

UNOFFICIAL COPY

862341174

only

PARTIAL JUNIOR MORTGAGE

#37.00

THIS MORTGAGE (hereinafter referred to as "Mortgage"), made this 10th day of June, 1986 by and between PAG, Inc., an Illinois corporation, having an address at 250 S. Wacker Drive, Suite 800, Chicago, Illinois 60601 (hereinafter from time to time referred to as "Mortgagor") and Westinghouse Credit Corporation, a Delaware corporation having its principal office at One Oxford Centre, 301 Grant Street, Pittsburgh, PA 15219 (hereinafter referred to as "Mortgagee").

W I T N E S S E T H:

WHEREAS, Mortgagor, American National Bank and Trust Company of Chicago, not personally but as Trustee under Trust Agreement dated November 15, 1979 and known as Trust No. 48322 ("Land Trust") and the beneficiary of the Land Trust, Palmolive Venture, an Illinois limited partnership ("Beneficiary") are justly indebted to Mortgagee in the principal sum of FOURTEEN MILLION SIX HUNDRED NINE THOUSAND FIVE HUNDRED DOLLARS (\$14,609,500.00) lawful money of the United States of America, payable with interest thereon in accordance with the terms of a certain note bearing even date herewith (hereinafter the "Note") executed by Mortgagor, Land Trust and Beneficiary, payable to the order of Mortgagee at its office aforesaid or at such other place as Mortgagee may designate in writing, the balance of said principal sum with interest thereon maturing and being due and payable on September 10, 1986, unless otherwise extended in accordance with the terms and conditions thereof as more fully set forth in the Note;

WHEREAS, this Mortgage is executed for the purpose of securing (1) payment of said indebtedness as provided in said Note and any extensions or modifications thereof, (2) payment of all other monies secured hereby, and (3) the performance of all of the covenants, conditions, stipulations and agreements herein contained and contained in the Note, the Loan and Security Agreement of even date herewith (hereinafter referred to as the "Loan and Security Agreement") between Mortgagor, Mortgagee, Land Trust and Beneficiary and any other instrument now or hereafter executed

This Instrument Prepared by, and After Recording Return to:

Larry D. Blust
JENNER & BLOCK
One IBM Plaza
Chicago, IL 60611

Address: 919 N. Michigan
Chicago, IL

PIN: 17-03-213-001-0000

Handwritten initials

BOX 333 - HV

70-55-870D² (4) Caution

86234117

UNOFFICIAL COPY

8 6 2 3 4 1 1 7

evidencing or securing the loan evidenced by the Note (collectively hereinafter referred to as the "Security Documents").

NOW, THEREFORE, Mortgagor does hereby irrevocably grant, transfer, assign, mortgage and warrant to Mortgagee, the fee simple estate in that certain real property located in the City of Chicago, County of Cook, State of Illinois, described as Parcel 1 in Exhibit A attached hereto and hereby made a part hereof and the leasehold estate described as Parcel 2 in Exhibit A attached hereto (hereinafter collectively referred to as the "Property"), together with all buildings and improvements thereon, together with all of the right, title and interest of Mortgagor in and to all and singular the tenements, hereditaments, rights of way, easements, privileges and appurtenances now or hereafter thereto belonging or in anywise appertaining, all buildings, structures or improvements now located thereon or which may hereafter be placed thereon, the rents, issues and profits thereof (which are hereby expressly and absolutely assigned to the Mortgagee), all chattels, furniture, equipment, machinery, apparatus, fixtures and articles of personal property of every kind and nature whatsoever of Mortgagor now or hereafter located in or upon the premises, or any building or structure located or to be located thereon, and used or usable in connection with the operation of the premises including, but without limiting the generality of the foregoing, all heating, lighting, laundry, incinerating and power equipment, engines, pipes, pumps, tanks, motors, conduits, switchboards, plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating and communications apparatus, air cooling and air conditioning apparatus, elevators, escalators, shades, awnings, screens, storm doors and windows, stoves, wall beds, refrigerators, cabinets, partitions, ducts, compressors, canopies, furnishings, garbage and rubbish disposals, counters, bathtubs, sinks, basins, carpets, floor and wall coverings, drapes, inventory; and proceeds therefrom and all substitutions and replacements therefor; it being understood and agreed that all such property is part and parcel of the premises and appropriated to the use thereof, and whether affixed or annexed to the premises or not, shall for the purpose of this Mortgage be deemed conclusively to be a portion of the security for the indebtedness herein mentioned and secured by this Mortgage.

TOGETHER WITH all rights, rights of way, easements, privileges, title and interest of Mortgagor, if any, now owned or hereafter acquired, in and to any land lying in the bed of any street, road or avenue, open or proposed, in front of or adjoining the Property to the center line thereof (the Property and all other real estate, buildings, improvements, rights, titles and interests hereby granted, conveyed, bargained, sold, assigned, confirmed, mortgaged

86234117

UNOFFICIAL COPY

8 6 2 3 4 1 1 7

and warranted to Mortgagee being hereinafter collectively called the "Premises").

TO HAVE AND TO HOLD the Premises, with all the privileges and appurtenances to the same belonging to Mortgagee, and its successors and assigns, forever for the uses set forth herein and in the other Security Documents, free from all rights and benefits under any homestead exemption, rights of redemption from sale, rights to retain possession and appraisal, valuation, stay, extension or moratorium laws of any state, all of said rights and benefits Mortgagor does hereby expressly release and waive; and Mortgagor hereby binds itself, its successors and assigns to forever warrant and defend the Premises and every part thereof unto the Mortgagee, its successors and assigns, against the claims and demands of every person whomsoever lawfully claiming or to claim the same or any part thereof (except for the Permitted Encumbrances with respect to the Premises as defined in the Loan and Security Agreement).

MORTGAGOR HEREBY REPRESENTS AND WARRANTS TO AND COVENANTS AND AGREES WITH MORTGAGEE AS FOLLOWS:

1. Mortgagor will cause to be paid all sums secured hereby when due.

2. Mortgagor will pay, when due, all real estate taxes, assessments, utility charges and governmental charges of every type or nature levied or assessed against all or any part of the Premises or upon Mortgagor's interest therein, and any claim, lien or encumbrance against all or any part of the Premises and shall produce all receipts or other satisfactory evidence of such payments. If any of such items shall not be paid, Mortgagee shall have the right to pay the same and add the amount so paid to the principal sums secured hereby with interest thereon at the Default Rate, as that term is defined in the Note, until paid. In event of enactment of any law deducting from the value of the Premises for the purpose of taxation any lien thereon or imposing payment of all or any portion of any such taxes upon Mortgagee, or the rendering by any court of competent jurisdiction of a decision that the undertaking by Mortgagor, as herein provided, to pay such tax or taxes is legally inoperative, then, all sums hereby secured, without any deduction, shall, at the option of Mortgagee, become immediately due and payable, notwithstanding anything contained herein or any law heretofore or hereafter enacted.

