptable to Mortgagee, a detailed certified rent roll of all the Leases and such other matters and information relating thereto as Mortgagee may request.

5.5 Upon the occurrence of an Event of Default under this Mortgage:

(A) Immediately upon demand by Mortgagee, Mortgagor shall deliver to Mortgagee the originals of the Leases, with appropriate endorsement or other specific evidence of assignment thereto to Mortgagee, which endorsement or assignment shall be in form and substance acceptable to Mortgagee.

(B) Mortgagee, then or at any time or times thereafter, at its sole election, without notice thereof to Mortgagor, may notify any or all of the obligors of the Leases that the Leases have been assigned to Mortgagee, and Mortgagee (in its name, in the name of Mortgagor, or in both names) may direct said obligors thereafter to make all payments due from them under the Leases directly to Mortgagee.

(C) Mortgagor, immediately upon demand by Mortgagee, irrevocably, shall direct all obligors of the Leases then and thereafter to make all payments then and thereafter due from them under the Leases directly to Mortgagee.

(D) Mortgagee shall have the right at any time or times thereafter, at its sole election, without notice thereof to Mortgagor, to enforce the terms of the Leases and obtain payment of and collect the Rents, by legal proceedings or otherwise, in the name of Mortgagor, Mortgagee, or in both names.

(E) Mortgagor, irrevocably, hereby designates, makes, constitutes and appoints Mortgagee (and all Persons designated by Mortgagee) as Mortgagor's true and lawful attorney and agent-in-fact, with power, without notice to Mortgagor and at such time or times thereafter as Mortgagee, at its sole election, may

8611002

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

3 8 1 1 1 0 3 2

determine, in the name of Mortgagor, Mortgagee or in both names: (i) to demand payment of the Rents and performance of the Leases; (ii) to enforce payment of the Rents and performance of the Leases, by legal proceedings or otherwise; (iii) to exercise any or all of Mortgagor's rights, interests, and remedies in and under the Leases and to collect the Rents; (iv) to settle, adjust, compromise, extend, or renew the Leases or the Rents; (v) to settle, adjust, or compromise any legal proceeding brought to collect the Rents or obtain performance of the Leases; (vi) to take control, in any manner, of the Rents; (vii) to prepare, file, and sign Mortgagor's name on any Proof of Claim in bankruptcy, or similar document in a similar proceeding, against any obligor of the Leases; (viii) to endorse the name of Mortgagor upon any payments or proceeds of the Rents and to deposit the same to the account of Mortgagee; and (ix) to do all acts and things necessary, in Mortgagee's sole discretion, to carry out any or all of the foregoing.

(F) All of the foregoing payments and proceeds received by Mortgagee shall be utilized by Mortgagee, at its sole election and in its sole discretion, for any one or more of the following purposes: (i) to be held by Mortgagee as additional collateral for the payment of Mortgagor's Liabilities; (ii) to be applied to Mortgagor's Liabilities, in such manner and fashion and to such portions thereof as Mortgagee, at its sole election, shall determine; (iii) to be applied to such obligations of Mortgagor or the Mortgaged Property or the operation or business thereof as Mortgagee, at its sole election, shall determine appropriate or warranted under the then existing circumstances; or (iv) to be remitted to Mortgagor.

6. DEFAULT

6.1 The occurrence of any one or more of the following events shall constitute an "Event of Default" under this Mortgage:

(A) if Mortgagor fails or neglects to perform, keep, or observe any of Mortgagor's Obligations, or any other term, provision, condition, covenant, warranty, or representation contained in this Mortgage, the Guaranty, Installment Note #1, Installment Note #2, the Demand Note, the Loan and Security Agreement, or in the Other Agreements, which is required to be performed, kept, or observed by Mortgagor;

(B) if any material statement, report, or certificate made or delivered by Mortgagor, or any of its officers, employees, or agents, to Mortgagee is not true and correct;

UNOFFICIAL COPY

3 6 1 1 1 0 6 2

(C) if Mortgagor fails to pay Mortgagor's Liabilities, when due and payable or declared due and payable;

