

UNOFFICIAL COPY

Subj: 3000 N. Dearborn St. (part of) 111434  
4 Algonquin Rds, Schaumburg  
Ill.

Permanent Real Estate Tax Index No.: 02-34-102-009

MORTGAGE, DEED OF TRUST, SECURITY AGREEMENT,  
ASSIGNMENT OF LEASES AND RENTS, AND FINANCING STATEMENT 86354113

This Mortgage, Deed of Trust, Security Agreement, Assignment of Leases and Rents, and Financing Statement (the "Mortgage") is made as of August 12, 1986, by LA SALLE NATIONAL BANK, a national banking association, not personally but as trustee under that certain Trust Agreement dated August 8, 1986, and known as Trust No. 111434 (the "Mortgagor"), with a mailing address at 135 LaSalle Street, Chicago, Illinois 60603, to MBANK PLAMO, N.A., a national banking association (the "Lender"), with a mailing address at St. Mary's at Commerce Street, P.O. Box 900, San Antonio, Texas 78293 (Attention: Real Estate Department), and pertains to the real estate described in attached Exhibit A attached hereto and made a part hereof for all purposes.

I.

RECITALS

1.01 Premises. Whereas, the Mortgagor is the owner and holder of fee simple title in and to all of the real estate described in Exhibit A attached hereto and made a part hereof for all purposes (the "Premises"), which Premises forms a portion of the Property described below;

1.02 Note. Whereas, the Mortgagor has executed and delivered to Lender a Mortgage Note (the "Note") of even date herewith, wherein the Mortgagor promises to pay to the order of the Lender the principal amount of U.S. TEN MILLION FIVE HUNDRED EIGHTEEN THOUSAND AND NO/100 DOLLARS (\$10,518,000.00) in repayment of a loan (the "Loan") from the Lender to the

This instrument was prepared by and should be returned to:

John M. Sudyka  
Fulbright & Jaworski  
2200 InterFirst Plaza  
300 Convent Street  
San Antonio, Texas 78205

Box  
15

86354113

Mortgagor in like amount, or so much as may now or hereafter be disbursed by the Lender under the Note, together with interest, at the rate and in installments as set forth in the Note. The entire unpaid principal balance of and accrued interest on the Note is due and payable on the Maturity Date (as defined in the Note), with the terms and provisions of the Note attached hereto as Exhibit A-1 and incorporated herein and made a part hereof by this reference with the same effect as if set forth at length;

1.03 Indebtedness. Whereas, the indebtedness evidenced by the Loan, including the principal and any interest and premiums, and all extensions, renewals, modifications or substitutions, in whole or in part, made by the Lender to the Mortgagor, and all other sums which may be at any time due or owing or required to be paid as provided in this Mortgage or the Loan Documents (as defined in Paragraph 1.04 hereinbelow) are collectively referred to herein as the "Indebtedness";

1.04 Other Loan Documents. Whereas, as security for the repayment of the Indebtedness, in addition to this Mortgage, there have been executed and delivered to the Lender certain other loan documents described in Exhibit B attached hereto and made a part hereof (the Note, this Mortgage, and all other documents or instruments described in Exhibit B hereto or executed in connection therewith, whether now or hereafter existing, and as such may be amended, modified, or supplemented from time to time, are collectively referred to herein as the "Loan Documents"); and

1.05 This Mortgage. Whereas, as security for the repayment of the Loan in addition to the other Loan Documents, the Mortgagor is required by the Loan Documents to execute and deliver to the Lender this Mortgage.

II.

THE GRANT

NOW, THEREFORE, in order to secure the payment of the principal amount of the Note and interest thereon and the

86354113

performance of all of the covenants, provisions, agreements, and obligations contained in this Mortgage or in the Loan Documents (whether or not the Mortgagor is personally liable for such payment, performance, or observation), and also to secure the payment of any and all Indebtedness, direct or contingent, that may now or hereafter become owing from the Mortgagor to the Lender and the performance of any and all other obligations under the Loan Documents, in consideration of U.S. TEN AND NO/100 DOLLARS (\$10.00) in hand paid by the Lender to the Mortgagor, the Recitals above stated, and for other good and valuable consideration, the receipt and sufficiency of which are hereby confessed and acknowledged, the Mortgagor GRANTS, SELLS, ASSIGNS, RELEASES, ALIENS, TRANSFERS, PREMISES, CONVEYS, and MORTGAGES to the Lender and its successors and assigns forever, and represents and grants to the Lender and its successors and assigns forever, a continuing security interest in and to the Premises, and all of its estate, right, title, and interest therein, situated in the County of Cook, State of Illinois, as more particularly described in Exhibit A hereto, together with the following described property, all of which other property is pledged primarily on a parity with the Premises and not secondarily (the Premises and the following described rights, interests, claims, and property collectively referred to herein as the "Property"):

(a) The Premises herein described, together with all and singular the rights, titles, interests, servitudes, hereditaments, prescriptions, profits, and advantages thereto in anywise belonging (the term "Premises" as used herein shall be deemed to include the real estate described in Exhibit A hereto as well as all of the foregoing);

(b) Any and all buildings, structures, sidewalks, parking areas, fences, and other improvements, and any and all additions, alterations, or appurtenances thereto now or at any time hereafter placed or constructed upon or which may be used in connection with or related to the Premises or any part thereof (all of the foregoing collectively referred to herein as the "Improvements");

86354113

4113

(c) All materials, supplies, equipment, apparatus, and other items now or hereafter attached to, installed in, or used, whether temporarily or permanently, in connection with any of the Improvements or the Premises, and all renewals, replacements, substitutions thereof and additions thereto, including, but not limited to, any and all partitions, ducts, shafts, pipes, radiators, conduits, wiring, window screens and shades, drapes, rugs and other floor coverings, awnings, motors, engines, boilers, pumps, transformers, generators, fans, blowers, vents, switchboards, elevators, escalators, compressors, furnaces, cleaning, call and sprinkler systems, fire extinguishing apparatus, water tanks, swimming pools, heaters, ventilators, pumps, laundry, incinerators, air conditioning and other cooling systems, water, gas, and electrical equipment, disposals, dishwashers, refrigerators and ranges, cafeteria equipment, recreational equipment and facilities of all kinds, and water, gas, electrical, storm, and sanitary sewer facilities, and all other utilities, whether or not situated in easements, all of which property and things to the extent permitted by law, are hereby declared to be permitted accessions of the Premises (all of the foregoing collectively referred to herein as the "Fixtures").

(d) All of the right, title, and interest of the Mortgagor in and to all personal property other than fixtures, of any kind, as defined in the Uniform Commercial Code of the State in which the Property is located, now or hereafter located upon, within, or about the Premises and the Improvements, or which are or may be used in or related to the development, financing, or operation of the Property, together with all now owned or hereafter acquired personal property, accessories, and spare parts, and all additions, replacements, and substitutions therefor, and the proceeds thereof, including, but not limited to, all furniture, furnishings, equipment, machinery, tools, vehicles, goods, general intangibles, money, insurance proceeds, accounts, contract rights, inventory, all refundable, returnable, or reimbursable fees, deposits, or other funds or evidences of credit or indebtedness deposited by or on behalf of the Mortgagor with any governmental agencies, boards, corporations, providers of utility services, public or private, including, but not limited to, all refundable, returnable, or reimbursable tap fees, utility deposits, commitment fees, and development costs (all of the foregoing collectively referred to herein as the "Personalty");

(e) All leases, subleases, licenses, concessions, contracts, or other agreements, whether written or oral, now or hereafter in effect, which grant a possessory interest in and to or the right to use any portion of the Property, or which relate to the use or construction of the Improvements, and all other agreements, such as utility contracts,

86354113

maintenance agreements, and service contracts, which in any way relate to the use, occupancy, development, operation, maintenance, enjoyment, or ownership of the Property (all of the foregoing collectively referred to herein as the "Leases");

(f) All consideration, whether money or otherwise, paid or payable by parties to the Leases other than the Mortgagor, by using, occupying, leasing, licensing, possessing, operating from, selling, or otherwise enjoying the Property, and all rents, issues, income, profits, insurance, proceeds, benefits, and advantages of every nature whatsoever that arise, accrue, or are derived from the Property pursuant to the Leases or any renewals thereof (all of the foregoing collectively referred to herein as the "Rents");

(g) Rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages, and appurtenances in any way pertaining to any of the Property, and rights, titles, and interests of the Mortgagor in and to any streets, alleys, driveways, and strips of land adjoining the Premises or any part thereof;

(h) All plans, specifications, drawings, feasibility studies, cost estimates, permits, licenses, and certificates for any Improvements to be placed upon the Premises, and all contracts and subcontracts relating to the Premises (all of the foregoing collectively referred to herein as the "Contracts");

(i) All additions, substitutions, replacements, and revisions of and to, and proceeds of any of, the Property and all remainders therein;

(j) Other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Indebtedness hereby secured or the performance and discharge of the obligations under this Mortgage, the Note hereby secured, or any of the Loan Documents (all of the foregoing collectively referred to herein as the "Obligations");

(k) All other property or rights of the Mortgagor of any kind or character relating to the Property.