3. Mortgagor warrants that it has good title to the Premises free from liens, claims, restrictions or encumbrances except for the Permitted Encumbrances and is lawfully seized and possessed thereof with full right and power to convey the Premises, and to execute and deliver this Mortgage and does hereby warrant and will forever defend the

86234117

UNOFFICIAL COPY

0 6 2 3 4 1 1 /

Premises against the claims of all persons whomsoever, and will appear in and defend any suit, action or proceeding that might in any way and in the sole judgment of Mortgagee affect the value of the Premises, the priority of this Mortgage or the rights and powers of Mortgagee with respect to the Premises.

4. Mortgagor shall upon written request of Mortgagee make monthly deposits with Mortgagee, in a non-interest bearing account, together with and in addition to interest and principal, of a sum equal to one-twelfth of the yearly taxes and assessments which may be levied against the Premises, and (if so requested by Mortgagee) one-twelfth of the yearly premiums for insurance thereon. Such deposits shall not be deemed to be trust funds but may be commingled with general funds of Mortgagee. The amount of such taxes, assessments and premiums, when unknown, shall be estimated by Mortgagee. Such deposits shall be used by Mortgagee to pay such taxes, assessments and premiums when due provided there is no default hereunder or under any of the other Security Documents; however, Mortgagee shall be under no obligation to pay any such charges unless there is on deposit with Mortgagee sufficient funds to pay such charges when due. Any insufficiency of such account to pay such charges when due shall be paid by Mortgagor to Mortgagee on demand. In the event Mortgagor shall for any reason fail to pay such additional monies as are necessary to enable Mortgagee to pay the foregoing items when the same become due, Mortgagee, if it so elects, may pay the foregoing items by advancing such additional monies as are necessary, and such additional monies so advanced by Mortgagee shall become immediately due and payable with interest at the Default Rate until paid and shall be secured by this Mortgage. Failure on the part of the Mortgagor to pay sums advanced hereunder shall, at the option of Mortgagee, constitute a default hereunder.

If, by reason of any default by Mortgagor under any provision of this Mortgage, the Note or any other of the Security Documents, Mortgagee declares all sums secured hereby to be due and payable, Mortgagee may, at its option without being required to do so, then apply any funds in said account against any of the indebtedness secured hereby, in such order and manner as Mortgagee may elect. The enforceability of the covenants relating to taxes, assessments and insurance premiums herein otherwise provided shall not be affected except insofar as those obligations have been met by compliance with this Paragraph. Mortgagee may from time to time, at its option, waive, and after any such waiver reinstate, any or all provisions hereof requiring such deposits, by notice to Mortgagor in writing. While any such waiver is in effect, Mortgagor shall pay taxes, assessments and insurance premiums as herein elsewhere provided.

UNOFFICIAL COPY

8 6 2 3 4 1 1 7

5. Mortgagor will keep the Premises insured against loss or damage by fire, windstorm and such other hazards as may be required by Mortgagee, in form and amounts satisfactory to (but not less than full insurable value in amounts sufficient to avoid coinsurance liability) and in insurance companies approved by Mortgagee, the proceeds of which insurance shall be payable to Mortgagee. Mortgagor shall also at its expense provide rental or use and occupancy insurance and public liability insurance in amounts and with companies satisfactory to Mortgagee. All policies shall be endorsed with a noncontributory Standard Mortgagee Clause in favor of Mortgagee. One original or a certified duplicate copy of each policy shall be delivered to Mortgagee, together with receipts showing payment for the premiums therefor. Upon foreclosure of this Mortgage or other acquisition of the Premises or any part thereof by Mortgagee, said policies shall become the absolute property of Mortgagee. In the event any policy required by Mortgagee is not renewed on or before thirty (30) days of its expiration and evidence thereof provided to Mortgagee, Mortgagee may procure said insurance, pay the premium therefor, and such sum shall become immediately due and payable with interest at the Default Rate until paid and shall be secured hereby. Failure on the part of Mortgagor to furnish such renewal copies as are herein required or failure to pay any sums advanced hereunder shall, at the option of Mortgagee, constitute a default under the terms hereof. The proceeds of all insurance shall, at the option of the Mortgagee be applied by Mortgagee in reduction of the indebtedness secured hereby, whether the same be then matured or unmatured (no such application shall be deemed to be an advance payment of any subsequently accruing fixed sum) or paid over wholly or in part to Mortgagor by Mortgagee for the repair of the Premises or for any other purpose or object satisfactory to Mortgagee. Mortgagor hereby assigns to the Mortgagee, for the use and purposes aforesaid, all insurance required by this Mortgage and the proceeds thereof and hereby irrevocably appoints Mortgagee as Attorney-In-Fact of Mortgagor to assign each policy in the event of foreclosure of this Mortgage. Mortgagor shall promptly notify Mortgagee of any damage to or destruction of any part of the Premises, whether or not the same is covered by insurance, and shall furnish to Mortgagee, upon request, a certificate signed by an authorized individual containing a detailed list of the insurance policies then outstanding and in force on the Premises.

6. Mortgagor (i) will not remove, demolish or alter the design or structural character of any building now or hereafter erected upon the Property, nor remove or permit the removal of any fixtures, equipment or appliances therefrom unless Mortgagee shall first consent thereto in writing; (ii) will maintain the Premises in good condition and repair; (iii) will not commit or suffer waste thereon;

UNOFFICIAL COPY

86234117

(iv) will comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Premises, and will not suffer or permit any violation thereof; and (vi) will not use or permit any use of the Premises except as an office building having not less than 352,000 net rentable square feet.

Should Mortgagor fail to make any and all necessary repairs to keep the Premises in good condition and repair within thirty (30) days after receipt by Mortgagor of written notice from Mortgagee directing that such repairs be made, then Mortgagee, its agents, employees or contractors, if Mortgagee so elects, may enter said Premises and the building or buildings located thereon and make the necessary repairs and all expenses incurred by Mortgagee in connection therewith shall become immediately due and payable with interest at the Default Rate until paid and shall be secured hereby. Failure on the part of Mortgagor to pay all expenses incurred by Mortgagee in connection with the making of such repairs shall at the option of Mortgagee, constitute a default under the terms hereof.

7. If Mortgagor fails to pay any claim, lien or encumbrance on the Premises when due, whether subordinate or prior to this Mortgage, or any tax or assessment before the same become delinquent under the law or insurance premium, or to keep the Premises in repair, or shall commit or permit waste, or shall use the Premises for an illegal purpose, or if there be commenced any action or proceedings affecting the Premises or the title thereto, or if Mortgagor defaults in the performance of any of its covenants or agreements hereunder, then Mortgagee, at its option, may pay said claim, lien, encumbrance, tax, assessment or premium, with right of subrogation thereunder, may procure such abstracts or other evidence of title as it deems necessary, may make such repairs and take such steps as it deems advisable to prevent or cure such waste, and may appear in any such action therein as Mortgagee deems advisable, and may perform such covenants and obligations, and for any part of said purposes Mortgagee may advance such sums of money as it deems necessary. Such sums advanced, with interest thereon at the Default Rate, shall immediately be due from Mortgagor to Mortgagee and be secured by this Mortgage. Mortgagee shall be the sole judge of the legality, validity and priority of any such claim, lien, encumbrance, tax, assessment and premium, and of the amount necessary to be paid in satisfaction thereof.