(D) if the Mortgaged Property or any other of Mortgagor's assets are attached, seized, subjected to a writ of distress warrant, or levied upon, or come within the possession of any receiver, trustee, custodian, or assignee for the benefit of creditors and the same is not terminated or dismissed within thirty (30) days thereafter;

(E) if a petition under any section or chapter of the Bankruptcy Reform Act of 1978 or any similar law or regulation shall be filed by Mortgagor or if Mortgagor shall make an assignment for the benefit of its creditors or if any case or proceeding is filed by Mortgagor for its dissolution or liquidation;

(F) if Mortgagor is enjoined, restrained, or in any way prevented by court order from conducting all or any material part of its business affairs or if a petition under any section or chapter of the Bankruptcy Reform Act of 1978 or any similar law or regulation is filed against Mortgagor or if any case or proceeding is filed against Mortgagor for its dissolution or liquidation and such injunction, restraint, or petition is not dismissed or stayed within thirty (30) days after the entry or filing thereof;

(G) if an application is made by Mortgagor for the appointment of a receiver, trustee, or custodian for the Mortgaged Property or any other of Mortgagor's assets;

(H) if an application is made by any Person other than Mortgagor for the appointment of a receiver, trustee, or custodian for the Mortgaged Property or any other of Mortgagor's assets and the same is not dismissed within thirty (30) days after the application therefor;

(I) if a notice of lien, levy, or assessment is filed of record with respect to all or any of Mortgagor's assets by the United States or any department, agency or instrumentality thereof or by any state, county, municipal, or other governmental agency, including without limitation the Pension Benefit Guaranty Corporation, or if any Charges owing at any time or times hereafter to any one of them becomes an Encumbrance upon the Mortgaged Property or upon any other of Mortgagor's assets and the same is not released or contested in such manner as to stay

86111062

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

8 6 1 1 1 0 6 2

the enforcement thereof within thirty (30) days after the same becomes an Encumbrance;

(J) the occurrence of a default or an Event of Default under any of the Other Agreements, if such default is not cured within the time, if any, specified therefor in such agreement, instrument, or document; or

(K) the occurrence of a default or an Event of Default under the Guaranty, Installment Note #1, Installment Note #2, the Demand Note or the Loan and Security Agreement.

6.2 Upon the occurrence of an Event of Default, without notice to or demand of Mortgagor, all Mortgagor's Liabilities shall become immediately due and payable, and Mortgagee, in its sole discretion and at its sole election, without notice of such election, and without demand, may do any one or more of the following:

(A) Collect Mortgagor's Liabilities at once by foreclosure or otherwise, without notice of broken covenant or condition (and in case of such default and the exercise of such option, Mortgagor's Liabilities shall bear interest, from the date of such default, at the rate provided in Paragraph 3.4 hereof).

(B) Either with or without process of law, forcibly or otherwise, enter upon and take immediate possession of the Mortgaged Property, expel and remove any Persons, goods, or chattels occupying or upon the same, receive all Rents and issue receipts therefor, manage, control, and operate the Mortgaged Property as fully as Mortgagor might do if in possession thereof, including without limitation, the making of all repairs and replacements deemed necessary by Mortgagee and the leasing of the same, or any part thereof, from time to time, and, after deducting all reasonable attorneys' fees and all costs and expenses incurred in the protection, care, maintenance, management and operation of the Mortgaged Property, apply the remaining net income, if any, to Mortgagor's Liabilities or upon any deficiency decree entered in any foreclosure proceeding. At the option of Mortgagee, such entry and taking of possession shall be accomplished either by actual entry and possession or by written notice served personally upon or sent by registered mail to Mortgagor at the address of Mortgagor last appearing on the records of Mortgagee. Mortgagor agrees to surrender possession of the Mortgaged Property to Mortgagee immediately upon the occurrence of an Event