TO HAVE AND TO HOLD the Property hereby mortgaged and conveyed or so intended, together with the rents, issues, and profits thereof, unto the Lender, its successors and assigns, forever, free from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois or such other jurisdiction in which the Property is located (which

86354113

rights and benefits are hereby expressly released and waived), for the uses and purposes herein set forth.

The Mortgagor hereby covenants with the Lender and with the purchaser at any foreclosure sale: that at the execution and delivery hereof, the Mortgagor owns the Property and has good, indefeasible estate therein, in fee simple; that the Property is free from all encumbrances whatsoever (and any claim of any other person thereto) other than those encumbrances described in Exhibit C attached hereto and made a part hereof for all purposes or as may be permitted by the Lender in writing (collectively, the "Permitted Exceptions"); that it has good and lawful right to sell, mortgage, and convey the Property; and that the Mortgagor and its successors and assigns shall forever warrant and defend the Property against all claims and demands whatsoever.

Provided, however, that if and when the Mortgagor has paid all of the Indebtedness, has paid any and all other amounts required under the Loan Documents, and has strictly performed and observed all of the agreements, terms, conditions, provisions, and warranties contained herein and in all of the Loan Documents, then this Mortgage and the estate, right, and interest of the Lender in and to the Property shall cease and shall be released at the cost of the Mortgagor, but otherwise shall remain in full force and effect. The Lender shall be entitled to charge a reasonable release fee.

III.

GENERAL AGREEMENTS

3.01 Payment of Indebtedness. The Mortgagor shall pay promptly and when due the principal and interest on the Indebtedness evidenced by the Note and all other Indebtedness at the times and in the manner provided in the Note, this Mortgage, or any of the other Loan Documents, and the Mortgagor shall duly perform and observe all of the covenants,

86354113

agreements, and provisions contained in the Mortgage, the Note, or in the Loan Documents. This Mortgage shall secure the payment of all such Indebtedness (collectively, the "Secured Indebtedness"). All sums payable by the Mortgagor shall be paid without demand, counterclaim, offset, deduction, or defense. The Mortgagor hereby waives all rights now or hereafter conferred by statute or otherwise to any such demand, counterclaim, offset, deduction, or defense.

3.02 Protection of Title, Payment of Taxes, Etc. The Mortgagor shall protect the title and possession of the Property and shall pay when due all taxes and assessments now existing or hereafter levied or assessed upon the Property, or the interest therein, created by this Mortgage, and to preserve and maintain the lien hereby created as a first and prior lien on the Property including any Improvements or Fixtures now or hereafter made a part of the Premises.

3.03 Maintenance of the Property. The Mortgagor shall keep the Property in good repair and condition, and shall not permit or commit any waste thereof, and shall keep any Improvements occupied so as not to impair the insurance carried thereon.

3.04 Insurance. The Mortgagor shall insure and keep insured the Property and each and every part and parcel thereof against such perils and hazards as the Lender may from time to time require, and, in any event, including insurance upon all Improvements now or hereafter created upon the Property against loss or damage by fire and windstorm, and any other hazard or hazards as may be reasonably required from time to time by the Lender during the term of the Secured Indebtedness, to the extent of the original amount of the Secured Indebtedness or to the extent of the full insurable value of the Improvements, whichever is the lesser, in such form and with such Insurance Company or Companies as may be approved by the Lender. The

86354113

Mortgagor shall deliver to the Lender the policies of such insurance having attached to said policies such mortgage indemnity clause as the Lender shall direct, and the Mortgagor shall further deliver renewals of such policies to the Lender at least ten (10) days before any such insurance policies shall expire. The Mortgagor agrees that any proceeds which the Lender may receive under any such policy or policies may be applied by the Lender, at its option, to reduce the Secured Indebtedness, whether then matured or to mature in the future, and in such manner as the Lender may elect, or the Lender may permit the Mortgagor to use said proceeds to repair or replace any of the Property damaged or destroyed and covered by such policy or policies.

3.05 Condemnation and Eminent Domain. The Mortgagor agrees that the Lender shall be entitled to receive any and all sums which may become payable to the Mortgagor for the condemnation of the Property, or any part thereof, for public or quasi-public use, or by virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to the Mortgagor for damages caused by public works or construction on or near the Property. All such sums are hereby assigned to the Lender, who may, after deducting therefrom all expenses actually incurred, including attorney's fees, release same to the Mortgagor or apply the same to the reduction of the Secured Indebtedness, whether then matured or to mature in the future, or on any obligation herein described, as and in such manner as the Lender may elect. The Lender shall not be, in any event or circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of, any such sums. Without in any way limiting the foregoing, all judgments, decrees, or awards now or hereafter made for injury or damage to the Property, or awards, settlements, or other compensation now or hereafter made by any Governmental

86354113



Authority (as hereinafter defined), including those for any variation of, or change of grade in, any streets affecting the Premises or the Improvements, are hereby assigned in their entity to the Lender, who shall apply same in such manner as the Lender may elect. The Lender is hereby authorized, in the name of the Mortgagor, to execute and deliver valid acquittances for, and to appeal from, any such award, judgment, or decree. As used herein, the term "Governmental Authority" shall mean any and all governmental or quasi-governmental entities of any nature whatsoever, whether federal, state, county, district, city, or otherwise, and whether now or hereafter in existence.

3.06 Payments by the Lender. In the event the Mortgagor shall fail to keep any of the Property hereby conveyed in good repair and condition, or to pay promptly when due all taxes and assessments, as aforesaid, or to preserve the prior lien of this Mortgage on the Property, or to keep any of the Property insured, as aforesaid, or to deliver the policy or policies of insurance or the renewal thereof to the Lender, as aforesaid, the Lender may, at its option, but without being required to do so, make such repairs, pay such taxes and assessments, purchase any tax title thereon, remove any prior liens and/or prosecute or defend any suits in relation to the preservation of the prior lien of this Mortgage on the Property, or insure and keep insured any of the Property in any amount not to exceed that above stipulated. All sums which may be so paid out by the Lender and all sums paid for insurance premiums, as aforesaid, including the costs, expenses, and attorney's fees paid in any suit affecting the Property when necessary to protect the lien of this Mortgage, shall bear interest from the dates of such payments at the per annum interest rate stated in the Note herein described and shall be paid by the Mortgagor to the Lender upon demand, at the same

86354113

place at which the Note herein described is payable, and shall be deemed a part of the Secured Indebtedness and recoverable as such in all respects.

3.07 Prohibited Liens and Transfer. If all or any part of the Property or any interest therein or any rents or income therefrom is sold, transferred, conveyed, assigned, mortgaged, leased, pledged, encumbered, or otherwise disposed of by the Mortgagor without the Lender's prior written consent (or, if the Mortgagor is a Trustee, then if any Beneficiary of the Mortgagor shall create, effect, contract for, commit to or consent to, or shall suffer or permit, any sale, assignment, transfer, lien, pledge, mortgage, security interest, or other encumbrance or alienation of such Beneficiary's interest in Mortgagor), or, in the event any one or more of the Mortgagor, or the Beneficiary of the Mortgagor, is a corporation, a general or limited partnership, or any other entity other than a natural person, if any of the shares or ownership interests (regardless of how evidenced) in any of the Mortgagor, or the Beneficiary of the Mortgagor, is sold, transferred, conveyed, assigned, mortgaged, pledged, encumbered or otherwise disposed of, without the Lender's prior written consent, the Lender shall have the right and option to declare the entire Secured Indebtedness hereby secured, with all interest accrued thereon, immediately due and payable. In order to exercise such right and option to accelerate, the Lender shall give written notice to the Mortgagor that the Secured Indebtedness has been declared due and payable and that payment thereof is demanded. The failure to pay the Secured Indebtedness in full within ten (10) days after such notice has been placed in the mail as herein provided, addressed to the Mortgagor, shall constitute an Event of Default (as hereinafter defined) as provided in this Mortgage and the Lender may, at its option, proceed to foreclose the lien of this Mortgage by judicial proceedings in

86354113

accordance with the laws of the State in which the Property is located, and may exercise any and all other rights and remedies permitted herein. Any waiver by the Lender of or any forbearance by the Lender to exercise its option to accelerate with respect to any particular sale or transfer shall not be deemed to constitute a waiver of such option with respect to any other sale or transfer.

