SECOND MORTGAGE

THIS SECOND MORTGAGE (hereinafter "this Mortgage") is made as of this 19th day of January, 1987, by THE ELGIN NATIONAL BANK, a National Banking Association, not personally but as Trustee under Trust Agreement dated August 24, 1978, and known as Trust Number 1290 (hereinafter referred to as "Mortgagor"), with a mailing address c/o North American Heating and Air Conditioning Co., 2300 Stonington, Hoffman Estates, Illinois, 60195, to First National Bank of Hoffman Estates, a National Banking Association ("Mortgagee"), with a mailing address at 2200 West Higgins Road, Hoffman Estates, Illinois, 60195, and pertains to the real estate described in Exhibit A, which is attached hereto and hereby made a part hereof.

ARTICLE I
RECITALS

1.1 **Note.** Whereas, Mortagor has executed and delivered to Mortgagee a "Note" of even date herewith, to the order of Mortgagee in the principal amount of EIGHT HUNDRED THOUSAND DOLLARS ($800,000.00) together with interest thereon, in installments as set forth in the Note, the entire unpaid principal balance being due and payable not later than January 19, 1992. not Lmm

1.2 **Other Loan Documents.** Whereas, as security for the repayment of the Loan which, in addition to this Mortgage, is secured by certain other loan documents as described in Exhibit B, which is attached hereto and made a part hereof, have been executed and delivered to Mortgagee (the Note, this Mortgage, the other loan documents described in said Exhibit B, and all other documents whether now or hereafter existing, that are executed and delivered as additional evidence of or security for repayment of the Loan are hereinafter referred to collectively as the "Loan Documents").

1.3 **This Mortgage.** Whereas, as security for the Note, Mortgagor is required to execute and deliver to Mortgagee this Mortgage.

ARTICLE II
THE GRANT

Now, Therefore, to secure the payment of the Note and interest thereon and the performance of the agreements contained hereinbelow and to secure the payment of any and all other indebtedness, direct or contingent, that may now or hereafter become owing from Mortgagor to Mortgagee under the Note and the performance of all other obligations under the Loan Documents, and in consideration of the matters recited hereinabove, Mortgagor hereby grants, bargains, sells, conveys, and mortgages to Mortgagee and its successors and assigns forever the real estate, 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, which is attached hereto and made a part hereof (the "Premises"), together with the following described property (the Premises and

the following described property being hereinafter referred to collectively as the "Mortgaged Property"), all of which other property is hereby pledged primarily on a parity with the Premises and not secondarily:

(a) all buildings and other improvements of every kind and description now or hereafter erected or placed thereon and all materials intended for construction, reconstruction, alteration, and repair of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the Mortgaged Property immediately upon the delivery thereof to the Premises;

(b) All right, title, and interest of Mortgagor, including any after-acquired title or reversion, in and to the beds of the ways, streets, avenues, sidewalks, and alleys adjoining the Premises;

(c) Each and all of the tenements, hereditaments, easements, appurtenances, passages, waters, water courses, riparian rights, other rights, liberties, and privileges of the Premises or in any way now or hereafter appertaining thereto, including homestead and any other claim at law or in equity, as well as any after-acquired title, franchise, or license and the reversions and remainders thereof;

(d) All rents, issues, deposits, and profits accruing and to accrue from the Premises and the avails thereof; and

(e) All fixtures and personal property now or hereafter owned by Mortgagor and attached to or contained in and used or useful in connection with the Premises or the aforesaid improvements thereon, including without limitation any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same be attached to such improvements, and crops growing on or to be growing on or timber standing thereon, it being intended, agreed, and declared that all such property owned by Mortgagor and placed by it on the Premises or used in connection with the operation or maintenance thereof shall, so far as permitted by law, be deemed for the purpose of this Mortgage to be part of the real estate constituting and located on the Premises and covered by this Mortgage, and as to any of the aforesaid property that is not part of such real estate or does not constitute a "fixture," as such term is defined in the Uniform Commercial Code of the state in which the Premises are located, this Mortgage shall be deemed to be, as well, a security agreement under such Uniform Commercial Code for the purpose of creating hereby a security interest in

such property, which Mortgagor hereby grants to the Mortgagee as "secured party," as such term is defined in such Code;

To have and to hold the same unto Mortgagee and its successors and assigns forever, for the purposes and uses herein set forth.