86111062

UNOFFICIAL COPY

0 6 1 1 1 0 5 2

of Default. If Mortgagor shall remain in physical possession of the Mortgaged Property, or any part thereof, after any such default, such possession shall be as a tenant at sufferance of Mortgagee, and Mortgagor agrees to pay to Mortgagee, or to any receiver appointed as provided below, after such default, a reasonable monthly rental for the Mortgaged Property, or the part thereof so occupied by Mortgagor, to be applied as provided above in the first sentence of this Subparagraph, and to be paid in advance on the first day of each calendar month, and, in default of so doing, Mortgagor may be dispossessed by the usual summary proceedings. In the event Mortgagor shall so remain in possession of all, or any part of, the Mortgaged Property, said reasonable monthly rental shall be in amounts established by Mortgagee in its sole discretion. This covenant shall be effective irrespective of whether any foreclosure proceeding shall have been instituted and irrespective of any application for, or appointment of, a receiver.

(C) File one or more suits at law or in equity for the foreclosure of this Mortgage or to collect Mortgagor's Liabilities. In the event of the commencement of any such suit by Mortgagee, Mortgagee shall have the right, either before or after sale, without notice and without requiring bond (notice and bond being hereby waived), without regard to the solvency or insolvency of Mortgagor at the time of application and without regard to the then value of the Mortgaged Property or whether the same is then occupied, to make application for and obtain the appointment of a receiver for the Mortgaged Property. Such receiver shall have the power to collect the Rents during the pendency of such suit and, in case of a sale and a deficiency, during the full statutory period of redemption, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect the Rents, and shall have all other powers which may be necessary or usual in such cases for the protection, possession, control, management, and operation of the Mortgaged Property. The court before which such suit is pending may from time to time authorize the receiver to apply the net income in his hands in payment, in whole or in part, of Mortgagor's Liabilities. In case of a sale pursuant to foreclosure, the Premises may be sold as one parcel.

(D) In the event of the commencement of any suit by Mortgagee to foreclose this Mortgage, Mortgagee shall have the right to apply to the court in which such proceedings are pending for entry of an order placing

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

3 5 1 1 1 0 5 2

Mortgagee in possession of the Mortgaged Property. In the event an order is entered pursuant to Ill. Rev. Stat., Ch. 110, Par. 15-302 or any similar law placing Mortgagee in possession of the Mortgaged Property, Mortgagee may thereupon enter upon and take immediate possession of the Mortgaged Property, expel and remove any Persons, goods, or chattels occupying or upon the same, receive all Rents and issue receipts therefor, manage, control, and operate the Mortgaged Property, including without limitation make all repairs and replacements deemed necessary by Mortgagee and lease the same, or any part thereof, from time to time, and, after deducting all reasonable attorneys' fees and all costs and expenses incurred in the protection, care, maintenance, management, and operation of the Mortgaged Property, apply the remaining net income, if any, to Mortgagor's Liabilities or upon any deficiency decree entered in such foreclosure proceedings. At the option of Mortgagee, such entry and taking of possession shall be accomplished either by actual entry and possession or by written notice of entry of the order placing Mortgagee in possession served personally upon or sent by registered mail to Mortgagor at the address of Mortgagor last appearing on the records of Mortgagee. If Mortgagor shall remain in physical possession of the Mortgaged Property after entry of an order placing Mortgagee in possession, Mortgagor's possession shall be as a tenant at sufferance of Mortgagee, and Mortgagor agrees to pay to Mortgagee, or to any other Person authorized by Mortgagee, after entry of such order, a reasonable monthly rental for the Mortgaged Property, or the part thereof so occupied by Mortgagor, to be applied as provided above in the first sentence of Subparagraph (B) and to be paid in advance on the first day of each calendar month, and, in default of so doing, Mortgagor may be dispossessed by the usual summary proceedings. In the event Mortgagor shall so remain in possession of all or of any part of the Mortgaged Property, said reasonable monthly rental shall be in amounts established by Mortgagee in its sole discretion.