3.08 Priority of Mortgage and Subrogation to Prior Lienholder's Rights. The Mortgagor hereby covenants, represents, and agrees that the lien hereby created shall take precedence over and be a prior lien to any other lien of any character, whether vendor's, materialmen's, or mechanic's lien, hereafter created on the Property, and in the event any of the proceeds of the Secured Indebtedness as set forth herein are used to pay off and satisfy any liens heretofore existing on the Property, then the Lender is, and shall be, subrogated to all of the rights, liens, and remedies of the holders of the indebtedness so paid.

3.09 The Lender's Dealings with Transferee. In the event of the sale or transfer, by operation of law, voluntarily, or otherwise, of all or any part of the Property, the Lender shall be authorized and empowered to deal with the vendee or transferee with regard to the Property, the Secured Indebtedness, and this Mortgage as fully and to the same extent as it might with the Mortgagor, without in any way releasing or discharging the Mortgagor's obligations, specifically including Paragraph 3.07 and without waiving the Lender's right of acceleration pursuant to such Paragraph 3.07.

3.10 Compliance with Laws. The Mortgagor shall comply with all statutes, ordinances, regulations, rules, orders, decrees, and other requirements relating to the Property by any federal, state, or local authority. The Mortgagor shall observe and comply with all conditions and requirements

86354113

necessary to preserve and extend any and all rights, licenses, permits (including without limitation zoning variances, special exceptions, and nonconforming uses), privileges, franchises, and concessions that are applicable to the Property or that have been granted to or contracted for by the Mortgagor in connection with any existing or presently contemplated use of the Property.

3.11 Assignment of Rents and Leases. As further security for the payment of the Secured Indebtedness, the Mortgagor hereby transfers, assigns, and conveys unto the Lender all Rents issuing or to hereafter issue from or in connection with the Property, and does hereby transfer, assign, and convey unto the Lender all Mortgagor's right, title, and interest as lessor by virtue of any Leases which may have been heretofore or may be hereafter made or agreed to by the Mortgagor or its agents or Beneficiaries, and, in the event of any default in the payment of the Note or any of the Secured Indebtedness, the Lender, its agent or representative, is hereby authorized, at its option, to collect the Rents, or, if such Property is vacant, to rent the same and collect the Rents and apply the same, less the reasonable costs and expenses of collection thereof, to the payment of the Note or any of the Secured Indebtedness, whether the matured or to mature in the future, and in such manner as the Lender may elect. The collection of the Rents by the Lender shall not constitute a waiver of the Lender's right to accelerate the maturity of the Secured Indebtedness nor of its right to proceed with the enforcement of this Mortgage.

3.12 Mortgagee in Possession. Nothing herein contained shall be construed as constituting the Lender as a lender in possession in the absence of the actual taking of possession of the Property by the Lender.

3.13 Inspection of Property. The Mortgagor shall permit the Lender and its representatives and agents to inspect

86354113

the Property from time to time during normal business hours and as frequently as the Lender considers reasonable.

3.14 Uniform Commercial Code. This Mortgage constitutes a Security Agreement as that term is used in, and shall constitute a first and prior security interest under, the Uniform Commercial Code of the State in which the Property is located (the "UCC") with respect to the Improvements, Fixtures, Personalty, Contracts, Leases, and Rents (collectively, the "Collateral") to the extent the UCC is applicable to any of such Collateral. To this end, without limiting any of the provisions of this Mortgage, the Mortgagor, as Debtor, has granted, conveyed, assigned, transferred, and set over, and by these presents does grant, convey, assign, transfer, and set over, unto the Lender, as Secured Party, a prior security interest in all of the Mortgagor's right, title, and interest in and to the Collateral to secure the full and timely payment of the Secured Indebtedness and performance of the obligations set forth in the Note, this Mortgage, and any and all of the Loan Documents. The following provisions shall not limit the generality or applicability of any other provision of this Mortgage but shall be in addition thereto:

(a) The Mortgagor agrees to execute and deliver to the Lender, in the form and substance satisfactory to the Lender, such financing statements and such further assurances as the Lender may from time to time consider necessary to create, perfect, and preserve the security interest granted herein, and the Mortgagor shall cause such statements and assurances to be recorded and filed at such times and places as may be required or permitted by law to create, perfect, and preserve such security interest.

(b) The Lender shall have all rights, remedies, and recourses with respect to the Collateral afforded a "Secured Party" by the UCC in addition and not in limitation of the other rights, remedies, and recourses afforded the Lender by this Mortgage.

(c) The security interest herein granted shall not be deemed or construed to constitute the Lender as a party in possession of the Property or to obligate the Lender to lease the Property, or to take any action, incur any expense, or perform any obligation whatsoever under any of the Leases or otherwise.

86354113

(d) Upon any Event of Default hereunder or under the Note or any of the Loan Documents or any document executed in connection therewith, and at any time thereafter:

(i) The Lender shall have, with regard to the Collateral, the remedies provided in this Mortgage and in the UCC. No such remedy granted by the UCC is or shall be deemed to be accepted, modified, or waived in any manner by this Mortgage.

(ii) The Lender shall be entitled, in its sole discretion, to apply the proceeds of any disposition of any of the Collateral in the order set forth in the UCC, or, if allowed by the UCC, in the order set forth in the body of this Mortgage. If the proceeds are not sufficient to pay the Secured Indebtedness in full, the Mortgagor shall remain liable for any deficiency.

(iii) Notwithstanding anything herein to the contrary, the Lender may, at its option and to the extent permitted by applicable law, dispose of the Collateral and other items of personal property covered by this Mortgage, in accordance with the Lender's rights and remedies in respect of the Premises, pursuant to the provisions of this Mortgage in lieu of proceeding under the UCC.

(e) The Lender may require the Mortgagor to assemble the Collateral and make it available to the Lender at a place to be designated that is reasonably convenient to both parties. All expenses of retaking, holding, preparing for sale, lease, or disposal of the Collateral and the like, which are incurred or paid by the authorized and permitted hereunder, including all attorney's fees, legal expenses and costs, shall be added to the Secured Indebtedness and the Mortgagor shall be liable therefor.

(f) As to such portion of the Collateral which constitutes fixtures under applicable law, this Mortgage shall be effective as a financing statement when filed for record in the appropriate public records of the State in which the Property is located as required by the UCC. The record owner of the Premises is the Mortgagor hereunder, whose mailing address for purposes of such financing statement is that set forth hereinabove in this Mortgage.

3.15 Extensions of Secured Indebtedness, Releases, Etc. It is agreed that an extension or extensions may be made of the time of payment of all or any part of the Secured

86354113

Indebtedness secured hereby, and that any part of the Property may be released from lien of this Mortgage without altering or affecting the priority of the lien of this Mortgage in favor of any junior encumbrancer, mortgagee, or purchaser, or any person acquiring an interest in the Property hereby conveyed, or any part thereof; it being the intention of the parties hereto to preserve the lien of this Mortgage on the Property herein described as a lien first and superior to any liens that may be placed thereon, or that may be fixed, given, or imposed by law thereon, after the execution of this Mortgage, notwithstanding any such extension of the time of payment or the release of a portion of the Property from the lien of this Mortgage.

3.16 First Application to Any Unsecured Amounts. In the event any portion of the Secured Indebtedness herein described cannot be lawfully secured by the lien of this Mortgage upon the Property, it is agreed that the first payments made on the Secured Indebtedness shall be applied to the discharge of that portion of such Secured Indebtedness.

