

# UNOFFICIAL COPY

MORTGAGE

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THIS INDENTURE, made as of this 2<sup>nd</sup> day of May 1986, by and between DONALD WATTS, divorced and not since remarried (hereinafter referred to as the "Mortgagor"), and SEAWAY NATIONAL BANK, a National Banking Association, (hereinafter referred to as the "Mortgagee"), having an office at 645 East 87th Street, Chicago, Illinois.

### WITNESSETH:

Mortgagor is justly indebted to Mortgagee in the principal sum of ONE MILLION ONE HUNDRED THOUSAND AND NO/100 (\$1,100,000.00) DOLLARS evidenced by a certain Mortgage Note (the "Note") of even date herewith in that amount, made by Mortgagor and payable to the order of and delivered to Mortgagee, in and by which said Note, Mortgagor promises to pay the said principal sum and interest, thereon in the manner and at the rates as provided therein. The unpaid principal amount and all accrued and unpaid interest due under the Note, if not sooner paid, shall be due on May 15, 1983. All such payments on account of the indebtedness evidenced by the Note shall at such place as the holder of the Note may from time to time in writing appoint, and in the absence of such appointment, then at the office of Mortgagee, 645 East 87th Street, Chicago, Illinois 60619.

NOW THEREFORE, Mortgagor, to secure: (i) the payment of said principal sum of money, and said interest in accordance with the terms, provisions and limitations of this Mortgage, and of the Note secured hereby, together with any extensions, renewals or refinancings thereof; (ii) the performance and observance of the covenants, conditions and agreements contained in the Note, this Mortgage and the Loan Documents (as hereinafter defined); and (iii) the reimbursement of Mortgagee for any and all sums expended or advanced by Mortgagee pursuant to any term or provision of or constituting additional indebtedness secured by this Mortgage or any of the Loan Documents, with interest thereon as provided herein or therein; and also in consideration of the sum of TEN (\$10.00) DOLLARS in hand paid, the receipt whereof is hereby acknowledged, does by these presents MORTGAGE, GRANT, REMISE, RELEASE, WARRANT AND CONVEY unto Mortgagee, its successors and assigns, the real estate and all of its estate, right, title and interest therein situated, located in Cook County, Illinois and legally described in Exhibit A attached hereto and made a part hereof (the "Land"), which together with the property hereinafter described, is referred to herein as the "Premises".

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

TOGETHER WITH all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, hereditaments and appurtenances whatsoever, in any way belonging, relating or appertaining to the Land, or which hereafter shall in any way

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RESERVED, DONALD WATTS

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belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Mortgagor of, in and to the same;

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

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

TOGETHER WITH all fixtures and articles of personal property now or hereafter owned by Mortgagor and forming a part of or used in connection with the Land or the Improvements or the operation thereof including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Land or the Improvements in any manner; it being mutually agreed that all of the aforesaid property owned by Mortgagor and placed on the Land or the Improvements shall, so far as permitted by law, be deemed to be fixtures, a part of the realty, and security for the indebtedness hereby secured; notwithstanding the agreement and declaration hereinabove expressed that certain articles of property form a part of the realty covered by this Mortgage and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute goods (as said term is used in the Uniform Commercial Code), this instrument shall constitute a security agreement, creating a security interest in such goods, as collateral, in Mortgagee as a secured party and Mortgagor as Debtor, all in accordance with said Uniform Commercial Code; and

TOGETHER WITH all proceeds of the foregoing, including without limitation all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Premises or proceeds of any sale, option or contract to sell the Premises or any portion thereof; and Mortgagor hereby authorizes, directs and empowers, Mortgagee, at its option, on behalf of Mortgagor, or the successors or assigns of Mortgagor, to adjust, compromise, claim, collect and receive such proceeds, to give proper receipts and acquittances therefor, and, after deducting expenses of

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collection, to apply the net proceeds as a credit upon any portion, as selected by Mortgagee, of the indebtedness hereby secured, notwithstanding the fact that the same may not then be due and payable or that the indebtedness hereby secured is otherwise adequately secured. All of the Land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared, to the maximum extent permitted by law, to form a part and parcel of the real estate and to be appropriated to the use of the real estate, and shall be for the purposes of this Mortgage deemed to be real estate and conveyed and mortgaged hereby.

TO HAVE AND TO HOLD the Premises unto the said Mortgagee, its successors and assigns, forever, for the purposes and uses herein set forth.

PROVIDED, NEVERTHELESS, that if Mortgagor shall pay in full when due the indebtedness hereby secured and shall duly and timely perform and observe all of the terms, provisions, covenants and agreements herein and in the Note and the Loan Documents provided to be performed and observed by the Mortgagor or its beneficiaries, then this Mortgage and the estate, right and interest of Mortgagee in the Premises shall cease and become void and of no effect, but shall otherwise remain in full force and effect.

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. Title.

Mortgagor represents to and covenants with Mortgagee that (a) Mortgagor holds fee simple title to the Premises, free and clear of all liens and encumbrances, except the "Permitted Exceptions" set forth on Exhibit B attached hereto and made a part hereof and other liens and encumbrances as shall have been expressly approved in writing by Mortgagee, and (b) Mortgagor has legal power and authority to mortgage (with a waiver of the right of redemption) and convey the Premises.

2. Maintenance, Repair and Restoration of Improvements, Payment of Prior Liens, etc.

Mortgagor shall (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed; (b) keep the Premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien, except that Mortgagor shall have the right within fifteen (15) days after the filing thereof (1) to place a bond with Mortgagee in an amount, form, content and issued by a surety reasonably acceptable to Mortgagee for the payment of any such lien or (2) to cause the title company which has issued the loan policy of title insurance to Mortgagee insuring the lien of this Mortgage to issue an endorsement thereto insuring against loss or damage on account of any such lien; (c) subject to the provisions of subparagraph (b) above, immediately pay when due any indebtedness which may be secured by a lien or charge on the Premises superior to, of equal priority with or inferior to the lien hereof (no such superior or equal priority or inferior lien to be permitted hereunder) and upon request exhibit satisfactory evidence of the discharge of any such lien to Mortgagee; (d) complete within a reasonable time any Improvements now or at any time in process of construction upon the Premises; (e) comply with all requirements of law, municipal ordinances and restrictions of record with respect to the Premises and the use and development thereof, including without limitation, those relating to building, zoning,