6.3 Upon the occurrence of an Event of Default under this Mortgage, there will be added to and included as part of Mortgagor's Liabilities (and allowed in any decree for sale of the Mortgaged Property or in any judgment rendered upon this Mortgage, the Guaranty, Installment Note #1, Installment Note #2, the Demand Note, the Loan and Security Agreement) the following: all costs and expenses of taking possession of the Mortgaged Property and of the holding, using, leasing, maintaining, repairing, improving, and selling the same, including without limitation the costs, expenses, and attorneys' fees specified in Paragraph 6.4 below; receivers'

86111062

fees; any and all expenditures which may be paid or incurred by or on behalf of Mortgagee for appraisers' fees, documentary and expert evidence, stenographers' charges, publication costs, fees and expenses for examination of title, title searches, guaranty policies, Torrens certificates, and similar data and assurances with respect to the title to the Mortgaged Property; all prepayment or like premiums, if any, provided for in the Guaranty, Installment Note #1, Installment Note #2, the Demand Note, the Loan and Security Agreement, or the Other Agreements; and all other fees, costs, and expenses which Mortgagee deems necessary to prosecute any remedy it has under this Mortgage, or to inform bidders at any sale which may be had pursuant to its rights hereunder, of the true condition of title or of the value of the Mortgaged Property. All such costs, charges, expenses, prepayment or like premiums, fees and other expenditures shall be a part of Mortgagor's Liabilities, secured by this Mortgage, payable on demand and shall bear interest at the rate specified in Paragraph 3.4 hereof from the date of Mortgagee's payment thereof until repaid to Mortgagee.

6.4 If foreclosure proceedings are instituted upon this Mortgage, or if Mortgagee shall be a party to, shall intervene, or file any petition, answer, motion or other pleading in any suit or proceeding relating to this Mortgage, the Guaranty, Installment Note #1, Installment Note #2, the Demand Note, the Loan and Security Agreement, the Other Agreements, or Mortgagor's Liabilities, or if Mortgagee shall incur or pay any expenses, costs, or attorneys' fees by reason of the employment of counsel for advice with respect to this Mortgage, the Guaranty, Installment Note #1, Installment Note #2, the Demand Note, the Loan and Security Agreement, the Other Agreements, or Mortgagor's Liabilities, and whether in court proceedings or otherwise, such expenses and all Mortgagee's reasonable attorneys' fees shall be part of Mortgagor's Liabilities, secured by this Mortgage, payable on demand and shall bear interest at the rate specified in Paragraph 3.4 hereof from the date of Mortgagee's payment thereof until repaid to Mortgagee.

6.5 The proceeds of any foreclosure sale of the Mortgaged Property shall be applied and distributed, first, on account of the fees, costs, and expenses described in Paragraph 6.3 above, second, to the balance of Mortgagor's Liabilities, and third, the surplus, if any, to Mortgagor.

6.6 In the event of the commencement of judicial proceedings to foreclose this Mortgage, Mortgagor, on behalf of itself, its successors and assigns, and each and every Person it may legally bind acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage: (a) does hereby expressly waive any and all rights of appraisalment, valuation, stay extension, and (to the extent permitted by law) redemption from sale under any order or

8611062

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

3 6 1 1 1 0 3 2

decree of foreclosure of this Mortgage; and (b) does hereby agree that when sale is had under any decree of foreclosure of this Mortgage, upon confirmation of such sale, the master in chancery or other officer making such sale, or his successor in office, shall be and is authorized immediately to execute and deliver to any purchaser at such sale a deed conveying the Mortgaged Property, showing the amount paid therefor, or if purchased by the Person in whose favor the order or decree is entered, the amount of his bid therefor.

6.7 Mortgagee shall have the right from time to time to sue for any sums, whether interest, principal, or any other sums required to be paid by or for the account of Mortgagor under the terms of this Mortgage, the Guaranty, Installment Note #1, Installment Note #2, the Demand Note, or the Loan and Security Agreement, as the same become due under the Guaranty, Installment Note #1, Installment Note #2, the Demand Note, the Loan and Security Agreement, or this Mortgage, or for any other of Mortgagor's Liabilities which shall become due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced.