Notwithstanding the foregoing, so long as no default shall have occurred hereunder or under any other Security Document, Mortgagor shall have the right to contest, at Mortgagor's sole cost and expense, the amount or validity, in whole or in part, of any of the aforesaid

86234117

UNOFFICIAL COPY

8 0 2 3 4 1 1 7

taxes, claims, liens, encumbrances or assessments (hereinafter collectively referred to as "taxes") by appropriate proceedings diligently conducted by Mortgagor in good faith, but only after payment of such taxes, unless such payment would operate as a bar to such contest or interfere materially with the prosecution thereof, in either of which latter events, Mortgagor may postpone or defer payment of such taxes if (1) the right or privilege so to do is granted or sanctioned by applicable law or otherwise, (2) Mortgagor deposits with Mortgagee sufficient security to pay such taxes and all costs, fees, interest and other liabilities in connection therewith (the sufficiency of which security shall be in the sole discretion of Mortgagee), (3) the Premises or any part thereof shall not, by reasons of such postponement or deferment, be subject to forfeiture or loss, and (4) Mortgagor shall promptly commence proceedings for such contest and prosecute the same with all due diligence. Upon the termination of such proceedings, Mortgagee shall pay such amount of any such taxes or part thereof as is finally determined in such proceedings, the payment of which, pursuant to the foregoing provisions of this Paragraph, shall have been deferred during the prosecution of such proceedings, together with all costs, fees, interest, penalties and other liabilities in connection therewith. Mortgagor covenants to defend, indemnify and save Mortgagee harmless from and against any liability and for the payment of all costs and expenses in connection with any such proceedings.

8. Mortgagor will comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Premises or its operation and will pay all fees or charges of any kind in connection therewith. Mortgagor shall, within thirty (30) days following notice from the proper authorities, comply with any legal requirements of the state, county or municipality in which the Premises are located and respecting the Premises. Notwithstanding the foregoing, Mortgagor may, in good faith, contest any such requirement.

9. All awards heretofore or hereafter made by any public or quasi-public authority to the present and all subsequent owners of the Premises by virtue of an exercise of the right of eminent domain by such authority, including any award for a taking of title, possession or right of access to a public way, or for any change of grade or streets affecting said Premises, are hereby assigned to Mortgagee; and Mortgagee, at its option, is hereby 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 and acquittances therefor, and may, at the Mortgagee's election, use such proceeds when actually received in any one or more of the following ways: (1) apply the same or any part thereof upon the indebtedness

86234117

UNOFFICIAL COPY

8 6 2 3 4 1 1 7

secured hereby, whether such indebtedness then be matured or unmatured, (2) use the same or any part to fulfill any of the covenants contained herein as Mortgagee may determine, (3) use the same or any part thereof to replace or restore the Premises to a condition satisfactory to Mortgagee, (4) release the same to Mortgagor, and Mortgagor hereby covenants and agrees to and with Mortgagee, upon request by Mortgagee, to make, execute and deliver any and all assignments and other instruments sufficient for the purpose of so assigning all such awards to the Mortgagee. Mortgagee shall have the right to intervene and participate in any proceeding for and in connection with any taking referred to in this Paragraph, provided, however, that if such intervention shall not be permissible or permitted by the court, Mortgagor shall, at its expense, consult with Mortgagee, its attorney and experts and make all reasonable efforts to cooperate with them in any defense of such proceedings. Mortgagor shall not enter into any agreement for the taking of the Premises or any part thereof with any person or persons authorized to acquire the same by condemnation or eminent domain, unless Mortgagee shall have consented thereto in writing. Notwithstanding any taking by condemnation or eminent domain, alteration of the grade of any street or other injury to or decrease in value of the Premises by any public or quasi-public authority or corporation, Mortgagor shall continue to pay the regular monthly installments due under the Note (including interest on the entire principal sum secured), and any reduction in the principal sum resulting from the application by the Mortgagee of such award or payment shall be deemed to take effect only on the date of such receipt by Mortgagee.

10. The Mortgagor shall at all times promptly and faithfully keep and perform, or cause to be kept and performed, all the covenants and conditions contained in the lease agreement (the "Ground Lease") pursuant to which the leasehold estate described as Parcel 2 in Exhibit A was created, by the lessee therein to be kept and performed and in all respects conform to and comply with the terms and conditions of the Ground Lease, and the Mortgagor further covenants that it shall not do or permit anything which will impair or tend to impair the security of this Mortgage or will be grounds for declaring a forfeiture of the Ground Lease, and upon any such failure aforesaid, Mortgagor shall be subject to all of the rights and remedies of Mortgagee in this Mortgage contained.

The Mortgagor also covenants that it shall not modify, extend or in any way alter the terms of the Ground Lease or cancel or surrender the Ground Lease, or waive, execute, condone or in any way release or discharge the lessor thereunder of or from the obligations, covenants, conditions and agreements by said lessor to be done and performed; and said Mortgagor does by these presents

86234117

UNOFFICIAL COPY

8 6 2 3 4 1 1 /

expressly release, relinquish and surrender unto the Mortgagee all of its right, power and authority to cancel, surrender, amend, modify or alter in any way the terms and provisions of said Ground Lease and any attempt on the part of the Mortgagor to exercise any such right without the written authority and consent of the Mortgagee thereto being first had and obtained shall constitute an event of default under the terms hereof and the entire indebtedness hereby secured shall, at the option of the Mortgagee, become due and payable forthwith and without notice.

The entire indebtedness hereby secured shall immediately become due and payable at the option of the Mortgagee, if the Mortgagor fails to give the Mortgagee immediate notice of any default under the Ground Lease or of the receipt by it of any notice of default thereunder, or if the Mortgagor fails to furnish to the Mortgagee immediately any and all information which it may request concerning the performance by the Mortgagor of the covenants of the Ground Lease, or if the Mortgagor fails to permit the Mortgagee or its representative at all reasonable times to make investigation or examination concerning the performance by the Mortgagor of the covenants of the Ground Lease, or if the Mortgagor fails to permit the Mortgagee or its representative at all reasonable times to make investigation or examination concerning such performance. The Mortgagor further covenants and agrees that it shall promptly deposit with the Mortgagee an original executed copy of said Ground Lease, an estoppel certificate from the lessor of the Ground Lease within 30 days of request by Mortgagee and in such form and content as shall be satisfactory to Mortgagee, as well as any and all documentary evidence received by it showing compliance by the Mortgagor with the provisions of the Ground Lease. Mortgagor shall also deposit with the Mortgagee an exact copy of any notice, communication, plan, specification or other instrument or document received or given by it in any way relating to or affecting the Ground Lease which may concern or effect the estate of the lessor or the lessee in or under the Ground Lease or in the real estate thereby demised.

In the event of any failure by Mortgagor to perform any covenant on the part of lessee to be observed and performed under the Ground Lease, the performance by Mortgagee on behalf of Mortgagor of the Ground Lease covenant shall not remove or waive, as between Mortgagor and Mortgagee, the corresponding event of default under the terms hereof and any amount so advanced by Mortgagee or any costs incurred in connection therewith, shall be immediately due and payable without notice or demand, with interest thereon at the default rate.

To the extent permitted by law, the price payable by the Mortgagor, or by any other party so entitled, in the

UNOFFICIAL COPY

8 6 2 3 4 1 1 7

exercise of the right of redemption, if any, from sale under order or decree of foreclosure of this Mortgage shall include all rents paid and other sums advanced by Mortgagee, on behalf of Mortgagor, as lessee under the Ground Lease.