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environmental protection, health, fire and safety; (f) make no structural or non-structural alterations to the Premises or any Improvements now or hereafter constructed thereon, without the prior written consent of Mortgagee; (g) suffer or permit no demolition of the Premises and no change in the general nature of the occupancy of the Premises, without the prior written consent of Mortgagee; (h) initiate or acquiesce in no zoning reclassification without the prior written consent of Mortgagee; and (i) pay each item of indebtedness secured by this Mortgage when due according to the terms hereof or of the Note. As used in this paragraph and elsewhere in this Mortgage, the term "indebtedness" shall mean and include the principal sum evidenced by the Note, together with all interest thereon, Additional Indebtedness, accrued interest thereon and all other amounts payable to Mortgagee thereunder, and all other sums at any time secured by this Mortgage.

3. Payment of Taxes and Assessments.

Mortgagor shall pay before any penalty or interest attaches all general taxes, special taxes, special assessments, water charges, sewer service charges, and all other liens or charges levied or assessed against the Premises of any nature whatsoever when due, and shall furnish to Mortgagee duplicate receipts of payment therefor. If any special assessment is permitted by applicable law to be paid in installments, Mortgagor shall have the right to pay such assessment in installments, so long as all such installments are paid prior to the due date thereof. With respect to any tax or assessment which Mortgagor may desire to contest, Mortgagor shall pay such tax or assessment in full under protest in order to prevent a default under this Mortgage on account thereof.

4. Tax and Insurance Deposits.

If requested by Mortgagee, Mortgagor covenants and agrees to deposit with Mortgagee, commencing on June 15, 1986 and on the fifteenth (15) day of each month thereafter until the indebtedness secured by this Mortgage is fully paid, a sum equal to one-twelfth (1/12th) of the annual taxes and assessments (general and special) on the Premises (unless said taxes are based upon assessments which exclude the improvements thereof now constructed or to be constructed, in which event the amount of such deposits shall be based upon Mortgagee's reasonable estimate as to the amount of taxes and assessments to be levied and assessed). Immediately following an Event of Default (as hereinafter defined), Mortgagor shall deposit with Mortgagee an amount of money, when together with the aggregate of the monthly deposits to be made pursuant to the above as of one month prior to the date on which the total annual taxes and assessments for the current calendar year become due, shall be sufficient to pay in full the total annual taxes and assessments estimated by Mortgagee to become due and payable with respect to the Premises for the current calendar year. Such deposits are to be held without any allowance of interest and are to be used for the payment of taxes and assessments (general and special), on the Premises next due and payable when they become due. Mortgagee may, at its option, itself pay such taxes and assessments when the same become due and payable (upon submission of appropriate bills therefor from Mortgagor) or shall release sufficient funds to Mortgagor for payment of such taxes and assessments. If the funds so deposited are insufficient to pay any such taxes and assessments (general or special) for any year when the same shall become due and payable, Mortgagor shall within ten (10) days after receipt of demand therefor, deposit additional funds as may

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for payment of such taxes, assessments and insurance premiums. If the funds so deposited are insufficient to pay any such taxes, assessments (general or special) and premiums for any year when the same shall become due and payable, Mortgagor shall within ten (10) days after receipt of demand therefor, deposit additional funds as may be necessary to pay such taxes, assessments (general and special) and premiums in full. If the funds so deposited exceed the amount required to pay such taxes, assessments (general and special) and premiums for any year, the excess shall be applied on a subsequent deposit or deposits. Said deposits need not be kept separate and apart from any other funds of Mortgagee and Mortgagor shall not be entitled to the payment of interest thereon. Anything in this Paragraph 4 to the contrary notwithstanding, if the fund so deposited are insufficient to pay any such taxes, assessments (general or special) or premiums or any installment thereof, Mortgagor will, not later than the thirtieth (30th) day prior to the last day on which the same may be paid without penalty or interest, deposit with Mortgagee the full amount of any such deficiency.

## 5. Mortgagee's Interest In and Use of Deposits.

In the event of a default in any of the provisions contained in this Mortgage or the Note secured hereby, the Mortgagee may at its option, without being required so to do, apply any monies at the time on deposit pursuant to Paragraph 4 hereof, on any of Mortgagor's obligations herein or in the Note contained, in such order and manner as Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Mortgagor. Such deposits are hereby pledged as additional security for the indebtedness hereunder and shall be irrevocably applied by Mortgagee for the purposes for which are made hereunder and shall not be subject to the direction or control of Mortgagor; provided, however, that Mortgagee shall not be liable for any failure to apply to the payment of taxes, assessments and insurance premiums any amount so deposited unless Mortgagor, while not in default hereunder, shall have requested Mortgagee in writing to make application of such funds to the payment of which they were deposited, accompanied by the bills for such taxes, assessments and insurance premiums. Mortgagee shall not be liable for any act or omission taken in good faith or pursuant to the instruction of any party.

## 6. Insurance.

Mortgagor shall at all times keep all Improvements, including buildings, site improvements, fixtures and articles of personal property now or hereafter situated on the Premises insured against loss or damage by fire and such other hazards as may reasonably be required by Mortgagee, including without limitation: (a) all-risk fire and extended coverage insurance, with vandalism and malicious mischief endorsements, for the full replacement value of the Premises, in an agreed amount, with inflation guard endorsement; (b) if there are tenants under leases at the Premises, rent or business loss insurance for the same perils described in (a) above payable at the rate per month and for the period specified from time to time by Mortgagee; (c) boiler and sprinkler damage insurance in an amount reasonably satisfactory to Mortgagee, if and so long as the Premises shall contain a boiler and sprinkler system, respectively; (d) if the Premises are located in a flood hazard district, flood insurance whenever in the opinion of Mortgagee such protection is necessary and available; and (e) such other insurance as Mortgagee may from time to time reasonably require. Mortgagor also shall at all times maintain comprehensive public liability, property damage and workmens' compensation insurance covering the Premises and any employees thereof, with such limits for personal injury, death and property damage as Mortgagee may reasonably require.