Provided, however, the foregoing grant is made subordinate and subject to the provisions of the "Prior Mortgage" and the rights of the "Prior Mortgagee" thereunder (as those terms are defined in paragraph 4.1 hereof).

If and when Mortgagor has paid the principal amount of the Note and all interest as provided thereunder, has paid any and all other amounts required under the Loan Documents, and has performed all of the agreements contained in the Loan Documents, then this Mortgage shall be released at the cost of Mortgagor, but otherwise shall remain in full force and effect.

ARTICLE III
GENERAL AGREEMENTS

3.1 **Principal and Interest.** Mortgagor shall pay promptly when due the principal and interest on the indebtedness evidenced by the Note at the times and in the manner provided in the Note, this Mortgage, or any of the other Loan Documents.

~~3.2 Other Payments. Except to the extent they have been deposited pursuant~~ to the terms of the Prior Mortgage or unless waived by Lender in writing, Mortgagor shall deposit with Mortgagee or a depositary designated by Mortgagee, in addition to the monthly installments required by the Note, monthly until the principal indebtedness evidenced by the Note is paid:

(a) a sum equal to all real estate taxes and assessments ("taxes") next due on the Mortgaged Property, all as estimated by Mortgagee, divided by the whole number of months to elapse before the month prior to the date when ~~such taxes will become due and payable; and~~

(b) a sum equal to an installment of the premium or premiums that will become due and payable to renew the insurance as required in Paragraph 3.5 hereof, each installment to be in such an amount that the payment of approximately equal installments will result in the accumulation of a sufficient sum of money to pay renewal premiums for such insurance at least one (1) month prior to the expiration or renewal date or dates of the policy or policies to be renewed.

All such payments described in this Paragraph 3.2 shall be held by Mortgagee or a depositary designated by Mortgagee, in trust, without accruing, or without any obligation arising for the payment of, any interest thereon. If the funds so deposited are insufficient to pay, when due, all taxes and premiums as aforesaid, Mortgagor shall, within ten (10) days after receipt of demand therefor from Mortgagee or its agent, ~~deposit such additional funds as may be necessary to pay such taxes and premiums. If the~~

~~funds so deposited exceed the amounts required to pay such items, the excess shall be~~ applied ~~on a~~ subsequent deposit or deposits.

Neither Mortgagee nor any such depositary shall be liable for any failure to make such payments of insurance premiums or taxes unless Mortgagor, while not in default hereunder, has requested Mortgagee or such depositary, in writing, to make application of such deposits to the payment of particular insurance premiums or taxes, accompanied by the bills for such insurance premiums or taxes; provided, however, that Mortgagee may, at its option, make or cause such depositary to make any such application of the ~~aforesaid deposits without any direction or request to do so by Mortgagor~~.

3.3 **Property Taxes.** Mortgagor shall pay immediately, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer charges, and any other charges that may be asserted against the Mortgaged Property or any part thereof or interest therein, and to furnish to Mortgagee duplicate receipts therefor within thirty (30) days after payment thereof. Provided, however, that unless any waiver by Mortgagee of the monthly deposits required by Paragraph 3.2(a) hereof is then in effect, Mortgagee, at its option, either shall either make such deposits available to Mortgagor for the payments required under this Paragraph 3.3 or may make such payments on behalf of Mortgagor. Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any such taxes or assessments, provided that:

(a) Such contest shall have the effect of preventing the collection of the tax or assessment so contested and the sale or forfeiture of the Mortgaged Property or any part thereof or interest therein to satisfy the same;

(b) Mortgagor has notified Mortgagee in writing of the intention of Mortgagor to contest the same before any tax or assessment has been increased by any interest, penalties, or costs; and

(c) Mortgagor has deposited with Mortgagee, at such place as Mortgagee may from time to time in writing designate, a sum of money or other security reasonably acceptable to Mortgagee that, when added to the monies or other security, if any, deposited with Mortgagee pursuant to Paragraph 3.2 hereof, is sufficient, in Mortgagee's reasonable judgment, to pay in full such contested tax and assessment and all penalties and interest that might become due thereon, and shall keep on deposit an amount sufficient, in Mortgagee's reasonable judgment, to pay in full such contested tax and assessment, increasing such amount to cover additional penalties and interest whenever, in Mortgagee's reasonable judgment, such increase is advisable.