11. The occurrence of any of following events shall constitute a default under this Mortgage:

(a) The failure of the Mortgagor, Land Trust or Beneficiary to make any payment required to be made under the Note secured hereby, this Mortgage, or any other Security Document in accordance with the terms of the Note, this Mortgage or such other Security Document;

(b) The failure of Mortgagor, Land Trust or Beneficiary to observe or to perform any other obligation of Mortgagor contained in this Mortgage, the Note secured hereby, or any other Security Document, or the occurrence of any other default under any of the foregoing instruments, or failure of Mortgagor, Land Trust or Beneficiary to observe the terms and obligations of any local, state or federal permit, franchise or certificate issued in connection with the Premises;

(c) If by the order of a court of competent jurisdiction, (i) a receiver or liquidator or trustee of the Mortgagor, Land Trust, Beneficiary or any of the Guarantors, as such term is defined in the Loan and Security Agreement, or of a substantial part of the Premises shall be appointed and shall have not been discharged within a period of sixty (60) days, or (ii) if, by decree of such a court, the Mortgagor, Land Trust, Beneficiary or any of the Guarantors shall be adjudicated a bankrupt or any substantial part of its or their property shall be sequestered and such decree shall continue undischarged and unstayed for a period of sixty (60) days after the entry thereof; or (iii) a petition to reorganize the Mortgagor, Land Trust, Beneficiary or any of the Guarantors pursuant to the Federal Bankruptcy Code, as it now exists or as it may hereafter be amended, or pursuant to any other analogous statute applicable to Mortgagor, Land Trust, Beneficiary or any of the Guarantors as now or hereinafter in effect, shall be filed against the Mortgagor, Land Trust, Beneficiary or any of the Guarantors and shall not be dismissed within sixty (60) days;

(d) If Mortgagor, Land Trust, Beneficiary or any of the Guarantors shall file a petition in voluntary bankruptcy under any provision of any

UNOFFICIAL COPY

8 6 2 3 4 1 1 7

bankruptcy law or petition to take advantage of any insolvency act, or shall make an assignment for the benefit of its or their creditors, or shall admit in writing its or their inability to pay its or their debts generally as they become due, or shall consent to the appointment of a receiver or receivers of all or any part of the Premises or shall consent to the filing of any bankruptcy, arrangement, or reorganization petition by or against it or them under any provision of the bankruptcy law, or (without limitation of the generality of the foregoing) Mortgagor, Land Trust, Beneficiary or any of the Guarantors shall file a petition or answer seeking an arrangement or reorganization pursuant to the Federal Bankruptcy Code, as it now exists or as it may hereafter be amended, or pursuant to any other analogous statute applicable to the Mortgagor, Land Trust, Beneficiary or any of the Guarantors as now or hereafter in effect;

(e) Failure by the Mortgagor, Land Trust or Beneficiary to pay state sales and use taxes when due, including advance deposits therefor;

(f) Default by the Mortgagor, Land Trust, Beneficiary or by any parent, subsidiary or affiliate of Mortgagor, Land Trust or Beneficiary, in the payment or performance of any other obligation that Mortgagor, Land Trust, Beneficiary or any parent, subsidiary or affiliate of Mortgagor, Land Trust or Beneficiary, may now or hereafter have to Mortgagee;

(g) Dissolution of Mortgagor, Land Trust or Beneficiary; or

(h) The Premises or the beneficial interest in the Premises, or any part thereof, is transferred or further encumbered by operation of law or otherwise, without the prior written consent of Mortgagee, except for a transfer to any of Guarantors or to a partnership of which Guarantors or any of them are the sole general partners as permitted by the Loan and Security Agreement. For purposes of this Subparagraph and Paragraph 16, the sale, transfer, assignment, encumbrance, redemption or issuance of (i) capital stock in the Mortgagor, if the Mortgagor is a corporation, or (ii) a general partner's interest in Mortgagor, if the Mortgagor is a partnership, shall be deemed a transfer of the beneficial interest in the Premises.

UNOFFICIAL COPY

8 6 2 3 4 1 1 7

12. Upon the happening of an event of default:

(a) Mortgagee shall have the right, at its option to declare the amount of principal of the Note then unpaid, with interest thereon as provided in the Note, to be due and payable immediately, without notice, and upon such declaration the principal of, and the interest on the Note then outstanding shall forthwith become and be due and payable as fully and to the same effect as if the date of such declaration were the date originally specified for the maturity of the unpaid balance of the Note;

(b) The election by Mortgagee to accelerate the maturity of said principal sum pursuant to Subparagraph 12(a) above shall be evidenced by delivery to Mortgagor of written declaration by Mortgagee of default and demand for sale, and Mortgagee shall, to the extent required by law, thereafter file or cause to be filed for record a notice of such default and of election to cause the Premises to be sold;

(c) After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as required by law, Mortgagee shall sell the Premises at the time and place of sale fixed by it in said notice of sale, either as a whole or in separate parcels and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at the time of sale; and Mortgagee shall deliver to such purchaser appropriate instruments conveying the property so sold, but without any covenant or warranty, express or implied from Mortgagee and the recitals in such instruments of any matters or facts shall be conclusive proof of the truthfulness thereof;

(d) Mortgagee may postpone the sale authorized under Subparagraph 12(c) of all or any portion of the Premises by public announcement at such time and place of sale, and from time to time thereafter may postpone such public sale by public announcement at the time fixed by the preceding postponement;

(e) After deducting all costs, fees and expenses of Mortgagee, including cost of evidence of title in connection with sale, Mortgagee shall apply the proceeds of sale to payment of (i) all sums expended under the terms hereof, not then

UNOFFICIAL COPY

8 6 2 3 4 1 1 7

repaid, with interest at the Default Rate; (ii) all other sums then secured hereby, and (iii) the remainder, if any, to the person or persons legally entitled thereto;

(f) The provisions contained in the foregoing Subparagraphs shall not be construed to preclude Mortgagee from enforcing any appropriate remedy against Mortgagor or from proceeding by suit to foreclose or by suits at law or in equity, as Mortgagee may elect, to enforce payment of all sums secured hereby;

(g) Mortgagee is hereby irrevocably appointed the true and lawful attorney of the Mortgagor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Premises and rights so sold and for that purpose, Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, the Mortgagor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, the Mortgagor, if so requested by Mortgagee, shall ratify and confirm any such sale or sales by executing and delivering to Mortgagee or to such other purchaser or purchasers all such instruments as may be advisable, in the judgment of Mortgagee, for the purpose, and as may be designated in such request. Any such sale or sales made under or by virtue of this Paragraph 11 whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Mortgagor;

(h) Upon any sale made under or by virtue of this Paragraph 12, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, any person, including Mortgagor and Mortgagee, may bid for and acquire the Premises or any part thereof; and in lieu of paying cash therefore, Mortgagee may make settlement for the purchase price by crediting upon the indebtedness of Mortgagor secured by this Mortgage

UNOFFICIAL COPY

8 8 2 3 4 1 1 7

the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which the Mortgagee is authorized to deduct under this Mortgage;