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All policies of insurance to be included hereunder shall be in forms, companies, amounts and deductibles reasonably satisfactory to Mortgagee, with mortgage clauses attached to all policies in favor of and in form satisfactory to Mortgagee, including a provision requiring that the coverage evidenced thereby shall not be terminated or modified without thirty (30) days' prior written notice to Mortgagee. Mortgagor shall deliver all policies, including additional and renewal policies, to Mortgagee, and, in the case of insurance about to expire, shall deliver renewal policies not less than thirty (30) days prior to their respective dates of expiration.

Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon under a standard mortgage clause acceptable to Mortgagee. Mortgagor immediately shall notify Mortgagee whenever any such separate insurance is taken out and promptly shall deliver to Mortgagee the policy or policies of such insurance.

In the event of loss Mortgagor will give immediate notice by mail to Mortgagee, who may make proof of loss if not made promptly by Mortgagor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Mortgagee instead of to Mortgagor and Mortgagee jointly, and the insurance proceeds, or any part thereof, shall be applied by Mortgagee to the restoration or repair of the property damaged as provided in Paragraph 22 hereof. In the event of foreclosure of this Mortgage, all right, title and interest of Mortgagor in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale. Mortgagor shall furnish Mortgagee, without cost to Mortgagee, at the request of Mortgagee, from time to time, evidence of the replacement value of the Premises.

## 7. Condemnation.

If all or any part of the Premises are damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid indebtedness secured by this instrument, is hereby assigned to Mortgagee, who is empowered to collect and receive the same and to give proper receipts therefor in the name of Mortgagor and the sale shall be paid forthwith to Mortgagee, who shall release any such award or monies so received or apply the same in whole or in part, after the payment of all of its expenses, including reasonable costs and attorneys' fees, to the restoration or repair of the property damaged as provided in Paragraph 22 hereof, if the property can be restored or repaired to constitute a complete architectural unit, then such award or monies received after the payment of expenses of Mortgagee as aforesaid shall be applied on account of the unpaid principal balance of the Note, irrespective of whether such principal balance is then due and payable. Furthermore, in the event such award or monies so received shall exceed the cost of restoration or repair of the property and expenses of Mortgagee as aforesaid, then such excess monies shall be applied on account of the unpaid principal balance of the Note, irrespective of whether such principal balance is then due and payable.

## 8. Stamp Tax.

If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over Mortgagor, any tax is due or becomes due in respect of the execution and delivery of this Mortgage or the issuance of the Note hereby secured, Mortgagor covenants and agrees to pay such

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tax in the manner required by any such law. Mortgagor further covenants to reimburse Mortgagee for any sums which Mortgagee may expend by reason of the imposition of any tax on the issuance of the Note secured hereby.

## 9. Observance of Lease Assignment.

As additional security for the payment of the Note secured hereby and for the faithful performance of the terms and conditions contained herein, Mortgagor and Mortgagor's beneficiaries, as lessor, have assigned to Mortgagee all of their right, title and interest as lessor in and to all leases, occupancy, operation and management agreements (herein, collectively "leases" and individually a "lease") which now or hereafter affect the Premises pursuant to the Assignment of Rents and Lessor's Interest in Leases of even date herewith.

Mortgagor will not, without Mortgagee's prior written consent (i) execute an assignment or pledge of any rents and/or any leases affecting all or any portion of the Premises; or (ii) accept any prepayment of any installment of any rents more than thirty (30) days before the due date of such installment, other than security and other deposits.

Mortgagor at its sole cost and expense will (1) at all times promptly and faithfully abide by, discharge and perform all of the covenants, conditions and agreements contained in all leases affecting all or any portion of the Premises, on the part of the lessor thereunder to be kept and performed; (ii) use its best efforts to enforce or secure the performance of all of the covenants, conditions and agreements of such leases on the part of the lessees to be kept and performed; (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with such leases or the obligations, duties or liabilities of the lessor or of the lessees thereunder; (iv) as additional security for the payment of the Note secured hereby and for the faithful performance of the terms and conditions contained herein, transfer and assign to Mortgagee any lease or leases of the Premises heretofore or hereafter entered into, and make, execute and deliver to Mortgagee upon demand, any and all instruments required to effectuate said assignment; (v) give written notice to Mortgagee within five (5) days of the occurrence of any material default under any leases affecting all or any portion of the Premises; and (vi) exercise within (5) days of any demand therefor by Mortgagee any right to request from the lessee under any lease affecting all or any portion of the Premises a certificate with respect to the status thereof.

Nothing in this Mortgage or in any other documents relating to the loan secured hereby shall be construed to obligate Mortgagee, expressly or by implication, to perform any of the covenants of Mortgagor as lessor under any of the leases assigned to Mortgagee or to pay any sum of money or damages therein provided to be paid by the lessor, each and all of which covenants and payments Mortgagor agrees to perform and pay.

In the event of the enforcement by Mortgagee of the remedies provided for by law or by this Mortgage, the lessee under each lease affecting all or any portion of the Premises shall, at the option of Mortgagee, attorn to any person succeeding to the interest of Mortgagor as a result of such enforcement and shall recognize such successor in interest as lessor under such lease without change in the terms of other provisions thereof; provided, however, that said successor in interest shall not be bound by any payment of rent or additional rent for more than one month in advance or any amendment or modification to any lease made without the consent of Mortgagee or said successor in interest. Each lessee, upon request by said

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successor in interest, shall execute and deliver an instrument or instruments confirming such attornment.

Mortgagee shall have the option to declare this Mortgage (after the expiration of the cure period expressly provided for in Paragraph 14(b) below) in default because of a default of the lessor in any lease affecting all or any portion of the Premises, whether or not such default is cured by Mortgagee pursuant to the right granted herein. It is covenanted and agreed that a default remaining uncured after the expiration of any applicable cure periods expressly provided for under the Assignment of Rents and Lessor's Interest in Leases referred to in the first grammatical paragraph of this Paragraph 9 or under any assignment of leases executed pursuant to this Paragraph 9 shall constitute a default hereunder on account of which the whole of the indebtedness secured hereby shall at once, at the option of Mortgagee, become immediately due and payable without notice to Mortgagor.