In the event Mortgagor fails to prosecute such contest with reasonable diligence or fails to maintain sufficient funds on deposit as hereinabove provided, Mortgagee may, at its option, apply the monies and liquidate any securities deposited with Mortgagee, in payment of, or on account of, such taxes and assessments, or any portion thereof then unpaid, including all penalties and interest thereon. If the amount of the money and any such security so deposited is insufficient for the payment in full of such taxes and assessments, together with all penalties and interest thereon, Mortgagor shall forthwith, upon demand, either deposit with Mortgagee a sum that, when added to such funds then

on deposit, is sufficient to make such payment in full, or, if Mortgagee has applied funds on deposit on account of such taxes and assessments, restore such deposit to an amount reasonably satisfactory to Mortgagee. Provided that Mortgagor is not then in default hereunder, Mortgagee shall, if so requested in writing by Mortgagor, after final disposition of such contest and upon Mortgagor's delivery to Mortgagee of an official bill for such taxes, apply the money so deposited in full payment of such taxes and assessments of that part thereof then unpaid, together with all penalties and interest thereon, and remit any balance to Mortgagor.

3.4 **Tax Payments by Mortgagee.** Mortgagee is hereby authorized to make or advance, in the place and stead of Mortgagor, any payment relating to taxes, assessments, water and sewer charges, and other governmental charges, fines, impositions or liens that may be asserted against the Property, or any part thereof, and may do so according to any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy thereof or into the validity of any tax, assessment, lien sale, forfeiture, or title or claim relating thereto. Mortgagee is further authorized to make or advance, in the place and stead of Mortgagor, any payment relating to any apparent or threatened adverse title, lien, statement of lien, encumbrance, claim, charge, or payment otherwise relating to any other purpose herein and hereby authorized, but not enumerated in this Paragraph 3.4, whenever, in its judgment and discretion, such advance seems necessary or desirable to protect the full security intended to be created by this Mortgage. In connection with any such advance, Mortgagee is further authorized, at its option, to obtain a continuation report of title or title insurance policy prepared by a title insurance company of Mortgagee's choosing. All such advances and indebtedness authorized by this Paragraph 3.4 shall constitute additional indebtedness secured hereby and shall be repayable by Mortgagor upon demand with interest at the "Default Interest Rate" (as that term is defined in the Note).

3.5 **Insurance.**

(a) Mortgagor, at all times, shall keep and maintain the Mortgaged Property fully insured (without co-insurance) against loss or damage by, or abatement of rental income resulting from, fire and such other hazards, casualties and contingencies and during the course of construction builder's risk insurance as Mortgagee, from time to time, may require in companies, form, amounts and for such periods as is satisfactory to Mortgagee, but, in any event, for not less than the full insurable value of the Mortgaged Property. All such policies and renewals thereof (hereinafter referred to as the "policies") shall contain, in form and substance acceptable to Mortgagee, standard mortgagee loss payable clauses in favor of Mortgagee as Second Mortgagee and naming the holder of the Prior Mortgage as First Mortgagee as well as a standard waiver of subrogation endorsement and shall be delivered, as issued, to lender, with premiums therefor paid in full by Mortgagor. All policies shall provide that they are non-cancellable by the insurer without first giving at least ten (10) days prior written notice to lender of any intended cancellation. Mortgagor will give immediate written notice to Mortgagee of any loss or damage to the Mortgaged Property caused by any casualty. In case of policies about to expire, Mortgagor will deliver to and deposit with Mortgagee renewal policies not less than forty-five (45) days prior to the respective dates of expiration.

Mortgagor will deliver and deposit with Mortgagee (or if the holders of the Prior Mortgages require originals, copies of) receipts for the payment of the premiums on all policies. In the event of foreclosure of this Mortgage or assignment hereof by Mortgagee or transfer of title to the Mortgaged Property in extinguishment of Mortgagor's liabilities hereunder, all right, title and interest of Mortgagor in and to any policies then in force shall pass to the purchaser, grantee or assignee. ~~Mortgagor will also, at all~~ times and at its sole expense, maintain ~~policies of rent~~ insurance in favor of Mortgagee ~~in an amount equal~~ to not less than one year's aggregate gross ~~rent from the Mortgaged Proper~~ty.

(b) Subject to the interest, if any, of the holder of the Prior Mortgage, and upon the occurrence of a "Major Casualty" (as hereinafter defined):

(i) Full power is hereby conferred on Mortgagee:

a. to settle and compromise all claims under all policies;

b. to demand, receive and receipt for all monies becoming due and/or payable under all policies;

c. to execute, in the name of Mortgagor or in the name of Mortgagee, any proofs of loss, notices or other instruments in connection with all claims under all policies; and

d. to assign all policies in the event of the foreclosure of this Mortgage or other transfer of title to the Mortgaged Property.