(i) Mortgagee shall be entitled to recover judgment as aforesaid either before or after or during the pendency of any proceedings for the enforcement of the provisions of this Mortgage; and the right of Mortgagee to recover such judgment shall not be affected by any entry or sale hereunder or the exercise of any other right, power or remedy for the enforcement of the provisions of this Mortgage; and the right of Mortgagee to recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this Mortgage, or the foreclosure of the lien hereof; and in the event of a sale of the Premises and of the application of the proceeds of sale, as in this Mortgage provided, to the payment of the debt hereby secured, Mortgagee shall be entitled to enforce payment of, and to receive all amounts then remaining due and unpaid upon, the Note, and to enforce payment of all other charges, payments and costs due under this Mortgage and shall be entitled to recover judgment for any portion of the debt remaining unpaid, with interest. In case of proceedings against Mortgagor in insolvency or bankruptcy or any proceedings for its arrangement or reorganization or involving the liquidation of its assets, then Mortgagee shall be entitled to prove the whole amount of principal and interest due upon the Note to the full amount thereof, and all other payments, charges and costs due under this Mortgage without deducting therefrom any proceeds obtained from the sale of the whole or any part of the Premises; provided, however, that in no case shall Mortgagee receive a greater amount than such principal and interest and such other payments, charges and costs from the aggregate amount of the proceeds of the sale of the Premises and the distribution from the estate of Mortgagor;

(j) Mortgagor shall not at any time insist upon, or plead or in any manner whatever claim or take any benefit or advantage of any stay or extension or moratorium law, any exemption from execution or sale of the Premises or any part thereof, whatever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Mortgage, nor

UNOFFICIAL COPY

8 6 2 3 4 1 1 7

claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision herein, or pursuant to the decree, judgment or order of any court of competent jurisdiction; nor, after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the property so sold or any part thereof and the Mortgagor hereby expressly waives all benefit or advantage of any such law or laws, and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to the Mortgagee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. Mortgagor, for itself and all who may claim under it, waives to the extent that it lawfully may, all right to have the Premises marshalled upon any foreclosure hereof;

(k) Mortgagee shall be entitled, as a matter of right, to the appointment of a receiver of the Premises, and the court may appoint a receiver, either before or after judgment, without notice and without regard to the solvency or insolvency of Mortgagor at the time of the application for such receiver and without regard to the then value of the Premises. Such receiver shall have full power to collect the rents, revenues, issues, income and profits from the Premises and all other powers necessary or incidental for the protection, possession, control, management and operation of the Premises. Said receiver shall also have full power and authority, at the expense of the Premises and of Mortgagor, to maintain, restore and keep insured the Premises and to pay all taxes, assessments and other charges arising in connection therewith. Mortgagor hereby consents to the appointment of a receiver and will upon Mortgagee's request formally evidence such consent in writing or in any proceeding for the appointment of such receiver.

13. Mortgagor further covenants and agrees as follows:

(a) With respect to the Premises and the operation thereof, Mortgagor will keep proper books of record and account in accordance with generally accepted accounting practice; Mortgagee shall have the right to examine such books of account and to discuss the affairs, finances and

UNOFFICIAL COPY

8 6 2 3 4 1 1 /

accounts relative to the Premises and to be informed as to the same by Mortgagor (or if Mortgagor be a corporation or partnership by an authorized officer or partner of Mortgagor, as the case may be), all at such reasonable times and intervals as the Mortgagee may desire, and the Mortgagor will furnish to the Mortgagee within ninety (90) days after the end of each fiscal year of the Mortgagor, copies of the completed financial statement and an operating statement regarding the Premises, including an itemized account of gross annual income and expenditure reflecting in detail the operations of the Premises, and stating in comparative form the figures as of the end of, and for the previous fiscal year and certified by Mortgagor (or if the Mortgagor be a corporation or partnership by an authorized officer or partner of Mortgagor as the case may be).

(b) At its option, Mortgagee may cause, at any reasonable time, a complete audit to be made at Mortgagor's accounting office of Mortgagor's entire business affairs and records relating to the Premises. If such audit shall disclose that any report furnished by Mortgagor to Mortgagee is false in any material respect, Mortgagor shall pay the full cost of such audit; or otherwise, the costs of such audit shall be borne by Mortgagee.

(c) It is contemplated that Mortgagor, Land Trust or Beneficiary may hereafter become indebted to the Mortgagee in further sum or sums, which may be evidenced in various manners, but all of which further and future sums, however evidenced, shall be payable at Mortgagee's principal office in Pittsburgh, Allegheny County, Pennsylvania, and bear interest at the rate specified in the evidences of said future indebtedness, and it is understood and agreed that all such future and further indebtedness, together with any renewals and extensions thereof, as well as any and all other indebtedness now owing by Mortgagor, Land Trust or Beneficiary to Mortgagee, however the same may be evidenced, shall be and the same are hereby embraced in the indebtedness secured by this Mortgage, and this Mortgage is expressly executed for the security and enforcement of the payment of the said present indebtedness, as well as such further and future indebtedness of Mortgagor, Land Trust and Beneficiary to Mortgagee. Nothing herein contained shall limit the amount secured by this Mortgage if such amount is increased by advances made by Mortgagee as

UNOFFICIAL COPY

8 6 2 3 4 1 1 7

herein or elsewhere provided. The word "Mortgagor" as used in this Subparagraph includes any successor in legal or beneficial ownership of the Premises;

(d) As further security for the indebtedness herein described, Mortgagor (in this Subparagraph hereinafter referred to as Debtor) hereby grants to Mortgagee a security interest in, and this Mortgage will constitute a Security Agreement within the meaning of the Illinois Uniform Commercial Code (the "Code") with respect to, all present and future furnishings, inventory, furniture, appliances, equipment, fixtures, machinery, trade fixtures, business equipment, apparatus, tools, leases of chattels whether the Debtor is the lessor or lessee thereof and options in favor of the Debtor thereunder, service, management and other contracts or agreements, tax refunds, insurance policies and proceeds to be received thereunder or therefrom whether by reason of loss or cancellation, all rents, issues and profits, all of Debtor's present and future accounts, accounts receivable, contract rights, instruments, chattel paper, goodwill, trade names, trademarks, proprietary choses and other choses in action of every kind and nature now in existence or hereafter created, and all other intangibles of Debtor, cash on hand belonging to the Debtor or possessed by the Debtor, and all of the foregoing whether presently owned or possessed by the Debtor, whether located at the address of the Debtor above designated or wheresoever else situated, including all proceeds thereof and funds on deposit in banking institutions to the credit of Debtor, and all other personal property of every kind owned by the Debtor and used in the operation of the Premises (hereinafter referred to as the "chattels") and the proceeds thereof which security interest shall have priority over all other security interests. Debtor further agrees that it shall not sell, assign, lease, transfer or otherwise dispose of said chattels without Mortgagee's prior written consent, except that Mortgagor shall have the right, without such consent, to remove and dispose of, free from the lien of this Mortgage, such chattels as from time to time may become worn out or obsolete, provided that either: (i) simultaneously, with or prior to such removal, any such chattels shall be replaced with other chattels of a value at least equal to that of the replaced chattels and free from security agreement or other encumbrances and from any reservation of title, and by such removal and replacement Mortgagor

86234117

UNOFFICIAL COPY

8 6 2 3 4 1 1 7

shall be deemed to have subjected such equipment to the lien of this Mortgage; or (ii) any net cash proceeds received from disposition shall be paid over promptly to Mortgagee to be applied to the last installment due on the indebtedness secured, without any charge for prepayment. In the event of a default, Mortgagee will have the option of proceeding as to both real and personal property in accordance with its rights and remedies with respect to real property, in which case the default provisions of the Code shall not apply. Mortgagor agrees that, in the event Mortgagee elects to proceed with respect to the portion of the Premises which may be deemed not to form a part of the real estate described herein or may not constitute a fixture within the meaning of the Code, (collectively, the "Code Property") separately from the rest of the Premises, 10 days' notice of the sale of the Code Property will be reasonable notice.