## 10. Effect of Extensions of Time.

If the payment of said indebtedness or any part thereof be extended or varied or if any part of any security for the payment of the indebtedness 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, the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation or release.

## 11. Effect of Changes in Laws Regarding Taxation.

In the event of the enactment after this date of any law of the state in which the Premises are located deducting from the value of the land for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagee's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holders thereof, then, and in any event, Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor; provided however, that Mortgagor shall not be deemed to be required to pay any income or franchise taxes of Mortgagee. Notwithstanding the foregoing, if in the opinion of counsel for Mortgagee (a) it might be unlawful to require Mortgagor to make such payment or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable sixty (60) days from the giving of such notice.

## 12. Mortgagee's Performance of Defaulted Acts.

In case of default herein, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient, and may, but need not, 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 consent to any tax or assessment or cure any default of Mortgagor in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by Mortgagee in regard to any tax referred to in paragraph 8 or to protect the Premises or the



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lien hereof shall be secured by additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at an annual rate (the "Default Interest Rate" applicable to the "Floating Interest Rate" as defined in the Note) then in effect under the Note. The interest under this Paragraph 11 shall be immediately due and payable by Mortgagor to Mortgagee, and shall be indebtedness evidenced by the note and secured by this Mortgage. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor. Should the proceeds of the Note or any part thereof, or any amount paid out or advanced by Mortgagee hereunder, or pursuant to any agreement executed by Mortgagor in connection with this Loan be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Premises or any part thereof, then as additional security hereunder, the Mortgagee shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, however remote, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released or record by the holder thereof upon payment. Notwithstanding anything contained herein to the contrary, in no event shall the indebtedness secured by this Mortgage exceed TEN MILLION (\$10,000,000.00) DOLLARS.

13. Mortgagee's Reliance on Tax Bills and Claims for Liens.

Mortgagee in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (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, provided that Mortgagee shall give to Mortgagor five (5) days' prior written notice thereof.

14. Acceleration of Indebtedness in Event of Default.

Each of the following shall constitute an "Event of Default" for purposes of this Mortgage:

(a) Mortgagor fails to pay when due any installment of principal or Additional Indebtedness payable pursuant to the Note or this Mortgage;

(b) Mortgagor fails to pay ten (10) days after same becomes due any installment of interest payable pursuant to the Note;

(c) Mortgagor fails to promptly perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Mortgagor under (i) the Note, (ii) this Mortgage, and (iii) the Assignment of Rents and Lessor's Interest in Leases of even date herewith made by Mortgagor to Mortgagee, (the documents described in sections (i) through (iii) above, both inclusive, being hereinafter collectively referred to as the "Loan Documents"); provided, however, that unless and until the continued operation or safety of the Premises, or the priority, validity or enforceability of this Mortgage or the lien hereof or the lien of any other security granted to Mortgagee or the value of the Premises is immediately threatened or jeopardized, Mortgagor shall have a period not to exceed thirty (30) days after written notice of such failure of performance or observance to cure the same;

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(d) Any material inaccuracy or untruth in any representation, covenant or warranty made in this Mortgage or any of the other Loan Documents by Mortgagor, or of any statement or certification as to facts delivered to Mortgagee pursuant to the Loan Documents;

(e) The death or legal incompetency of Mortgagor;

(f) At any time, Mortgagor, files at any time a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal, state, or other statute or law, or seeks or consents to or acquiesces in the appointment of any trustee, receiver or similar officer of Mortgagor, for all or any substantial part of the property of Mortgagor for any of the Premises;

(g) The commencement of an involuntary petition in bankruptcy against Mortgagor or the institution against Mortgagor of any reorganization, arrangement, composition, readjustment, dissolution, liquidation or similar proceedings under any present or future Federal, state or other statute or law, or the appointment of a receiver, trustee or similar officer for all or any substantial part of the property of Mortgagor, which shall remain undismissed or undischarged for a period of ninety (90) days; or

(h) The occurrence of any "Default" including any "Prohibited Transfer" (as those two terms are defined in the Note).

If an Event of Default occurs, Mortgagee may, at its option, declare the whole of the indebtedness hereby secured to be immediately due and payable without notice to Mortgagor, with interest thereon from the date of such Event of Default at the Default Interest Rate (and defined in the Note). If while any insurance proceeds or condemnation awards are being held by Mortgagee to reimburse Mortgagor for the cost of rebuilding or restoration of buildings or improvements on the Premises, as set forth in Paragraph 22 hereof, Mortgagee shall be or become entitled to, and shall accelerate the indebtedness secured hereby, then and in such event, Mortgagee shall be entitled to apply all such insurance proceeds and condemnation awards then held by it in reduction of the indebtedness hereby secured and any excess held by it over the amount of indebtedness then due hereunder shall be returned to Mortgagor or any party entitled thereto without interest.

## 15. Foreclosure; Expense of Litigation.

When the indebtedness hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof 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 for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this paragraph mentioned and such

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expenses and fees as may be incurred in the enforcement of Mortgagor's obligations hereunder, the protection of said Premises and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note, or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Mortgagor, with interest thereon at the Default Interest Rate applicable to the Floating Interest Rate and shall be secured by this Mortgage.

16. Application of 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 15 hereof; second, all other items which may under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided and all principal, Additional Indebtedness and interest remaining unpaid on the Note; and third, any surplus to Mortgagor, its successors or assigns, as their rights may appear.

17. Appointment of 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 notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder or any holder of the Note may be appointed as such receiver. Such receiver shall have 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 a deficiency during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect 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 from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (a) the indebtedness secured hereby, or by any 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 foreclosure sale; (b) the deficiency in case of a sale and deficiency; or (c) both.