3.17 Interest Laws. The Lender and the Mortgagor intend to comply with all applicable laws. Notwithstanding any provision to the contrary in the Note, this Mortgage, or any of the other Loan Documents, no such provision shall require the payment or permit the collection of any amount ("Excess Interest") in excess of the maximum amount of interest permitted by law to be charged for the use or detention, or the forbearance in the collection, of all or any portion of the indebtedness evidenced by the Note. If any Excess Interest is provided for, or is adjudicated to be provided for, in the Note, this Mortgage, or any of the other Loan Documents, then in such event (a) the provisions of this Paragraph 3.17 shall govern and control; (b) neither the Mortgagor nor any person, party, or other entity liable for the payment of the Note (collectively, the "Obligors") shall be obligated to pay any

86354113

Excess Interest; (c) any Excess Interest that the Lender may have received hereunder shall, at the option of the Lender, be (i) applied as a credit against the then unpaid principal balance under the Note, accrued and unpaid interest not to exceed the maximum amount permitted by law, (ii) refunded to the payor thereof, or (iii) any combination of the foregoing; (d) the per annum interest rate applicable to the Note shall be automatically subject to reduction to the maximum lawful contract rate allowed under applicable usury laws, and the Note, this Mortgage, and the other Loan Documents shall be deemed to have been, and shall be, reformed and modified to reflect such reduction in such per annum interest rate; and (e) neither the Mortgagor nor any of the obligators shall have or be entitled to assert any action against the Lender for any damages whatsoever arising out of the payment or collection of any Excess Interest.

3.18 Future Advances. This Mortgage also secures the payment of and includes, without limitation, the following:

(a) The above-described Note.

(b) All loans and future advances made by the Lender to the Mortgagor in connection with the loan evidenced by the Note and all debts, obligations, and liabilities of every kind and character of the Mortgagor now or hereafter existing in favor of the Lender in connection with the loan evidenced by the Note, including all indebtedness incurred or arising pursuant to the provisions of this Mortgage, the Note, or any other Loan Documents now or hereafter evidencing or securing the above-described indebtedness or any part thereof, whether such debts, obligations, or liabilities are direct or indirect, primary or secondary, joint or several, fixed or contingent, and whether originally payable to the Lender or to a third party and subsequently acquired by the Lender and whether such debts, obligations, and liabilities are evidenced by promissory note, open account, overdraft, endorsement, surety agreement, guaranty, or otherwise.

(c) This Mortgage shall secure not only the above-described indebtedness, but any and all renewals and extensions thereof, whether or not such renewals and extensions are evidenced in writing, and the liens under this Mortgage shall be cumulative of all other liens and security of any and every other kind or character whatsoever securing the above-described indebtedness.

86354113



(d) The words "Indebtedness" and "Secured Indebtedness" wherever used in this Mortgage shall refer to and include, without limitation, all present and future debts, obligations, and liabilities described or referred to in this Paragraph 3.18.

Any and all future advances shall be evidenced by the Note and shall be secured by this Mortgage. The Lender shall disburse said future advances in accordance with the terms and provisions of the Note; provided, that (a) no Event of Default has occurred under this Mortgage, the Note, or any other Loan Documents, (b) on the date(s) of any such disbursement(s), the title insurance company that has insured the validity and priority of the lien in this Mortgage is prepared to issue an endorsement to its loan policy, which endorsement shall increase the amount of title insurance by the amount of the then applicable future advance, and which endorsement shall extend the effective date of said loan policy to the date of such disbursement without raising any new exceptions under Schedule B thereof except for (i) general real estate taxes which are a lien but are not yet due and payable and (ii) title exceptions which are satisfactory to the Lender and have been approved in writing by the Lender, and (c) the Mortgagor shall have executed and delivered to the Lender an amendment to this Mortgage, in form and substance acceptable to the Lender, incorporating any provisions pertaining to any such disbursement(s) and as may be required by the Lender.

#### IV.

##### EVENT OF DEFAULT AND REMEDIES

4.01 Event of Default. The occurrence of any of the following shall constitute an event of default ("Event of Default") under this Mortgage:

(a) Any default in the payment of any installment, principal or interest, of the Note, or of any Secured Indebtedness hereby secured, in accordance with the terms thereof;

86354113

(b) Any breach of any of the covenants herein contained or contained in the Note hereby secured or in this Mortgage or in any of the other Loan Documents, whether now existing or hereafter entered into;

(c) Any failure to perform any other obligations herein described or described in the Note or any of the Loan Documents;

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

(i) The Mortgagor shall file a voluntary petition in bankruptcy, insolvency, debtor relief, or for arrangement, reorganization, or other relief under any chapter of the Federal Bankruptcy Act or any similar law, state or federal, now or hereafter in effect, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of the Mortgagor or for any part of the Premises or any substantial part of the Mortgagor's property, or shall make any general assignment for the benefit of the Mortgagor's creditors, or shall fail generally to pay the Mortgagor's creditors, or shall fail generally to pay the Mortgagor's debts as they become due or shall take any action in furtherance of any of the foregoing;

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

(iii) A court having jurisdiction shall enter a decree or other for relief in respect of the Mortgagor, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or the Mortgagor shall consent to or shall fail to oppose any such proceeding, or any such court shall

86354113

enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Mortgagor or for any part of the Premises or any substantial part of the Mortgagor's property, or ordering the winding up or liquidation of the affairs of the Mortgagor, and such decree or order shall not be dismissed within thirty (30) days after the entry thereof;

(iv) The Mortgagor shall abandon the Premises.

4.02 Acceleration of Maturity. At any time during the existence of any Event of Default, the Lender is hereby authorized and empowered, at its option, and without affecting the lien hereby created or the priority of said lien or any right of the Lender hereunder, to declare, without further notice, all Secured Indebtedness (which shall include any prepayment premium or penalty provided for in the Note) to be immediately due and payable, and the Lender may immediately proceed to foreclose this Mortgage and/or exercise any right, power, or remedy provided by this Mortgage, the Note, any of the Loan Documents, or by law or in equity conferred.

4.03 Foreclosure of Mortgage. Upon the occurrence of any Event of Default, or at any time thereafter, the Lender may, at its option, proceed to foreclose the lien of this Mortgage by judicial proceedings in accordance with the laws of the State in which the Property is located.

4.04 Remedies Cumulative and Non-Waiver. No remedy or right of the Lender hereunder or under the Note or any Loan Documents or otherwise, or available under applicable law, shall be exclusive of any other right or remedy, but each such remedy or right shall be in addition to every other remedy or right now or hereafter existing under any such document or under applicable law. No delay in the exercise of, or omission to exercise, any remedy or right accruing on any Event of Default shall impair any such remedy or right or be construed to be a waiver of any such Event of Default or an acquiescence

86354113

therein, nor shall it affect any subsequent Event of Default of the same or a different nature, nor shall it extend or affect any grace period. Every such remedy or right may be exercised concurrently or independently, when and as often as may be deemed expedient by the Lender. All obligations of the Mortgagor, and all rights, powers, and remedies of the Lender expressed herein shall be in addition to, and not in limitation of, those provided by law or in the Note or any Loan Documents or any other written agreement or instrument relating to any of the Secured Indebtedness or any security therefor.

4.05 Litigation Expenses. In any proceeding to foreclose the lien created hereby or enforce any other remedy of the Lender under the Note, this Mortgage, and the other Loan Documents, or in any other proceeding in connection with any of the Loan Documents or any of the Property in which the Lender is named as a party, there shall be allowed and included, as additional indebtedness in the judgment or decree resulting, all related expenses paid or incurred by or on behalf of the Lender. Such expenses shall include: attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, survey costs, and costs (which may be estimated as to items to be expended after entry of such judgment or decree) of procuring all abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and any similar data and assurances with respect to title to the Property as the Lender may deem reasonably necessary either to prosecute or defend in such proceeding or to evidence to bidders at any sale pursuant to such decree the true condition of the title to or value of the Premises or the Property. All foregoing expenses, and such expenses as may be incurred in the protection of any of the Property and the maintenance of the lien of this Mortgage (including the fees of any attorney employed by the Lender in

86354113

any litigation affecting the Note, this Mortgage, or the Property, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding), shall be immediately due and payable by the Mortgagor with interest thereon at the lesser of (i) the Base Rate (as defined in the Note) plus five percent (5%) or (ii) the Maximum Rate (as defined in the Note) (such lesser rate as aforesaid referred to herein as the "Default Interest Rate").