6.8 No right of remedy of Mortgagee hereunder is exclusive of any other right or remedy hereunder or now or hereafter existing at law or in equity, but is cumulative and in addition thereto and Mortgagee may recover judgment thereon, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting or affecting or impairing the security or any right or remedy afforded by this Mortgage. No delay in exercising, or omission to exercise, any such right or remedy will impair any such right or remedy or will be construed to be a waiver of any default by Mortgagor hereunder, or acquiescence therein, nor will it affect any subsequent default hereunder by Mortgagor of the same or different nature. Every such right or remedy may be exercised independently or concurrently, and when and so often as may be deemed expedient by Mortgagee. No terms or conditions contained in this Mortgage, the Guaranty, Installment Note #1, Installment Note #2, the Demand Note, or the Loan and Security Agreement may be waived, altered, or changed except as evidenced in writing signed by Mortgagor and Mortgagee.

6.9 Mortgagee shall release this Mortgage by proper instrument upon payment and discharge of all Mortgagor's Liabilities, including all prepayment or like premiums, if any, provided for in the Guaranty, Installment Note #1, Installment Note #2, the Demand Note, the Loan and Security Agreement, or the Other Agreements and payment of all costs, expenses, and fees, including reasonable attorneys' fees, incurred by Mortgagee for the preparation, execution, or recording of such release.

86111062

UNOFFICIAL COPY

3 3 1 1 1 3 2

6.10 Upon occurrence of an Event of Default and acceleration of the maturity of Mortgagor's Liabilities as provided herein, a tender of payment thereof by Mortgagor, or any other Person, or a payment thereof received upon or on account of a foreclosure of this Mortgage or Mortgagee's exercise of any of its other rights or remedies under this Mortgage, the Guaranty, Installment Note #1, Installment Note #2, the Demand Note, the Loan and Security Agreement, the Other Agreements, or under any applicable law or in equity shall be deemed to be a voluntary prepayment made by Mortgagor of Mortgagor's Liabilities and, therefore, such payment must, to the extent permitted by law, include the premiums and other payments required under the prepayment privilege, if any, contained in the Guaranty, Installment Note #1, Installment Note #2, the Demand Note, the Loan and Security Agreement, or the Other Agreements.

6.11 (A) Any agreements between Mortgagor and Mortgagee are expressly limited so that, in no event whatsoever, whether by reason of disbursement of the proceeds of the loans secured hereby or otherwise, shall the amount paid or agreed to be paid to Mortgagee for the use, detention, or forbearance of the loan proceeds to be disbursed exceed the highest lawful contract rate permissible under any law which a court of competent jurisdiction may deem applicable thereto.

(B) If fulfillment of any provision herein, in the Guaranty, Installment Note #1, Installment Note #2, the Demand Note, the Loan and Security Agreement, or in the Other Agreements, at the time performance of such provision becomes due, involves exceeding such highest lawful contract rate, then ipso facto, the obligation to fulfill the same shall be reduced to such highest lawful contract rate. If by any circumstance Mortgagee shall ever receive as interest an amount which would exceed such highest lawful contract rate, the amount which may be deemed excessive interest shall be applied to the principal of Mortgagor's Liabilities and not to interest.

(C) The terms and provisions of this Paragraph shall control all other terms and provisions contained herein, in the Guaranty, Installment Note #1, Installment Note #2, the Demand Note, the Loan and Security Agreement, or in the Other Agreements.