(e) Mortgagor hereby assigns and transfers to Mortgagee all rents, issues, profits, revenues and income from the above-described property and Premises, including all rents now due or which may hereafter become due under all leases thereof, whether written or verbal, now existing or hereafter made, as additional security for the indebtedness secured hereby, and Mortgagee is given a prior and continuing lien thereon. Mortgagor hereby appoints Mortgagee as its Attorney-In-Fact with power to collect said rents, revenues and income with or without suit, and apply same, less expenses of collection, to said indebtedness, in such manner as Mortgagee may elect; provided, however, that except for collection of rents in advance of when they become due and for the modification or cancellation of any lease without the written consent of Mortgagee, Mortgagor may exercise all acts of ownership and collect all rents, revenues and income as if this Mortgage had not been executed until a default occurs under the provisions of this Mortgage. Mortgagee does not assume and shall not be liable in respect of any obligation of the lessor under any of said leases, and no liability shall attach to Mortgagee for failure or inability to collect any rents, revenues and incomes hereby assigned. Mortgagor shall not collect any rents under any of said leases in advance of the time when they become due and will not modify or cancel any of said leases without the prior written consent of Mortgagee. Mortgagor will (i) fulfill or perform each and every term, covenant and provision of any such lease to be

UNOFFICIAL COPY

8 6 2 3 4 1 1 7

fulfilled or performed by the lessor thereunder; (ii) give prompt notice to Mortgagee of any notice received by Mortgagor of default by the lessee thereunder, together with a complete copy of any such notice; and (iii) enforce, short of termination thereof, the performance or observance of each and every term, covenant and provision of any such lease by the lessee thereunder to be performed or observed; and that, in the event of any default under this Mortgage, Mortgagor will pay monthly in advance to Mortgagee, or to any receiver appointed to collect said rents, issues and profits, the fair and reasonable rental value for the use and occupation of such part of the Premises as may be in possession of Mortgagor or Beneficiary and upon default in any such payment, will vacate and surrender possession of such part of the Premises to Mortgagee or to such receiver and in default thereof, Mortgagor may be evicted by summary proceedings or otherwise;

(f) Nothing in this Mortgage shall be construed to obligate Mortgagee to discharge or perform the duties of a landlord to a tenant or to impose any liability as a result of the exercise of the option to collect rents under this Mortgage by virtue of a default, and it is agreed that the collection or participation therein shall be as agent only for the Mortgagor;

(g) As further security for the debt herein described, Mortgagor hereby sells, assigns, sets over and transfers to Mortgagee all of the plans and specifications covering all improvements now located on or hereafter constructed on the Premises, and Mortgagor shall, within thirty (30) days from the date of this Mortgage, deliver or cause to be delivered to Mortgagee a complete set of such plans and specifications;

(h) Mortgagor shall cause the Guarantors to furnish to Mortgagee, annually, financial statements of, and certified by, each Guarantor in a form acceptable to Mortgagee. The first set of financial statements shall be furnished on April 1, 1987 and subsequent sets on the same day of each following year. In the event that Mortgagor fails to cause Guarantors to so furnish such financial statements, such failure shall constitute an event of default hereunder.

(i) Mortgagor will do, execute and deliver all further acts, mortgages, assignments, U.C.C. filing statements and assurances as Mortgagee may

UNOFFICIAL COPY

8 6 2 3 4 1 1 7

require from time to time, for confirming to Mortgagee the property and rights hereby and hereafter intended to be conveyed or assigned, and Mortgagor will pay all filing, registration or recording fees, and all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note, and the Security Documents.

(j) Mortgagor will furnish within 10 days after written request, a written statement setting forth the amount of the debt secured by this Mortgage, and stating either that no setoffs or defenses exist against the Mortgagee or the debt, or, if such setoffs or defenses are alleged to exist, the nature thereof.

(k) Mortgagor agrees that Mortgagee may, at its option, install professional management of the Premises at any time that Mortgagor is in default under any provision of this Mortgage for a period of 45 days. Such installation will be at the sole discretion of Mortgagee, and nothing herein will obligate Mortgagee to exercise its right to install professional management. The cost of such management will be borne by Mortgagor and will be treated as an advance under Paragraph 7 hereof. An affiliate of Mortgagee may serve in the management capacity, provided the charges for its services are at competitive market rates.

14. Mortgagor will at all times, indemnify, defend, hold harmless and on demand reimburse Mortgagee for any and all loss, damage, expense or cost, of whatsoever kind and nature, including, without limitation cost of evidence of title, appraisal fees, documentary and expert evidence, stenographer's and publication charges, and attorneys', accountants' and other professionals' fees arising out of or incurred in connection with or arising out of (i) any suit, action or proceeding relative to the Premises, the Mortgagor or having impact on the interest granted hereunder including probate, bankruptcy, appellate proceedings, and foreclosure of this Mortgage, but excluding any suit, action or proceeding based on a claim incurred prior to Mortgagor's acquisition of the Premises, (ii) preparation for the commencement or defense of any proceeding (iii) adjustment and settlement of insurance proceeds and condemnation awards, (iv) advances made by Mortgagee pursuant to Paragraph 7 hereof or elsewhere hereunder, (v) other costs incurred by Mortgagee in connection with preserving the Premises, (vi) retaking, holding, preparing and selling the Code Property pursuant to the Code, and (vii) the transactions contemplated by the Note and the

86234117

UNOFFICIAL COPY

8 6 2 3 4 1 1 7

Security Documents and any breach thereof. The sum of such expenditures will bear interest at the Default Rate, will be due and payable on demand and will be secured by this Mortgage.

15. The powers and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law, and the powers herein may be executed after the death, dissolution or termination, of the Mortgagor and the property sold as the property of the deceased.

16. Mortgagor and Mortgagee acknowledge that the continued ownership of the Premises by Mortgagor and the entire beneficial interest in Mortgagor by the current shareholders of Mortgagor is a material inducement to the making of the loan secured by this Mortgage; therefore, Mortgagor further agrees as an additional security for the debt herein described that it shall not sell, assign, transfer or further encumber the Premises, or any part thereof, or the chattels in any manner whatsoever without the prior written consent of the Mortgagee except as permitted by the Loan and Security Agreement. Should the Mortgagor transfer said property or further encumber said property without the prior written consent of the Mortgagee, or should any of the shareholders of Mortgagor sell, assign, transfer or encumber the beneficial interest in Mortgagor, or any part thereof, without the prior written consent of Mortgagee, it shall constitute a default under the terms of this Mortgage and the Note secured hereby.