18. Mortgagee's Right of Possession in Case of Default.

In any case in which under the provisions of this Mortgage Mortgagee has a right to institute foreclosure proceedings, Mortgagor shall forthwith and upon demand of Mortgagee, surrender to Mortgagee and Mortgagee shall be entitled to take actual possession of the Premises or any part thereof personally, or by its agents or attorneys, as for condition broken. Mortgagee's rights and remedies under this Paragraph 18 shall be effective whether before or after the whole principal sum secured hereby is declared to be immediately due and provided hereunder, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder. In the event Mortgagee is entitled to take possession of the premises, Mortgagee in its discretion may, with or without force and with

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or without process of law, enter upon and take and maintain possession of all or any part of said Premises, together with all documents, books, records, papers and accounts of Mortgagor or then owner of the Premises relating thereto, and may exclude Mortgagor, its agents or servants, wholly therefrom. In such case Mortgagee under the powers herein granted, may hold, operate manage and control the Premises and conduct the business, if any, thereof, either personally or by its agents. Mortgagee shall have full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Premises, including actions for the recovery of rent, actions, in forcible detainer and actions in distress for rent. Mortgagee shall have full power:

(a) to cancel or terminate any lease or sublease for any case or on any ground which would entitle Mortgagor to cancel the same;

(b) to elect to disaffirm any lease or sublease which is then subordinate to the lien hereof:

(c) to extend or modify any then existing leases and to enter new leases, which extensions, modifications and leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness secured hereby and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;

(d) to make any repairs, decorating renewals, replacements, alterations, additions, betterments and improvements to the Premises as to it may seem judicious;

(e) to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; and

(f) to receive all of such avails, rents, issues and profits; hereby granting full power and authority to exercise each and every right, privilege and power herein granted at any and all times hereafter without notice to Mortgagor.

Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases. To the extent provided by law, Mortgagor shall and does hereby agree to protect, indemnify, defend and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under said leases or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases except for such claims and demands as result directly from the negligent or willful actions of Mortgagee. Should Mortgagee incur any such liability, loss or damage under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby, and Mortgagor shall reimburse Mortgagee therefor immediately upon demand.

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## 19. Application of Income Received by Mortgagee.

Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it shall have full power to use and apply the avails, rents, issues and profits of the premises to the payment of or on account of the following, in such order as Mortgagee may determine:

(a) to the payment of the operating expenses of said property, including cost of management and leasing thereof (which shall include reasonable compensation to Mortgagee and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions (but not with respect to the renewal of existing leases unless provided for therein) and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

(b) to the payment of taxes and special assessments now due or which may hereafter become due on the Premises; and, if this is a leasehold mortgage, of all rents due or which may become hereafter due under the underlying lease;

(c) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of the premises, including the cost from time to time of installing or replacement refrigeration and gas or electric stoves therein, and of placing the Premises in such condition as will, in the judgment of Mortgagee, make them readily rentable; and

(d) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale.

## 20. Rights Cumulative.

Each right, power and remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, 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 by 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 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.

## 21. Mortgagee's Right of Inspection;

Mortgagee and/or its representative shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

## 22. Disbursement of Insurance or Eminent Domain Proceeds.

(a) Before commencing to repair, restore or rebuild following damage to, or destruction of, all or a portion of the Premises, whether by fire or other casualty or by a taking under the power of eminent domain, Mortgagor shall obtain from Mortgagee its approval of all site and building plans and specifications pertaining to such repair, restoration or rebuilding.

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(b) Prior to the payment or application of insurance proceeds or condemnation or eminent domain award to the repair or restoration of the Improvements (including site improvements) upon the Premises as provided in Paragraphs 6 and 7 hereof, Mortgagee shall be entitled to evidence of the following:

(i) An Event of Default has not occurred under the Note or the Loan Documents;

(ii) That Mortgagee shall first be given reasonably satisfactory proof that either such improvements have been fully restored, or that the expenditure of money as may be received from such insurance proceeds or condemnation award will be sufficient to repair, restore or rebuild the Premises, free and clear of all liens, except the lien of this Mortgage;

(iii) That in the event such insurance proceeds or condemnation award shall be insufficient to repair, restore or rebuild the said improvements, Mortgagor or its lessee(s) shall deposit with Mortgagee funds equaling such deficiency, which, together with the insurance proceeds or condemnation award, shall be sufficient to restore, repair and rebuild the Premises;

(iv) That prior to the disbursement of any such proceeds held by Mortgagee in accordance with the terms of this Paragraph 22 for the cost of any repair, restoration or rebuilding, Mortgagee shall be furnished with a statement of Mortgagor's architect, certifying the extent of the repair and restoration completed to the date thereof, and such repairs, restoration, and rebuilding have been performed to date in conformity with the plans and specifications approved by Mortgagee and with all statutes, regulations or ordinances (including building and zoning ordinances) affecting the Premises; and Mortgagee shall be furnished with appropriate evidence of payment for labor or materials furnished to the Premises; and Mortgagee shall be furnished with appropriate evidence of payment for labor or materials furnished to the Premises, and total or partial lien waivers substantiating such payments; and

(c) Prior to the payment or application of insurance proceeds or a condemnation award to the repair or restoration of the improvements upon the Premises as provided in Paragraph 6 and 7 there shall have been delivered to Mortgagee the following:

(i) A waiver of subrogation from any insurer who claims that no liability exists as to Mortgagor or the then owner or other assured under the policy of insurance in question;

(ii) Such performance and payment bonds, and such insurance, in such amounts, issued by such company or companies and in such forms and substance, as are required by Mortgagee.

(d) In the event Mortgagor shall fail to restore, repair or rebuild the improvements upon the Premises within a reasonable time, then Mortgagee, at its option, and upon not less than thirty (30) days' written notice to Mortgagor, may commence to restore, repair or rebuild the said improvements for or on behalf of Mortgagor, and for such purpose, may perform all necessary acts to accomplish such restoration, repair or rebuilding. In the event insurance proceeds or condemnation award shall exceed the amount necessary to complete the repair, restoration or rebuilding of the improvements upon the Premises, such excess shall be applied on account of the unpaid principal balance of

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the Note irrespective of whether such balance is then due and payable.

(e) In the event: Mortgagor commences the repair or rebuilding of the improvements (including site improvements) located on the Premises, but fails to comply with the conditions precedent to the payment or application of insurance proceeds or a condemnation or eminent domain award set forth in this Paragraph 22; or Mortgagor shall fail to restore, repair or rebuild the improvements upon the Premises within a reasonable time, and if Mortgagee does not restore, repair or rebuild the said improvements as provided in subparagraph (d) above, then Mortgagee may, at its option, accelerate the indebtedness evidenced by the Note and apply all or any part of the insurance proceeds or condemnation award against the indebtedness secured hereby.