6.12 Any failure of Mortgagee to insist upon the strict performance by Mortgagor of any of the terms and provisions of this Mortgage, the Other Agreements, the Guaranty, Installment Note #1, Installment Note #2, the Demand Note, or the Loan and Security Agreement shall not be deemed to be a waiver of any of the terms and provisions thereof, and Mortgagee, notwithstanding any such failure, shall have the right at any time or times thereafter to insist upon the strict performance by Mortgagor of any and all of the terms and provisions thereof to be performed by Mortgagor. Neither

86111062

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

3 6 1 1 1 0 3 2

Mortgagor, nor any other Person now or hereafter obligated for the payment of the whole or any part of Mortgagor's Liabilities, shall be relieved of such obligation by reason of the sale, conveyance, or other transfer of the Mortgaged Property or the failure of Mortgagee to comply with any request of Mortgagor, or of any other Person, to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage, the Other Agreements, the Guaranty, Installment Note #1, Installment Note #2, the Demand Note, or the Loan and Security Agreement, or by reason of the release, regardless of consideration, of the whole or any part of the security held for Mortgagor's Liabilities, or by reason of any agreement or stipulation between any subsequent owner or owners of the Mortgaged Property and Mortgagee extending the time of payment of Mortgagor's Liabilities or modifying the terms of the Guaranty, Installment Note #1, Installment Note #2, the Demand Note, the Loan and Security Agreement, the Other Agreements, or this Mortgage without first having obtained the consent of Mortgagor or such other Person, and, in the latter event, Mortgagor and all such other Persons shall continue liable on account of Mortgagor's Liabilities and to make such payments according to the terms of any such agreement, extension, or modification unless expressly released and discharged in writing by Mortgagee. Mortgagee, without notice, may release, regardless of consideration, any part of the security held for Mortgagor's Liabilities, without, as to the remainder of the security therefor, in any way impairing or affecting the lien of this Mortgage or the priority of such lien over any subordinate lien. Mortgagee may resort for the payment of Mortgagor's Liabilities to any other security therefor held by Mortgagee in such order and manner as Mortgagee may elect.

7. MISCELLANEOUS

7.1 Every provision for notice, demand or request required in this Mortgage, the Guaranty, Installment Note #1, Installment Note #2, the Demand Note, the Loan and Security Agreement, or the Other Agreements or by applicable law shall be deemed fulfilled by written notice, demand, or request personally served on (with proof of service endorsed thereon), or mailed to, as hereinafter provided, the party entitled thereto or on its successors or assigns. If mailed, such notice, demand or request shall be made certified or registered mail, return receipt requested, and deposited in any post office station or letter-box, enclosed in a postage paid envelope addressed to such party at its address set forth below or to such other address as either party hereto shall direct by like written notice and shall be deemed to have been made on the fifth (5th) day following posting as aforesaid. For the purposes herein, notices shall be sent to Mortgagor and Mortgagee as follows:

86111052

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

8 6 1 1 1 0 6 2

To Mortgagor:

Drexel Distributors, Inc.
5201 West Grand Avenue
Chicago, Illinois 60639
Attention: Helen Sanichas, President

with a copy to:

Lord, Bissell and Brook
115 South LaSalle Street
Chicago, Illinois 60603
Attention: John S. Shapira

To Mortgagee:

American National Bank and
Trust Company of Chicago
33 North LaSalle Street
Chicago, Illinois 60690
Attention: Joseph P. Walker,
Vice President

with a copy to:

Nachman, Hunitz & Sweig, Ltd.
115 S. LaSalle Street
Suite 2580
Chicago, Illinois 60603
Attention: David S. Kurtz

7.2 All the covenants contained in this Mortgage will run with the land. Time is of the essence of this Mortgage and all provisions herein relating thereto shall be strictly construed.

7.3 This Mortgage, and all the provisions hereof, will be binding upon and inure to the benefit of the successors and assigns of Mortgagor and Mortgagee.

7.4 This Mortgage was executed and delivered in, and, except as otherwise specifically stated in any given paragraph hereof, shall be governed as to validity, interpretation, construction, effect, and all other aspects by the laws and decisions of the State of Illinois.