17. Mortgagor shall furnish to Mortgagee a copy of any environmental impact statement prepared by Mortgagor and submitted, or to be submitted, to a governmental agency, whether or not required by law. Mortgagor shall also furnish to Mortgagee copies of all responses received with respect to any such statement.

18. Any failure by Mortgagee to insist upon the strict performance by Mortgagor of any of the terms and provisions hereof shall not be deemed to be a waiver of any of the terms and provisions hereof, and Mortgagee, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by the Mortgagor of any and all of the terms and provisions of this Mortgage to be performed by Mortgagor; neither Mortgagor nor any other person now or hereafter obligated for the payment of the whole or any part of the sums now or hereafter secured by this Mortgage shall be relieved of such obligation by reason of the failure of Mortgagee to comply with any request of Mortgagor or any other person so obligated to take action to

UNOFFICIAL COPY

8 6 2 3 4 1 1 7

foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or of any obligations secured by this Mortgage, or by reason of the release, regardless of consideration, of the whole or any part of the security held for the indebtedness secured by this Mortgage, or by reason of any agreement or stipulation between any subsequent owner or owners of the Premises and the Mortgagee extending the time of payment or modifying the terms of the Note or 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 to make such payments according to the terms of any such agreement of extension or modification unless expressly released and discharged in writing by the Mortgagee; the Mortgagee may release, regardless of consideration, any part of the security held for the indebtedness secured by this Mortgage, without, as to the remainder of the security, in anywise impairing or affecting the lien; and Mortgagee may resort for the payment of the indebtedness to security therefor held by the Mortgagee in such order and manner as the Mortgagee may elect.

19. If at any time the United States of America shall require revenue stamps to be affixed to the Note, Mortgagor will pay for the same with any interest or penalties imposed in connection therewith.

20. This Mortgage shall be construed according to the internal laws and not the conflicts of law rules of the State of Illinois. It is understood and agreed that if any of the provisions of this Mortgage shall contravene, or be invalid under the laws of the State of Illinois, or of any county or jurisdiction therein, such contravention or invalidity shall not invalidate this entire Mortgage, but it shall be construed as if not containing the particular provision or provisions so held to be invalid in said state, county or jurisdiction, and the rights and obligations of the parties shall be construed and enforced accordingly.

21. All notices and demands under and with respect to this Mortgage or the Note secured hereby shall be in writing, and shall be served by registered or certified mail, return receipt requested, addressed to the respective parties at the following addresses:

Mortgagor: c/o PAG, Inc.
250 S. Wacker Drive
Suite 800
Chicago, Illinois 60601

86234117

UNOFFICIAL COPY

8 6 2 3 4 1 1 7

Mortgagee: Westinghouse Credit Corporation
One Oxford Centre
301 Grant Street
Pittsburgh, PA 15219
Attention: Vice President
Real Estate Financing

22. Mortgagor covenants and agrees that it shall not enter into any franchise, license or management agreement relating to the Premises or any part thereof without the prior written approval of Mortgagee.

23. Mortgagor will pay all taxes which may be assessed upon this Mortgage, the Note or indebtedness secured hereby, without regard to any law, heretofore or hereafter enacted, imposing payment of all or any part thereof upon Mortgagee. In event of enactment of any law imposing payment of all or any portion of such taxes upon Mortgagee, or the rendering by any court of competent jurisdiction of a decision that the undertaking by Mortgagor, as herein provided, to pay such tax or taxes is legally inoperative, then, all sums hereby secured, without any deduction, shall at the option of Mortgagee become immediately due and payable, notwithstanding anything contained herein or any law heretofore or hereafter enacted.

24. This Mortgage and the Note secured hereby are executed and delivered to secure moneys advanced or to be advanced in accordance with the Loan and Security Agreement, which Loan and Security Agreement is incorporated herein by this reference. Any default under the Loan and Security Agreement shall constitute a default hereunder and the holder of the Note may, at its option cause the entire indebtedness secured by this Mortgage to become immediately due and payable. In the event of such a default, and whether or not such holder shall cause the indebtedness secured hereby to become immediately due and payable, Mortgagee, after due notice to Mortgagor, may enter upon the Premises, may employ watchmen to protect the improvements thereon from theft or injury, may continue all outstanding contracts for the erection and completion of improvements, may enter into any further contracts and obligations wherever necessary, either in its name as Mortgagee hereunder or in the name of the Mortgagor, and may pay all debts, obligations and liabilities incurred thereby. All sums so advanced by Mortgagee and all sums advanced under the Loan and Security Agreement shall be secured by this Mortgage and, to the extent they shall not be included in the principal amount of indebtedness secured hereby, shall be due and payable on demand with interest at the highest contract rate allowed by law but not to exceed the Default Rate.

25. Mortgagor represents and warrants that no part of the funds advanced under the Note will be directly

UNOFFICIAL COPY

8 6 2 3 4 1 1 1

or indirectly invested in any security subject to the margin requirements of Federal Reserve Board Regulation "G."

26. Notwithstanding any provision herein to the contrary, in the event of either a casualty covered by insurance or a taking pursuant to the exercise of the power of eminent domain, Mortgagor shall have the right to use the insurance proceeds or eminent domain award (such proceeds and/or award are herein collectively referred to as the "Proceeds"), to rebuild, repair or restore the Premises, provided that no default shall have occurred hereunder or under any document executed in connection herewith, and further provided that in Mortgagee's sole opinion, the Premises as rebuilt, repaired or restored with the Proceeds would constitute adequate security for the indebtedness evidenced by the Note. In the event Mortgagor elects to rebuild, repair or restore the Premises and Mortgagee approves as aforesaid, the Proceeds shall be paid to Mortgagee and Mortgagee shall disburse the Proceeds to Mortgagor upon terms and conditions reasonably required by Mortgagee for the actual costs of such rebuilding, repair or restoration.

27. Notwithstanding any provision herein to the contrary, Mortgagor shall not be or be deemed to be in default hereunder or under any document executed in connection herewith unless and until Mortgagee shall have given Mortgagor notice in writing specifying such default and such default remains uncured thirty (30) days after the date of such notice, provided that in the case any default hereunder or thereunder which is not curable within said thirty (30) days, Mortgagor shall not be or be deemed to be in default hereunder or thereunder if Mortgagor shall have commenced curing such default as quickly as reasonably possible with the exercise of due diligence, and such default is cured within ninety (90) days. This Paragraph shall not apply to defaults in the payment of money.

28. Notwithstanding any provision herein or in the Note, the Loan and Security Agreement or any other Security Document, Mortgagee is not and shall not be deemed to be a partner or joint venturer with Mortgagor with respect to the Premises. It is not intended that the making of the loan or any other activities of Mortgagee with respect to the Premises shall be for the benefit of or be relied upon by any third party, and Mortgagee shall not in any way be liable or responsible for any reason for the payment of any claims to any such third party.

29. Time is of the essence in the performance by Mortgagor of all of its obligations, covenants and agreements contained herein.