4.06 Right of Possession. In any case in which the Lender has a right to institute foreclosure proceedings (whether or not the entire principal sum secured hereby becomes immediately due and payable or whether before or after the institution of foreclosure proceedings or before or after sale thereunder), the Mortgagor shall, immediately upon demand of the Lender, surrender to the Lender, and the Lender shall be entitled to take actual possession of, the Property or any part thereof, personally or by its agent or attorneys. The Lender, in its discretion, may enter upon and take and maintain possession of all or any part of the Property, together with all documents, books, records, papers, and accounts of the Mortgagor or the then owner of the Property relating thereto. The Lender may exclude the Mortgagor, such owner, and any agents and servants from the Property. As attorney-in-fact or agent of the Mortgagor or such owner, or in its own name, the Lender may:

(a) Hold, operate, manage, and control all or any part of the Property and conduct the business thereof, either personally or by its agents. The Lender 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 rents, issues, deposits, profits, and avails of the Property, including actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to the Mortgagor;

(b) Cancel or terminate any Leases covering or affecting all or any part of the Property for any cause or on any ground that would entitle the Mortgagor to cancel the same;

86354113

(c) Elect to disaffirm any Lease covering or affecting all or any part of the Property made subsequent to this Mortgage or subordinated to the lien of this Mortgage;

(d) Extend or modify any then existing Leases and make new leases of all or any part of the Property. Such extensions, modifications, and new leases may provide for terms or for options to lessees to extend or renew terms beyond the maturity date of the Loan evidenced by the Note and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale. Any such new leases, and the options or other such provisions therein, shall be binding upon the Mortgagor, all persons whose interests in the Property are subject to the lien of this Mortgage, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Secured Indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser; and

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

4.07 Priority of Rent Payments. Any rents, issues, deposits, profits, and avails of the Property received by the Lender after taking possession of the Property, or pursuant to any assignment to the Lender under the provisions of this Mortgage or any of the other Loan Documents, shall be applied in payment of or on account of the following, in such order as the Lender or, in case of a receivership, as the court, may determine:

(a) Operating expenses of the Property (including reasonable compensation to the Lender, any receiver of the Property, any agent or agents to whom management of the Property has been delegated, and also including lease commissions and other compensation for and expenses of seeking and procuring tenants and entering into leases, establishing claims for damages, if any, and paying premiums on insurance hereinabove authorized);

(b) Taxes, special assessments, and water and sewer charges now due or that may become due on the Property, or that may become a lien thereon prior to the lien of this Mortgage;

86354113

(c) Any and all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of the Property (including without limitation the cost, from time to time, of installing or replacing ranges, refrigerators, and other appliances and other personal property, and of placing the Property in such condition as will, in the judgment of the Lender or any receiver thereof, make it readily rentable or salable);

(d) Any Secured Indebtedness or any deficiency that may result from any foreclosure sale; and

(e) Any remaining funds to the Mortgagor or its successors or assigns, as their interests and rights may appear.

4.08 Appointment of Receiver. Upon or at any time after the filing of any complaint to foreclose the lien of this Mortgage, the court may, upon application, appoint a receiver of the Property. Such appointment may be made either before or after foreclosure sale, (i) without notice; (ii) without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the Secured Indebtedness; (iii) without regard to the value of the Property at such time and whether or not the same is then occupied as a homestead; and (iv) without bond being required of the applicant.

Such receiver shall have the power to take possession, control, and care of the Property, and to collect all rents, issues, deposits, profits, and avails during the pendency of such foreclosure suit and (in the event of a sale and a deficiency where the Mortgagor has not waived its statutory rights of redemption), during the full statutory period of redemption, as well as during any further times when the Mortgagor or its devisees, legatees, heirs, executors, administrators, legal representatives, successors, or assigns, except for the intervention of such receiver, would be entitled to collect such rents, issues, deposits, profits, and avails. The receiver shall have all other powers that may be necessary

86354113

or useful in such cases for the protection, possession, control, management, and operation of the Property during the whole of any such period to the extent permitted by law.

Such receiver may be authorized by the court to extend or modify any then existing Leases and to make new leases of the Property or any part thereof, which may provide for terms to expire, or for options to lessees to extend or renewal terms to expire, beyond the maturity date of the Secured Indebtedness. Any such new leases, and the options or other such provisions to be contained therein, shall be binding upon the Mortgagor and all persons whose interests in the Property are subject to the lien of this Mortgage, and upon the purchaser or purchasers at any such foreclosure sale, notwithstanding any redemption from sale, discharge of indebtedness, satisfaction of foreclosure decree, or issuance of certificate of sale or deed to any purchaser.

4.09 Foreclosure Sale. In the event of any foreclosure sale, the Property may be sold in one or more parcels. The Lender may be the purchaser at any foreclosure sale of the Property or any part thereof.

4.10 Application of Proceeds. The proceeds of any foreclosure sale shall be distributed and applied in the following order of priority: (i) on account of all costs and expenses incident to the foreclosure proceedings, including all such items mentioned in Paragraph 4.05; (ii) all other items that, under the terms of this Mortgage, constitute Secured Indebtedness additional to that evidenced by the Note, with interest thereon at the Default Interest Rate; (iii) all principal and interest remaining unpaid under the Note, in the order of priority specified by the Lender in its sole discretion; and (iv) the balance to the Mortgagor or its successors or assigns, as their interests and rights may appear.

86354113



4.11 Application of Deposits. Upon the occurrence of any Event of Default, the Lender may, at its option, apply any monies or securities that constitute deposits made to or held by the Lender or any depository pursuant to this Mortgage toward payment of any of the Mortgagor's obligations under the Note, this Mortgage, or any of the other Loan Documents, in such order and manner as the Lender may elect. When the Secured Indebtedness has been fully paid, any remaining deposits shall be paid to the Mortgagor or to the then owner or owners of the Property. Such deposits are pledged as additional security for the prompt payment of the indebtedness evidenced by the Note and any other Secured Indebtedness and shall be held to be applied irrevocably by such depository for the intended purposes and shall not be subject to the direction or control of the Mortgagor.

4.12 Insurance Upon Foreclosure. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in restoring the Improvements, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct. In the case of foreclosure of this Mortgage, the court, in its decree, may provide that the Lender's clause attached to each of the casualty insurance policies may be canceled and that the decree creditor may cause a new loss clause to be attached to each of said casualty policies making the loss thereunder payable to said decree creditors; and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statutes in each such case made and provided, then in every such case, each and every successive redemtor may cause the preceding loss clause attached to each casualty insurance policy to be canceled and a

86354113

new loss clause to be attached thereto, making the loss thereunder payable to such redeptor. In the event of foreclosure sale, the Lender is hereby authorized, without the consent of the Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as the Lender may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies without credit or allowance to the Mortgagor for prepaid premiums thereon.

4.13 Waiver of Statutory Rights. The Mortgagor shall not apply for or avail itself of any appraisement, valuation, redemption, stay, extension, or exemption laws, or any so-called "moratorium laws," now existing or hereafter enacted, in order to present or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. The Mortgagor, for itself and all who may claim through or under it, waives any and all rights to have the Property and estates comprising the Property marshalled upon any foreclosure of the lien of this Mortgage, and agrees that any court having jurisdiction to foreclose such lien may order the Property sold in its entirety. The Mortgagor further waives any and all rights of redemption from sale under any order or decree of foreclosure of the lien of this Mortgage pursuant to the rights herein granted, for itself and on behalf of any trust estate of which the Premises are a part, all persons, beneficially interested therein, and each and every person acquiring any interest in the Property or title to the Premises subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by the provisions of Section 12-125 of Chapter 110 of the Illinois Revised Statutes.

86354113

v.

MISCELLANEOUS

5.01 Notices. Any notice that the Lender or the Mortgagor may desire or be required to give to the other shall

be in writing and shall be mailed or delivered to the intended recipient at its address set forth hereinabove or at such other address as the intended recipient may in writing designate to the sender not less than fourteen (14) calendar days in advance of the time at which such other address is to become effective. Such notice shall be deemed to have been delivered upon deposit thereof in the United States mail, by registered or certified mail, return receipt requested, postage prepaid, and properly addressed as herein provided, or when delivered in person with written acknowledgment of the receipt. Except as otherwise set forth in the Note, this Mortgage, or any of the other Loan Documents, or as otherwise specifically required, notice of the exercise of any right or option granted to the Lender by this Mortgage is not required to be given.

5.02 Time of Essence. Time is of the essence of this Mortgage.

5.03 Covenants Run with Land. All of the covenants of this Mortgage shall run with the land constituting the Premises.

5.04 Governing Law. Except as otherwise provided herein, in the Note, or any of the other Loan Documents, this Mortgage shall be construed and enforced in accordance with the laws of the State of Illinois. To the extent that this Mortgage may operate as a Security Agreement under the Uniform Commercial Code of the State of Illinois, the Lender shall have all rights and remedies conferred therein for the benefit of a Secured Party, as such term is defined in such Uniform Commercial Code.