7.5 Any provision of this Mortgage which is unenforceable in any state in which this Mortgage may be filed or recorded or is invalid or contrary to the law of such state, or the inclusion of which would affect the validity, legality or enforcement of this Mortgage, shall be of no effect, and in such case all the remaining terms and provisions of this Mortgage shall subsist and be fully effective according to the tenor of this Mortgage, the same as though no such invalid portion had ever been included herein.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

2 5 1 1 1 0 5 2

7.6 To the extent that any of Mortgagor's Liabilities represent funds utilized to satisfy any outstanding indebtedness or obligations secured by liens, rights or claims against the Mortgaged Property or any part thereof, Mortgagee shall be subrogated to any and all liens, rights, superior titles and equities owned or claimed by the holder of any such outstanding indebtedness or obligation so satisfied, however remote, regardless of whether said liens, rights, superior title, and equities are by the holder(s) thereof assigned to Mortgagee or released.

IN WITNESS WHEREOF, this Mortgage has been duly executed and delivered as of the day and year first above written.

In the presence of:

DREXEL DISTRIBUTORS, INC.
(Mortgagor)
5201 West Grand Avenue
Chicago, Illinois 60639

Shirley E. ...
Name

Barbara A. ...
Name

By: [Signature]
Its President

ACCEPTED:

AMERICAN NATIONAL BANK AND
TRUST COMPANY OF CHICAGO
(Mortgagee)

By: [Signature]
Its Special Vice President

86111062

UNOFFICIAL COPY

Property of Cook County Clerk's Office

2025-03-28

UNOFFICIAL COPY

3 5 1 1 1 0 5 2

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

I, Kathleen Long Kelly, a Notary Public in and for said County, in the State aforesaid, do hereby certify that on December 18, 1985, Helen Sanchez, personally known to me to be a President of Drexel Distributors, Inc. and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument on behalf of the aforesaid corporation as his free and voluntary act and as the free and voluntary act of said corporation.

GIVEN under my hand and Notarial Seal this 18th day of December, 1985.

Kathleen Long Kelly
Notary Public

My commission expires: 1-25-88

PROPERTY OF COOK COUNTY CLERK'S OFFICE

86111062

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

3 6 1 1 1 0 6 2

EXHIBIT A TO MORTGAGE DATED DECEMBER 18, 1985

That part of the South West quarter of Section 33, Township 40 North, Range 13, Each of the Third Principal Meridian, described as follows: Commencing at the point of intersection of the center line of Latrobe Avenue (formerly 52nd Court) as shown on the plat of Gavigan's Subdivision of part of the West half of Section 33 aforesaid, said Subdivision being recorded October 1, 1908 as document 4267867, extended Southerly with a line which is 20 feet Northerly of and parallel with the Northerly line of the right of way of the Chicago, Milwaukee and St. Paul Railroad and running thence Northerly along said center line of Latrobe Avenue extended Southerly, a distance of 133.17 feet to the South line of Gavigan's Subdivision aforesaid; thence East along said South line, a distance of 180.87 feet to a point; thence South parallel to the East line of said South West quarter, a distance of 25 feet to a point; thence East parallel with the South line of Gavigan's Subdivision, a distance of 55 feet to a point; thence South parallel with the East line of said South West quarter, a distance of 153.44 feet to the point of intersection of said line with the said line which is 20 feet Northerly of the Northerly line of the right of way of the Chicago, Milwaukee and St. Paul Railroad; thence Westerly along said last described line, a distance of 269.40 feet to the place of beginning (except that part thereof falling in the premises described as follows: Commencing at the South West corner of Lot 8 "Gavigan's" Subdivision of part of the West half of Section 33, Township 40 North, Range 13, East of the Third Principal Meridian, according to the plat thereof recorded October 1, 1908 as document 4267867; thence South Westerly along the Westerly line of said Lot 8, extended a distance of 1 inch to the North West corner of a 1-story brick building; thence Easterly along the North face of said brick building 149.93 feet; thence North 9 3/8 inches to the South East corner of Lot 8 aforesaid; thence West along the South line thereof to the place of beginning) in Cook County, Illinois.

86111062

Permanent Tax No. 13-33-300-010

DEPT-01 RECORDING \$57.90
781111 TRAN 5366 03/21/86 15:12:09
#323 # A *-86--111062

MAR 90

37.00 mail

36111062

UNOFFICIAL COPY

Property of Cook County Clerk's Office