30. So long as any of the indebtedness hereby secured by this Mortgage shall remain unpaid, unless the

86234117

UNOFFICIAL COPY

8 6 2 3 4 1 1 1

Mortgagee shall otherwise in writing consent, the fee title and leasehold estates in said Premises shall not merge but shall always be kept separate and distinct, notwithstanding the union of said estates either in the lessor or in the lessee, or in a third-party, by purchase or otherwise; and the Mortgagor covenants and agrees that, in case it shall acquire any other estate, title or interest in the Premises covered by said Ground Lease, this Mortgage shall attach to and be a lien upon such other estate so acquired and such other estate so acquired by the Mortgagor shall be considered as mortgaged, assigned or conveyed to the Mortgagee and the lien hereof spread to cover such estate with the same force and effect as though specifically herein mortgaged, assigned or conveyed and spread.

31. The warranties, covenants, conditions, representations and agreements contained in this Mortgage shall run with the land and shall bind Mortgagor, its successors and assigns, and shall be construed as including any subsequent owner or owners of the Premises and shall inure to the benefit of the Mortgagee, its successors and assigns.

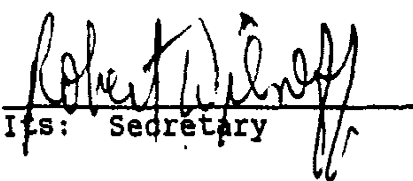
32. Whenever the singular or plural number, or masculine, feminine or neuter gender is used herein, it shall equally include the other, and every mention herein of the Mortgagor, Mortgagee and Beneficiary shall include heirs, executors, legal representatives, administrators, successors and assigns of the party so designated.

33. Notwithstanding any other provision of this Mortgage, it is understood and agreed that Mortgagee's recourse against Mortgagor with respect to any obligation of Mortgagor under this Mortgage shall be limited to the Premises and any other assets of any assignee of Mortgagor; provided, that nothing herein shall be construed to limit the rights of Mortgagee under the Guaranty, as defined in the Loan and Security Agreement.

IN WITNESS WHEREOF, this Mortgage is duly executed the day and year first above written.

PAG, INC.

ATTEST:


Its: Secretary

By: 
Its: President

86234117

UNOFFICIAL COPY

8 6 2 3 4 1 1 1

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, *John A. Kypnis* a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT *Philip Romano* and *Robert W. Luff* personally known to me and known by me to be the _____ President and _____ Secretary, respectively, of PAG, Inc., in whose name the above and foregoing instrument is executed, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this *02* day of June, 1986.

John A. Kypnis
Notary Public

My Commission Expires:

July 30, 1986



REC
JUN 10 PM 2:45

86234117

UNOFFICIAL COPY

8 6 2 3 4 1 1 7

EXHIBIT A LEGAL DESCRIPTION

PARCEL 1:

THE NORTH 1/2 OF THE CERTAIN TRACT OF LAND DESCRIBED AS FOLLOWS: LOTS 23 TO 31 BOTH INCLUSIVE, IN ALLMENDINGER'S LAKE SHORE DRIVE ADDITION TO CHICAGO, A SUBDIVISION OF PART OF BLOCK 13 IN THE CANAL TRUSTEES SUBDIVISION OF THE SOUTH FRACTIONAL QUARTER OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

EASEMENT FOR LIGHT, AIR AND VIEW FOR THE BENEFIT OF PARCEL 1 IN, OVER, ABOVE AND ACROSS THE FOLLOWING DESCRIBED AREA: COMMENCING AT A HORIZONTAL PLANE PARALLEL TO AND 63 FEET ABOVE CHICAGO CITY DATUM AND EXTENDING VERTICALLY UPWARDS TO THE ZENITH BEGINNING AT A POINT ON THE SOUTH LINE OF PARCEL 1, 62 FEET EAST OF THE WESTERLY LINE OF SAID PARCEL 1; THENCE SOUTH ALONG A LINE PARALLEL TO AND 62 FEET EAST OF THE WESTERLY LINE OF LOTS 26 AND 27 IN ALLMENDINGER'S LAKE SHORE DRIVE ADDITION TO CHICAGO AFORESAID (SAID WESTERLY LINE OF LOTS 26 AND 27 AFORESAID BEING A CONTINUATION OF THE WESTERLY LINE OF PARCEL 1 EXTENDED SOUTH) A DISTANCE OF 25 FEET TO A POINT IN SAID LOT 26; THENCE EAST ALONG A LINE PARALLEL TO THE SOUTH LINE OF PARCEL 1 A DISTANCE OF 88 FEET EAST TO A POINT IN LOT 24, IN SAID ALLMENDINGER'S LAKE SHORE DRIVE ADDITION TO CHICAGO AFORESAID; THENCE NORTH ALONG A LINE PARALLEL TO THE WESTERLY LINE OF LOTS 26 AND 27 AFORESAID, A DISTANCE OF 25 FEET TO THE SOUTH LINE OF PARCEL 1; THENCE WEST ALONG THE SOUTH LINE OF PARCEL 1, A DISTANCE OF 88 FEET TO THE PLACE OF BEGINNING, AS CREATED BY AGREEMENT BETWEEN THE PALMOLIVE PEET COMPANY, A CORPORATION OF DELAWARE, AND CHICAGO TITLE AND TRUST COMPANY, A CORPORATION OF ILLINOIS, AS TRUSTEE UNDER TRUST AGREEMENT DATED JULY 25, 1927 AND KNOWN AS TRUST NUMBER 19104, DATED MARCH 31, 1928 AND RECORDED APRIL 30, 1928 AS DOCUMENT 10005790, AND ALSO RECORDED JUNE 21, 1932 AS DOCUMENT 11106014, AND AS CONTINUED AND PRESERVED BY INSTRUMENT DATED DECEMBER 26, 1958 AND RECORDED DECEMBER 26, 1958 AS DOCUMENT 17413316, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

AN UNDIVIDED 60% INTEREST IN THE LEASEHOLD ESTATE CREATED BY THE INSTRUMENT HEREIN REFERRED TO AS THE GROUND LEASE, EXECUTED BY THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, A NEW JERSEY CORPORATION TO 2000 CORPORATION, AN ILLINOIS CORPORATION, AS LESSEE DATED DECEMBER 26, 1958, A MEMORANDUM

86234117

UNOFFICIAL COPY

8 6 2 3 4 1 1 7

OF WHICH GROUND LEASE WAS RECORDED DECEMBER 26, 1958 AS DOCUMENT 17413313, AS AMENDED BY AGREEMENT BETWEEN THE PRUDENTIAL INSURANCE COMPANY OF AMERICA AND AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED OCTOBER 8, 1959 AND KNOWN AS TRUST NUMBER 14758 DATED NOVEMBER 30, 1961 AND RECORDED DECEMBER 7, 1961 AS DOCUMENT 18349717 AS AMENDED BY INSTRUMENT RECORDED JUNE 1, 1983, AS DOCUMENT 26626015; WHICH GROUND LEASE DEMISES THE LAND DESCRIBED AS PARCEL 1 ABOVE FOR A TERM OF YEARS BEGINNING DECEMBER 15, 1958 AT 12:00 NOON AND ENDING DECEMBER 14, 2029.

Property of Cook County Clerk's Office

86234117