5.05 Rights and Remedies Cumulative. All rights and remedies in this Mortgage are cumulative. The holder of the Note and of every other obligation secured hereby may recover judgment, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first

86354113

exhausting and without affecting or impairing the security of any right or remedy.

5.06 Severability. If any provision of this Mortgage, or any paragraph, sentence, clause, phrase, or word, or their application, in any circumstance, is held invalid, the validity of the remainder of this Mortgage shall be construed as if such invalid part were never included.

5.07 Non-Waiver. Unless expressly provided in this Mortgage to the contrary, no consent or waiver, express or implied, by any party, to or of any breach or default by any other party shall be deemed a consent to or waiver of the performance by such defaulting party of any other obligations or the performance by any other party of the same, or of any other, obligations.

5.08 Headings. The headings of sections and paragraphs in this Mortgage are for convenience or reference only and shall not be construed in any way to limit or define the content, scope, or intent of the provisions hereof.

5.09 Grammar. As used in this Mortgage, the singular shall include the plural, and masculine feminine, and neuter pronouns shall be fully interchangeable, where the context so requires.

5.10 Deed of Trust. If title to the Property or any part thereof is now or hereafter becomes vested in a trustee, any prohibition or restriction against the creation of any lien on the Property shall be construed as a similar prohibition or restriction against the creation of any lien on or security interest in the beneficial interest of such trust.

5.11 Successors and Assigns. This Mortgage shall be binding upon the Mortgagor, its successors, assigns, legal representatives, and all other persons or entities claiming under or through the Mortgagor. The word "Mortgagor," when used herein, shall include all such persons and entities and

86354113

any others liable for the payment of the Secured Indebtedness, or any part thereof, whether or not they have executed the Note or this Mortgage. The word "Lender," when used herein, shall include the Lender's successors, assigns, and legal representatives, including all other holders, from time to time, of the Note or any part of the Note.

5.12 Lender in Possession. Nothing contained in this Mortgage shall be construed as constituting the Lender a mortgagee in possession in the absence of the actual taking of possession of the Property.

5.13 Business Loan. The Mortgagor certifies and agrees that the proceeds of the Note secured by this Mortgage will be held for the purposes specified in Illinois Revised Statutes, Chapter 17, Section 6404(1)(c), and that the principal obligation secured hereby constitutes a "business loan" within the definition and purview of that Section.

5.14 Indemnity. The Mortgagor shall indemnify and save the Lender harmless from and against any and all liabilities, losses, damages, claims, expenses (including attorneys' fees and court costs) which may be imposed on, incurred by, or asserted against the Lender at any time by any third party which relate to or arise from: this Mortgage; any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which the Lender 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; the offer for sale or sale of all or any portion of the Property; and/or the ownership, use, operation, or maintenance of the Property.

5.15 Lender not a Joint Venturer or Partner. The Mortgagor and the Lender acknowledge and agree that in no event shall the Lender be deemed to be a partner or joint venturer with the Mortgagor or any Beneficiary of the Mortgage.

86354113

Without limitation of the foregoing, the Lender shall not be deemed to be such a partner or a joint venture on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document evidencing or securing any of the Secured Indebtedness secured hereby.

5.16 Trustee Exculpation. This Mortgage is executed by La Salle National Bank, a national banking association ("La Salle"), not personally but as Trustee, in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that nothing herein or in the Note contained shall be construed as creating any liability on La Salle personally to pay the Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant, either express or implied, herein contained, all such liability, if any, being expressly waived by the Lender and by every person now or hereafter claiming any right or security hereunder. So far as La Salle personally is concerned, the legal holder or holders of said Note and the owner or owners of any indebtedness accruing hereunder shall look solely to the Property hereby conveyed for the payment of the Secured Indebtedness, by the enforcement of the lien hereby created, in the manner herein and in the Note provided, or by action against any other security at any time given to secure the payment, or by action to enforce the personal liability of any Obligators of the Note, or the personal liability of each guarantor of the

86354113

# UNOFFICIAL COPY

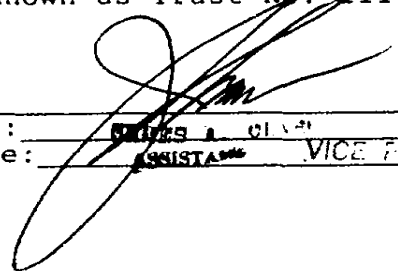
8 6 3 3 4 1 1 3

payment of the Note and the performance of the Mortgagor hereunder.

IN WITNESS WHEREOF, the Mortgagor has caused this Mortgage to be executed as of the date stated above.

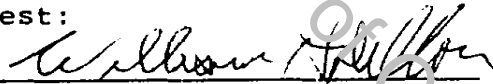
MORTGAGOR:

LA SALLE NATIONAL BANK,  
a national banking association,  
not personally but as Trustee  
under Trust Agreement dated  
August 8, 1986, and  
known as Trust No. 111434

By:   
Name: ROBERT A. OLIVER  
Title: ASSISTANT VICE PRESIDENT

[SEAL]

Attest:

  
Printed Name: William H. [unclear]  
Title: ASSISTANT SECRETARY

STATE OF ILLINOIS       )  
  )  
COUNTY OF COOK        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of August, 1986, by \_\_\_\_\_ of LA SALLE NATIONAL BANK, a national banking association, Trustee.

\_\_\_\_\_  
Notary Public in and for  
the State of Illinois

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Typed or Printed Name of  
Notary Public

Property of Cook County Clerk's Office

86354113

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Nancy Seathoff, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that James A. Clark, President of LASALLE NATIONAL BANK, a national banking association, and William Dillon, personally known to me to be an Assistant Secretary of said association, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they signed and delivered the said instrument as Asst. V. President and Assistant Secretary of said association to be affixed thereto, pursuant to authority given by the Board of Directors of said association, as their free and voluntary act, and as the free and voluntary act and deed of said association, not personally, but as Trustee as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 12th day of August, 1950.

  
Notary Public

My Commission Expires: 4-28-93

Property of

Office

863574113



EXHIBIT A

That part of Section 34, Township 42 North, Range 10 East of the third principal meridian, described as follows:

Commencing at the intersection of the center line of Plum Grove Road (also known as Old Plum Grove Road) with the northerly line of Algonquin Road as per document number 1195798; Thence North 66 degrees 50 minutes 41 seconds West along said northerly line of Algonquin Road, 89.04 feet to the most westerly center corner of property condemned for road purposes as per case number 71 "L" 11410; Thence North 57 degrees 00 minutes 18 seconds East along the northwesterly line of said land condemned for road purposes, 38.99 feet to a line 50.0 feet, measured at right angles, westerly and parallel with the center line of said Plum Grove Road; Thence North 00 degrees 51 minutes 17 seconds east along said last described parallel line, being also the West line of land condemned for road purposes as per case number 71 "L" 11410, 659.03 feet to a point for a place of beginning of the tract of land herein described; Thence continuing North 00 degrees 51 minutes 17 seconds East along said last described West line of land condemned for road purposes, and a northerly extension thereof, 712.92 feet to an intersection with a line 90.0 feet, as measured at right angles, Westerly of and parallel with the Westerly line of Lot 1, as staked and monumented in Old Plum Grove Subdivision of part of said Section 34, according to the plat thereof recorded May 25, 1943 as document number 13080952; Thence North 05 degrees 39 minutes 28 seconds West along said last described parallel line, 111.79 feet; Thence South 89 degrees 59 minutes 50 seconds West, 189.99 feet; Thence South 00 degrees 00 minutes 10 seconds East, 180.0 feet; Thence South 89 degrees 59 minutes 50 seconds West, 585.0 feet; Thence North 00 degrees 00 minutes 10 seconds West, 105.0 feet; Thence South 89 degrees 59 minutes 50 seconds West, 255.0 feet; Thence North 00 degrees 00 minutes 10 seconds West, 90.0 feet; Thence South 89 degrees 59 minutes 50 seconds West, 180.0 feet to a point 427.0 feet, as measured at right angles, South of the south line of 66 feet wide Old Plum Grove Road (also known as Hartung Road); Thence South 00 degrees 00 minutes 10 seconds East, 306.65 feet; Thence South 20 degrees 27 minutes 51 seconds West, 76.55 feet; Thence South 69 degrees 32 minutes 09 seconds East, 1320.47 feet to the place of beginning, in Cook County, Illinois.