23. DISBURSEMENT OF LOAN PROCEEDS FOR CONSTRUCTION OF IMPROVEMENTS ON PARCEL TWO. If any part of the proceeds of the loan hereby secured are intended to finance construction of improvements, Mortgagor further covenants and agrees that:

(a) The improvements to be erected, altered or remodeled on the Premises shall be completed in accordance with the plans and specifications deposited with the Mortgagee;

(b) There shall be no stoppage of construction for a period longer than thirty (30) days, except for matters beyond the reasonable control of Mortgagor;

(c) In any event said construction shall be completed not later than March 15, 1987.

(d) Upon default in any of the covenants in (a), (b), (c), of this paragraph 23, the Mortgagee may (but need not) exercise either or any of the following remedies:

(i) Declare the entire principal indebtedness and interest hereon, due and payable;

(ii) In accord with the terms and conditions of a certain Loan Agreement dated May 2, 1986, between the Mortgagor and Mortgagee, complete the construction, alteration or remodeling of said improvements and enter into the necessary contracts therefor. All monies so expended shall be deemed additional indebtedness secured by this Mortgage, and any money expended in excess of the Mortgage Note shall be payable on demand, with interest at the post maturity interest rate;

(iii) Pursue any other remedy or cause of action permitted under this Agreement or any other Loan or Security Agreement, or conferred upon the Mortgagee by operation of law.

(e) The construction of said improvements is, and will be, in compliance with all governmental regulations and restrictions and with all zoning and building laws and ordinances of the Village of Homewood, Illinois and with all building restrictions of record, and Mortgagor will furnish satisfactory evidence to Mortgagee of such compliance;

(f) The proceeds of the loan secured hereby are to be disbursed by Mortgagee to Mortgagor in accordance with the provisions contained in one or more of (i) the commitment for loan, and (ii) the Loan Agreement. Said Commitment and Loan Agreement, or such of the same as may have been executed, are hereinafter collectively referred to as the "Loan Agreement". All advances and indebtedness arising and accruing under the Loan Agreement from time to time, whether or not the total amount thereof may exceed the face amount of the Note secured hereby,



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shall be secured hereby to the same extent as though said Loan Agreement were fully incorporated in this Mortgage and the occurrence of any event of default under said Loan Agreement shall constitute a default under this Mortgage entitling Mortgagee to all of the rights and remedies conferred upon the Mortgagee by the terms of this Mortgage (including those set forth in subparagraph "d" of this paragraph 23) or by law, as in the case of any other default.

## 24. Release Upon Payment and Discharge of Mortgagor's Obligations.

Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby, including the payment of reasonable expenses incurred by Mortgagee in connection with the execution of such release.

## 25. Notices.

Any notice or demand required or permitted to be given under this Mortgage shall be in writing and shall be personally delivered or mailed by United States registered or certified mail, return receipt requested, addressed as follows:

To Mortgagee: Seaway National Bank of Chicago  
645 East 87th Street  
Chicago, Illinois 60619  
Attention: Mr. John Wheeler

With copy to: Carney & Brothers, Ltd.  
69 W. Washington - #630  
Chicago, Illinois 60602  
Attention: Demetrius E. Carney, Esq.

To Mortgagor: Donald Watts

With a copy to: Goldman & Marcus  
19 South LaSalle Street  
Chicago, Illinois  
Attention: Ira J. Marcus, Esq.

Either party may designate a different address for notice purposes by giving notice thereof in accordance with this Paragraph 25; provided, however, that such notice shall not be deemed given until actually received by the addressee. Any notice or demand given by United States mail shall be deemed given on the second business day after the same is deposited in the United States mail as registered or certified mail, addressed as above provided with postage thereon fully prepaid.

## 26. Waiver of Defense.

No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Note hereby secured.

## 27. Waiver of Rights.

To the extent permitted by law, Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. To the

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extent permitted by law, Mortgagor, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the premises marshalled upon in any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety.

## 28. Transfer of Premises; Further Encumbrance.

In determining whether or not to make the loan evidenced by the Note and secured hereby, Mortgagee examined the creditworthiness of Mortgagor, found it acceptable and relied and continues to rely upon same as the means of repayment of the Note. Mortgagee also evaluated the background and experience of Mortgagor in owning and operating property such as the Premises, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Premises which is Mortgagee's security for the Note. Mortgagor is well-experienced in borrowing money and owning and operating property such as the Premises, was ably represented by a licensed attorney at law in the negotiation and documentation of the loan secured hereby and bargained at arm's length and without duress of any kind for all of the terms and conditions of the loan, including this provision. Mortgagor recognizes that Mortgagee is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees, increasing the interest rate on a loan or the security for which is purchased by a party other than the Mortgagor. Mortgagor further recognizes that any secondary or junior financing placed upon the Premises, or the beneficial interest of the Mortgagor (a) may divert funds which would otherwise be used to pay the Note secured hereby; (b) could result in acceleration and foreclosure by any such junior encumbrance which would force Mortgagee to take measures and incur expenses to protect its security; (c) would detract from the value of the Premises should Mortgagee come into possession thereof with the intention of selling same; and (d) would impair Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Premises.

In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security, both of repayment and of value of the Premises; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; (iii) allowing Mortgagee to raise the interest rate, collect assumption fees, or both; and (iv) keeping the Premises and the beneficial interests free of subordinate financing liens, Mortgagor agrees that if this paragraph be deemed a restraint on alienation, that it is a reasonable one, and that any sale, conveyance, assignment, further encumbrance or other transfer of title to the Premises, the beneficial interest in the Trust or any interest in the Premises or said beneficial interest (whether voluntary or by operation of law), including without limitation, any "Prohibited Transfer" (as that term is defined in the Note) or the entering into of an installment agreement for the sale of the Premises or the beneficial interest in the Trust, the placement or granting of liens on all or any part of the Premises or said beneficial interest or the placement or granting of chattel mortgages, conditional sales contracts, financing or security agreements which would be or create a lien on the personal property utilized in the operation of the premises, or the placement or granting of a mortgage commonly known as a "wrap around" mortgage or an improvement loan, without Mortgagee's prior written consent shall be an Event of Default hereunder. For the purpose of, and without limiting the generality of, the preceding sentence, the occurrence at any time of any of the following events shall be deemed to be an unpermitted transfer of title to the Premises and therefore an event of default hereunder: any Prohibited Transfer; any sale, conveyance, assignment or other transfer of,

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or the grant of a security interest in, all or any part of the title to the Premises or the beneficial interest or power of direction under the Trust; or any transfer or the occurrence of any other transfer, conveyance, hypothecation or contract to do any of same which results in a breach of the Note. Any consent by Mortgagee, or any waiver by Mortgagee of an event of default under this paragraph shall not constitute a consent to, or waiver of any right, remedy or power of Mortgagee upon a subsequent Event of Default under this Paragraph 28. Mortgagor acknowledges that any agreements, liens or encumbrances created in violation of the provisions of this Paragraph 28 shall be void and of no force or effect.

## 29. Expenses Relating to Note and Mortgage.

Mortgagor will pay all expenses, charges, costs and fees relating to the loan evidenced by the Note and secured by this Mortgage or necessitated by the terms of the Note, this Mortgage or any of the other Loan Documents, including without limitation, Mortgagee's reasonable attorneys' fees in connection with the negotiation, documentation, administration, servicing and enforcement of the Note, this Mortgage and the other Loan Documents, all filing, registration or recording fees, all other expenses incident to the execution and acknowledgement of this Mortgage and all federal, state, county and municipal taxes, and other taxes (provided Mortgagor shall not be required to pay any income or franchise taxes of Mortgagee), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note and this Mortgage. Mortgagor recognizes that, during the term of the Mortgage, Mortgagee:

(i) May be involved in court or administrative proceedings, including, without restricting the foregoing, foreclosure, probate, bankruptcy, creditors' arrangements, insolvency, housing authority and pollution control proceedings of any kind, to which Mortgagee shall be a party by reason of the Loan Documents or in which the Loan Documents or the Premises are involved directly or indirectly;

(ii) May make preparations following an Event of Default for the commencement of any suit for the foreclosure hereof, which may or may not be actually commenced;

(iii) May enter into negotiations with Mortgagor, or any of his respective agents, employees or attorneys, in connection with the existence or curing of any Event of Default, the sale of the Premises, the assumption of liability for any of the indebtedness represented by the Note or the transfer of the Premises in lieu of foreclosure; or

(iv) May enter into negotiations with Mortgagor, or any of their respective agents, employees or attorneys, pertaining to Mortgagee's approval of actions taken or proposed to be taken by Mortgagor, which approval is required by the terms of this Mortgage.

All expenses of Mortgagee in connection with any of the foregoing, including reasonable attorneys', trustees' and appraisers' fees and expenses, cost of documentary and expert evidence, stenographers' charges, expenses of procuring title examinations, policies and certificates, court costs, and all other like and unlike charges, costs and fees described in this Paragraph 29 shall be so much additional indebtedness secured hereby, shall bear interest at from the date so incurred until paid at the Default Interest Rate applicable to the Floating

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Interest Rate and shall be paid, together with said interest, by Mortgagor forthwith upon demand.

## 30. Business Purpose.

Mortgagor covenants that he has represented to the Mortgagee that the proceeds of the loan evidenced by the Note and secured by this Mortgage will be used for the purposes specified in Paragraph (1)(c) of Section 6404, Chapter 17 of the Illinois Revised Statutes, as amended, and that the principal obligation secured hereby constitutes a business loan which comes within the purview of said paragraph.

## 31. Financial Statements.

If requested by Mortgagee, Mortgagor shall cause to be delivered to Mortgagee, within thirty (30) days after the close of each calendar quarter ending during the term of this Mortgage, on forms approved by Mortgagee setting forth the information therein as of the immediately preceding calendar quarter containing income and expense statements and a balance sheet, as to the statements of the ownership and operation of the Premises, prepared by Mortgagor or an independent certified public accounting firm acceptable to Mortgagee and reviewed by an independent certified public accounting firm acceptable to Mortgagee and certified to be true, complete and correct by Mortgagor.

## 32. Statement of Indebtedness.

Mortgagor, within seven (7) days after so requested by Mortgagee, shall furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Mortgage, the date to which interest has been paid and stating either that no offsets or defenses exist against the Mortgage debt or, if such offsets or defenses are alleged to exist, the nature thereof.

## 33. Further Instruments.

Upon request of Mortgagee, Mortgagor will execute, acknowledge and deliver all such additional instruments and further assurances of title and will do or cause to be done all such further acts and things as may reasonably be necessary to fully effectuate the intent of this Mortgage.

## 34. Indemnify.

Mortgagor shall indemnify and save Mortgagee harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses (including reasonable attorneys' fees and court costs) of whatever kind or nature which may be imposed on, incurred by or asserted against Mortgagee at any time by any third party which relate to or arise from: the making of the loan evidenced by the Note and secured by this Mortgage (excluding any and all liabilities, obligations, losses, damages, claims, costs and expenses (including reasonable attorneys' fees and court costs) which may be imposed on, incurred by or asserted against Mortgagee which relate to or arise from a violation of any federal banking law(s) or regulation(s) and any other federal law(s) or regulation(s), by Mortgagee); any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Mortgagee may or does become a party, either as plaintiff or as a defendant, by reason of this Mortgage or for the purpose of protecting the lien of this Mortgage; or the ownership, use, operation or maintenance of the Premises. All costs provided for herein and paid for by Mortgagee shall be so much additional indebtedness secured hereby and shall become immediately due and

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payable without notice and with interest at the Default Interest Rate applicable to the Floating Interest Rate.

## 35. Waiver of Right of Redemption.

At the written request and direction of Mortgagor, Mortgagor hereby releases and waives any and all rights to retain possession of the Premises after the occurrence of an Event of Default and any and all rights of redemption from sale under any order or decree of foreclosure, pursuant to rights therein granted, on behalf of Mortgagor, and each and every person (except judgment creditors of Mortgagor in its representative capacity as Trustee of the Trust and the trust estate) acquiring any interest in, or title to, the premises described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by the provisions of Chapter 110, Section 12-125 of the Illinois Revised Statutes.