86354113

# UNOFFICIAL COPY

8 8 5 5 4 1 1 3

## MORTGAGE NOTE

\$10,518,000.00

August \_\_\_\_\_, 1986

For value received, LA SALLE NATIONAL BANK, a national banking association, not personally but as Trustee under Trust Agreement dated August 8, 1986, and known as Trust No. 111434 (the "Borrower"), promises to pay to the order of MBANK ALAMO, N.A. (the "Lender") at its principal office at St. Mary's at Commerce Streets, P.O. Box 900, San Antonio, Bexar County, Texas 78293, the principal sum of U.S. TEN MILLION FIVE HUNDRED EIGHTEEN THOUSAND AND NO/100 DOLLARS (\$10,518,000.00), in immediately payable funds, with interest to accrue on the principal sum drawn hereunder from the date(s) that amounts are drawn hereunder until maturity at a varying rate per annum (the "Applicable Rate") equal to one and one-half percent (1 1/2%) over the base commercial lending rate of the Lender (the "Base Rate"); provided, however, that in no event shall the rate or amount of interest on the Note exceed the Maximum Rate authorized by applicable law (as hereinafter defined). If at any time the Applicable Rate shall exceed the Maximum Rate (in which event the interest rate hereon is automatically limited to the Maximum Rate), then any subsequent reduction in the Applicable Rate will not reduce the rate of interest hereunder below the Maximum Rate until the total amount of interest accrued hereon equals the amount of interest which would have accrued if there had been no limitation of interest to the Maximum Rate. Such rate of interest is subject to the limitation hereinafter set forth for the Maximum Rate of interest on this Note, and, subject to that limitation, the rate of interest on this Note shall be adjusted on the effective date of the change in the Base Rate. Interest shall be calculated on a 365/366-day basis, as applicable.

Notwithstanding any term or provision hereof which may appear in conflict herewith, Lender shall only be obligated to advance to Borrower the sum of \$1,500,000.00 under this Note (the "Initial Advance"), which Initial Advance shall be used for (i) the financing of the acquisition of that certain tract or parcel of real property described in Exhibit A attached hereto and made a part hereof for all purposes (the "Subject Property") and (ii) the paying of certain expenses and related costs incurred by Borrower in connection with the obtaining of the loan evidenced by this Note; provided, in the event that Borrower furnishes to Lender, in form and substance as Lender may require, a written commitment (the "First Commitment") from a banking or other lending institution acceptable to Lender, for a construction loan covering the first phase of construction (the "First Phase") of improvements upon the Subject Property, then (and only then) Lender shall be obligated to advance to Borrower a second advance in the sum of \$590,000.00 under this Note (the "Second Advance"), which Second Advance shall be used for certain pre-development costs and site work costs as may be approved in writing by Lender and relating to the Subject Property; provided, further, Lender shall not be obligated to advance to Borrower any sums under the Note other than the Initial Advance and the Second Advance, if any, as aforesaid unless and until (i) Borrower furnishes to Lender, in form and substance as Lender may require, a written commitment (the "Second Commitment") from a banking or other lending institution acceptable to Lender, for a construction

86354113

Exhibit A-1

loan covering the second phase of construction (the "Second Phase") of improvements upon the Subject Property, (ii) Lender shall have received written commitments from participants acceptable to Lender, in form and substance as may be required by Lender, to participate in the loan evidenced by this Note with respect to any advances hereunder other than the First Advance and the Second Advance, if any, as aforesaid, and (iii) Borrower shall have executed and delivered to Lender, each in form and substance acceptable to Lender, a loan agreement relating to the construction of any improvements upon the Subject Property proposed to be financed by Lender and any participants as aforesaid out of advances hereunder other than the First Advance and the Second Advance, if any, as hereinabove described, and an amendment to the Mortgage (as hereinafter defined) incorporating any provisions pertaining to such construction as above-mentioned and as may be required by Lender.

This Note is due and payable as follows:

(a) Interest only on this Note shall be due and payable monthly as it accrues beginning on that date which is one (1) calendar month from the date of execution of this Note, and continuing regularly on the same day of each succeeding calendar month thereafter; provided, however, in the event that the date of execution of this Note is the twenty-ninth (29th), thirtieth (30th) or thirty-first (31st) day of a respective calendar month, then said installments of interest hereunder shall be due and payable on the twenty-eighth (28th) day of each and every calendar month during the term of this Note.

(b) In the event that Borrower shall fail to furnish to Lender on or before November 30, 1986, the First Commitment relating to the First Phase as hereinabove described, then the entire amount hereof, unpaid principal and interest, shall be due and payable on or before six (6) calendar months from the date of this Note; provided, however, in the event that Borrower shall furnish to Lender on or before November 30, 1986, the First Commitment relating to the First Phase as hereinabove described, then the entire amount hereof, unpaid principal and interest, shall be due and payable on or before twelve (12) calendar months from the date of this Note. The date upon which the entire amount hereof, unpaid principal and interest, shall be due and payable as herein described in this paragraph (b) shall be called the "Maturity Date."

(c) In the event that Borrower shall furnish to Lender on or before November 30, 1986, the First Commitment relating to the First Phase as hereinabove described, but Borrower shall fail to furnish to Lender on or before June 30, 1987, the Second Commitment relating to the Second Phase as hereinabove described, then, in addition to and not in lieu of the monthly installments of interest to be paid as described in paragraph (a) above, Borrower shall pay to Lender on or before July 12, 1987, an amount equal to all sums, if any, advanced hereunder which exceed the First Advance as hereinabove described.

86354113

(d) The Borrower reserves the right to prepay, at any time prior to maturity, in whole or in part, and without penalty, all or any part of the unpaid principal balance of this Note together with all unpaid interest accrued on the principal balance to the date of prepayment. All prepayments shall be applied first to accrued unpaid interest to the date of the prepayment.

(e) Matured unpaid principal and/or interest shall bear interest at a rate per annum equal to the lesser of (i) five percent (5%) over the Base Rate or (ii) the Maximum Rate, and shall be due and payable on demand or, if no demand is made, then on the same day of each and every calendar month on which installments of interest are due and payable hereunder.

It is expressly provided that upon default in the punctual payment of this Note or any part thereof, principal or interest, as the same shall become due and payable, the entire indebtedness secured by the hereinafter mentioned lien shall be matured at the option of the Lender; and in the event default is made in the prompt payment of this Note when due or declared due, and the same is placed in the hands of an attorney for collection, or suit is brought on same, or the same is collected through probate, bankruptcy, or other judicial proceedings, then Borrower and all endorsers, guarantors, and sureties of this Note jointly and severally agree and promise to pay, in addition to the amount of principal and interest then owing hereon, all collection fees and reasonable attorney's fees incurred by Lender.

Each maker, surety, guarantor, and endorser of this Note expressly waives all notices, demands for payment, presentment for payment, notices of intention to accelerate the maturity, protest and notice of protest, and of the filing of suit herein, as to this Note and as to each, every, and all installments hereof, and consents to all renewals, extensions, modifications, partial payments, releases, or substitutions of security, in whole or in part, from time to time before or after maturity without notice to any of them.

Payment hereof is secured by, among other security, a Mortgage, Deed of Trust, Security Agreement, Assignment of Leases and Rents, and Financing Statement (the "Mortgage"), of even date herewith, executed by Borrower, in favor of Lender, upon the Subject Property located in Cook County, Illinois, as described in Exhibit A attached hereto and incorporated herein for all purposes. Reference is hereby made to the Mortgage for a complete description of the property covered thereby and the nature and extent of the security and the rights and powers of the holder of this Note with respect to such security. Upon the failure by Borrower to pay any installment due under this Note, or upon the occurrence of an event of default specified in the Mortgage and the expiration of any grace or curative period provided herein or in the Mortgage, the holder of this Note may, at its option, declare the entire principal balance hereof and the interest accrued hereon to be immediately due and payable.

The law governing this Note shall be the law of the State of Texas, including the Uniform Commercial Code, as adopted and as amended in the State of Texas. Further, the venue of any action brought hereunder shall be in Bexar County, Texas.