## 36. Miscellaneous.

### (a) Successors and Assigns.

This Mortgage and all provisions hereof shall be binding upon and enforceable against Mortgagor and its permitted successors, grantees and assigns, any subsequent owner or owners of the Premises who acquire the Premises subject to this Mortgage and all persons claiming under or through Mortgagor, and the word "Mortgagor" when used herein shall include all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage. This Mortgage and all provisions hereof shall inure to the benefit of Mortgagee, its successors and assigns and any holder or holders, from time to time, of the Note.

### (b) Invalidity of Provisions.

In the event one or more of the provisions contained in this Mortgage or the Note secured hereby or in any security documents given to secure the payment of the Note secured hereby shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall at the option of Mortgagee, not affect any other provision of this Mortgage, and this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein. This Mortgage and the Note it secures are to be construed and governed by the laws of the State of Illinois.

### (c) Municipal and Zoning Requirements.

Mortgagor shall not by act or omission permit any building or other Improvements on premises not subject to the lien of this Mortgage to rely on the premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. Similarly, no building or other Improvement on the Premises shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Mortgagor shall not by act or omission impair the integrity of the Premises as a single zoning lot separate and apart from all other premises. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this subparagraph shall be void.

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(d) Rights of Tenants.

Mortgagor shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a Decree of Foreclosure and Sale subject to the rights of any tenant or tenants of the Premises. The failure to join any such tenant or tenants as party defendant or defendants in any such civil action or the failure of any Decree of Foreclosure and Sale to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect the indebtedness secured hereby, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

(e) Option of Mortgagee to Subordinate.

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

(f) Use of Proceeds.

Mortgagor warrants that the proceeds evidenced by the Note secured hereby will not be used for the purchase of registered equity securities within the purview of Regulation G issued by the Board of Governors of the Federal Reserve System.

(g) Value for Purposes of Insurance. Upon request by Mortgagee, Mortgagor agrees to furnish evidence of replacement value, without cost to Mortgagee, of the type which is regularly and ordinarily made for insurance companies, with respect to the buildings and improvements on the Premises.

(h) Cross-Default Provisions.

The terms of certain Franchise Agreements, dated March 11, 1983, for the operation of a Popeye's Restaurant located at 15435 South Wood Street, Harvey, Illinois and an undated agreement for the operation of a Popeye's Restaurant located at 233 East Wacker Drive, Chicago, Illinois, between Donald Watts and Popeyes Famous Fried Chicken, Inc., a Louisiana corporation, and the terms of a certain Lease Agreement dated October 22, 1984 between Donald Watts and American National Bank of Chicago as Trustee under Trust Agreement dated June 23, 1978 and known as Trust No. 23294 are incorporated herein and made a part hereof to the same extent and with the same force and effect as if fully set forth herein. A default under any of the provisions of said Franchise Agreements and/or Lease Agreement shall be construed as a default under the Mortgage hereunder.

(i) Mortgagee in Possession.

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

(j) Relationship of Mortgagee and Mortgagor.

Mortgagee shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Mortgagor, lessee, operator, concessionaire or licensee of Mortgagor in the conduct of their respective businesses.

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performance and observance by Mortgagor of all terms, conditions, obligations and agreements contained in this Mortgage.

(l) No Merger.

It being the desire and intention of the parties hereto that the Mortgage and the lien thereof do not merge in fee simple title to the Premises, it is hereby understood and agreed that should Mortgagee acquire any additional or other interest in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien thereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

(m) Fixture Financing Statement.

This Mortgage is intended to be a financing statement within the purview of Section 9-402(b) of the Uniform Commercial Code with respect to those items of equipment, goods or inventory which are fixtures on the Premises. The addresses of the Mortgagor (Debtor) and Mortgagee (Secured Party) are herein set forth. This Mortgage is to be filed for record with the Recorder of Deeds of the county where the Premises are located. The Mortgagor is the record owner of the Premises.

IN WITNESS WHEREOF, Mortgagor has executed this instrument the day and year first above written.

Mortgagor:

Donald Watts  
Donald Watts

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Property of Cook County Clerk's Office

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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Crystal Williams, a Notary Public in and for said County, in the State aforesaid, do hereby certify that DONALD WATTS, 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 as his free and volunatry act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 2nd day of May, 1986.

Crystal Williams (Seal)  
NOTARY PUBLIC

My Commission expires:

My Commission Expires Dec. 5, 1989

Property of Cook County Clerk's Office

This instrument was prepared by and should be returned to:

Demetrius E. Carney  
Carney & Brothers, Ltd.  
69 W. Washington Street  
Suite 630  
Chicago, Illinois 60602

86186776

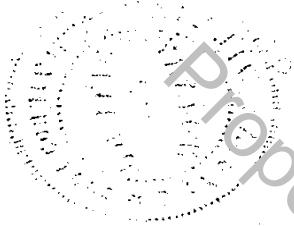
BOX 333

# UNOFFICIAL COPY

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IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Court at Chicago, Illinois, this 1st day of January, 1900.

CLERK OF THE COURT



Property of Cook County Clerk's Office

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Court at Chicago, Illinois, this 1st day of January, 1900.

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EXHIBIT 'A' 6

## PARCEL ONE:

Lots 25 to 31 inclusive in Block 132 in Harvey in the east 1/2 of the Northeast 1/4 of Section 18, Township 36 North, Range 14 east of the third principal meridian, in Cook County, Illinois.

Commonly known as: 15345 South Wood Street, Harvey, Illinois

### Permanent Real Estate Index Nos.:

29-18-220-017 Lot 31  
29-18-220-018 Lot 30  
29-18-220-019 Lot 29  
29-18-220-020 Lot 28  
29-18-220-021 Lot 27  
29-18-220-022 Lot 26  
29-18-220-023 Lot 25 Ho.

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BOX 333

# UNOFFICIAL COPY

THE STATE OF ILLINOIS, County of Cook, ss. I, Clerk of said County, do hereby certify that the within and foregoing is a true and correct copy of the original as the same appears in the records of said County.

Witness my hand and the seal of said County at Chicago, Illinois, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Clerk of Cook County

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PROPERTY OF  
COUNTY CLERK  
OF COOK COUNTY  
ILLINOIS

RECORDED

19\_\_-11-11