86354113

Notwithstanding any provisions appearing to the contrary contained in this Note, it is expressly agreed and provided: (i) that the total liability of Borrower hereunder for payments in the nature of interest shall not exceed the maximum lawful rate authorized under the laws of the State of Texas or such greater rate as may be authorized by other Governmental Authority applicable to the indebtedness evidenced hereby (the "Maximum Rate") and, without limiting the above, in no event shall the rate of interest or default interest, or both of them, when aggregated with any other sums in the nature of interest which Borrower may be obligated to pay hereunder, or under any other documents establishing or evidencing the indebtedness of Borrower to Lender, exceed such Maximum Rate; (ii) that no holder of this Note shall ever be entitled to receive, collect, or apply, as interest on the indebtedness evidenced hereby, any amount in excess of the Maximum Rate of interest permitted to be charged by applicable law, and in the event any holder of this Note ever receives, collects, or applies, as interest, any such excess because of application of the rate of interest or default interest, acceleration of maturity, prepayment or otherwise, such amount which should be excessive interest shall be applied to the reduction of the unpaid principal balance of the indebtedness and, if the principal balance of the indebtedness is already or is thereby paid in full, such remaining excess shall forthwith be paid to Borrower; (iii) that it is the intention of the parties hereto to conform strictly to the usury laws of the State of Texas or to the laws, rules, and regulations of other applicable Governmental Authority to the extent that such laws, rules, and regulations preempt Texas law; and (iv) that all sums paid or agreed to be paid to the holder of this Note for the use, forbearance, or detention of the indebtedness of Borrower to the holder of the Note shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of this Note until payment in full so that the rate or amount of interest on account of such indebtedness does not exceed the Maximum Rate for so long as debt is outstanding under this Note.

It is agreed that if the maximum contract rate of interest allowed by law and applicable to the Note is increased or decreased by statute or any other official action of the State of Texas or the United States subsequent to the date hereof, the new maximum contract rate of interest allowed by law will be the Maximum Rate of interest applicable to this Note from the effective date forward, unless such application is precluded by applicable statute, official action or rule of law. The time period elected for adjustment of the Texas usury ceiling is weekly commencing with the date of this Note.

Borrower hereby acknowledges and represents that this Note is given for a business purpose and is not given for Borrower's personal, family, household, or agricultural use. It is understood and agreed that Lender is relying upon the representations set forth above in making the loan evidenced by this Note.

This Note is executed by the herein named Borrower, not personally but as Trustee, in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that nothing contained in the herein described Mortgage or in this Note shall be construed as creating any liability on Borrower personally to pay this Note or any interest that may accrue hereon, or any indebtedness accruing under the Mortgage, or to perform any

86354113

# UNOFFICIAL COPY

8 6 3 5 4 1 1 3

covenant, either express or implied, contained in the Mortgage or this Note; all such liability, if any, being expressly waived by Lender and by every person now or hereafter claiming any right or security hereunder. So far as Borrower personally is concerned, the legal holder or holders of said Note and the owner or owners of any indebtedness accruing under the Mortgage shall look solely to the Subject Property herein described for the payment of this Note, by the enforcement of the lien created by the herein described Mortgage, in the manner therein and in this Note provided, or by action against any other security at any time given to secure the payment, or by action to enforce the personal liability of any obligators of, this Note, or the personal liability of each guarantor of the payment of this Note and the performance of the Mortgage securing this Note.

Executed as of the date first above written.

LA SALLE NATIONAL BANK,  
a national banking association,  
not personally but as Trustee  
under Trust Agreement dated  
August 8, 1986, and known as  
Trust No. 11434

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[SEAL]

Attest:

Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ADDRESS OF BORROWER:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF ILLINOIS     )  
                                  )  
COUNTY OF COOK        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of August, 1986, by \_\_\_\_\_, of LA SALLE NATIONAL BANK, a national banking association, Trustee.

\_\_\_\_\_  
Notary Public in and for  
the State of Illinois

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Typed or Printed Name of  
Notary Public

86354113

# UNOFFICIAL COPY

3 6 3 3 4 1 1 3

## EXHIBIT A

That part of Section 34, Township 42 North, Range 10 East of the third principal meridian, described as follows:

Commencing at the intersection of the center line of Plum Grove Road (also known as Old Plum Grove Road) with the northerly line of Algonquin Road as per document number 1195798; Thence North 66 degrees 50 minutes 41 seconds West along said northerly line of Algonquin Road, 89.04 feet to the most westerly center corner of property condemned for road purposes as per case number 71 "L" 11410; Thence North 57 degrees 00 minutes 18 seconds East along the northwesterly line of said land condemned for road purposes, 38.99 feet to a line 50.0 feet, measured at right angles, westerly and parallel with the center line of said Plum Grove Road; Thence North 00 degrees 51 minutes 17 seconds east along said last described parallel line, being also the West line of land condemned for road purposes as per case number 71 "L" 11410, 659.03 feet to a point for a place of beginning of the tract of land herein described; Thence continuing North 00 degrees 51 minutes 17 seconds East along said last described West line of land condemned for road purposes, and a northerly extension thereof, 712.92 feet to an intersection with a line 90.0 feet, as measured at right angles, Westerly of and parallel with the Westerly line of Lot 1, as staked and monumented in Old Plum Grove Subdivision of part of said Section 34, according to the plat thereof recorded May 25, 1943 as document number 13080952; Thence North 05 degrees 35 minutes 28 seconds West along said last described parallel line, 111.79 feet; Thence South 89 degrees 59 minutes 50 seconds West, 189.99 feet; Thence South 00 degrees 00 minutes 10 seconds East, 180.0 feet; Thence South 89 degrees 59 minutes 50 seconds West, 585.0 feet; Thence South 00 degrees 00 minutes 10 seconds West, 105.0 feet; Thence South 89 degrees 59 minutes 50 seconds West, 255.0 feet; Thence North 00 degrees 00 minutes 10 seconds West 90.0 feet; Thence South 89 degrees 59 minutes 50 seconds West, 180.0 feet to a point 427.0 feet, as measured at right angles, South of the south line of 66 feet wide Old Plum Grove Road (also known as Hartung Road); Thence South 00 degrees 00 minutes 10 seconds East, 306.65 feet; Thence South 20 degrees 27 minutes 51 seconds West, 76.55 feet; Thence South 69 degrees 37 minutes 09 seconds East, 1320.47 feet to the place of beginning, in Cook County, Illinois.

86354113

EXHIBIT B  
LOAN DOCUMENTS

The term "Loan Documents," as used in this Mortgage, means the following documents and any other documents previously, now, or hereafter given to evidence, secure, or govern the disbursement of the Secured Indebtedness, including any and all extensions, renewals, amendments, modifications, and supplements thereof or thereto:

1. The Note;
2. The following security documents:
  - (a) This Mortgage;
  - (b) Certain Uniform Commercial Code Financing Statements, executed by the Mortgagor and the Beneficiary, pertaining to the personal property described in this Mortgage;
  - (c) An Assignment of Beneficial Interest of even date herewith, executed by the Beneficiary, assigning to the Lender all of the Beneficiary's right, title, and interest in, to, and under the Trust Agreement described in this Mortgage; and
  - (d) A Specific Guaranty of even date herewith, executed by one or more guarantors having a financial interest in the Mortgagor and the Beneficiary, guaranteeing payment of the Secured Indebtedness.

86354113



# UNOFFICIAL COPY

8 6 3 5 4 1 1 3

EXHIBIT R

Subject To:

1. General real estate taxes not yet due and payable.
2. The following:

Rights of the public, State of Illinois and the municipality in and to so much of land, if any, as dedicated for road purposes by Instrument dated July 24, 1979 and recorded December 21, 1979 as Document 25,291,061.

Affects: Plum Grove Road

Covenants, conditions and restrictions contained in the Declaration of restrictions.

Recorded: June 21, 1979

Document: 25,016,002

Said covenants, conditions and restrictions relate, among other things, to the following:

Storm sewer and related ponds.

Said matter affects this and other property.

Reservation of building restrictions and certain easements in favor of Shell Oil Company, its successors and assigns, for storm sewers, retention ponds and other purposes as provided for in the Deed from Shell Oil Company to Frank R. Stape Builders, Inc., dated May 29, 1979 and recorded June 21, 1979 as Document 25,016,003.

NOTE: Limitation on number of residential units to be constructed released by instrument recorded as Document 25,240,765.

49-

COOK COUNTY RECORDER

T#3332 TRAN 3316 08/14/86 10:53:00  
#5613 # A \*--B&--354113

SEPT-01 RECORDING

\$49.00

86354113

86 554113