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

a. apply such proceeds, wholly or partially, after deducting all costs of collection, including reasonable attorneys' fees, either

(1) toward the alteration, reconstruction, repair or restoration of the Mortgaged Property or any portion thereof; or

(2) as a payment on account of Mortgagor's liabilities under the Note (without affecting the amount or time of subsequent installment payments required to be made by Mortgagor to Mortgagee under the Note), whether or not then due or payable;

or

b. deliver the same to Mortgagor.

(c) Upon the occurrence of a fire or other casualty to the Mortgaged Property that does not constitute a Major Casualty, and notwithstanding any provision to the contrary contained in this Mortgage, Mortgagor may insist upon the restoration of the improvements on the Premises (the "Improvements"), provided all of the following conditions are satisfied:

(i) The Prior Mortgagee, if applicable, has consented to such restoration in writing,

(ii) All proceeds for rebuilding or restoring the Improvements shall be deposited by the insurance carrier into an account (the "Escrow") at a title insurance and escrow company reasonably acceptable to Mortgagee (the "Title Company") pursuant to an Escrow Trust Agreement between Mortgagor, Mortgagee, Prior Mortgagees, if applicable and the Title Company which insures that the proceeds are disbursed only as work is completed to the Improvements and only after a review of the condition of title to the Premises by the Title Company verifying that (i) the title policy issued to Mortgagee in connection with the Loan is continued through the date of such disbursement with certification over mechanic lien claims in the amount of the proceeds disbursed to date and (ii) no exceptions to title arise that are asserted to be superior to the lien of this Mortgage.

In the event that the contract for the reconstruction of the Improvements contains a ten percent (10%) retainage clause, the proceeds deposited into the Escrow shall be disbursed pursuant to sworn owner's and contractor's statements satisfactory to the Title Company without additional holdbacks.

For purposes of this Agreement, a "Major Casualty" shall be deemed to consist of the following: (i) a fire or other casualty loss to the Mortgaged Property that results in a payment by the carrier insuring the Mortgaged Property of $50,000.00 or more <u>and</u> (ii) a fire or other casualty loss to the Mortgaged Property necessitating reconstruction or rebuilding of the Improvements that (a) in the opinion of a licensed architect or engineer reasonably acceptable to Mortgagee cannot be completed within three (3) months from the date of such casualty loss, or (b) the repair of which will result in a material alteration in the configuration, design or appearance of the Mortgaged Property, or (c) in the opinion of a licensed architect or engineer reasonably acceptable to the parties hereto, cannot be repaired or reconstructed by a date that is two (2) months or more prior to the end of the term of the Note.

a. The funds deposited into the Escrow shall be sufficient at all times to complete the restoration. If the funds become insufficient during the course of the reconstruction to complete the restoration, Mortgagor shall within ten (10) days of notice from the Title Company or Mortgagee of the deficiency, deposit the amount of the deficiency into the Escrow;

b. Debt service on all indebtedness secured by mortgage liens on the Mortgaged Property during the reconstruction period shall be fully insured and payable from the proceeds of rental insurance.

c. The provisions of the Escrow shall require that all costs associated with the Escrow, including, without limitation, examination of title and issuance of title policy endorsements, shall be paid by Mortgagor;

d. The restoration and reconstruction of the Improvements shall not materially alter the existing configuration, design or appearance of the Improvements; and

e. The reconstruction and rebuilding shall be in compliance with all applicable building codes, environmental obligations and zoning ordinances.

(d) Liability. Mortgagor shall carry and maintain such comprehensive public liability and workmen's compensation insurance as may be required from time to time by Mortgagee in form and of content, in amounts, and with companies reasonably approved in writing by Mortgagee; provided, however, that the amounts of coverage shall not be less than One Hundred Thousand and No/100 Dollars ($100,000.00) single limit liability and property damage, (insurance in the same amount), and in addition a Two Million Dollar ($2,000,000.00) umbrella policy, and that the policies shall name Mortgagee as an additional insured party thereunder. Certificates of such insurance, premiums prepaid, shall be deposited with Mortgagee and shall contain provision for ten (10) days' notice to Mortgagee prior to any cancellation thereof.

(e) ~~Rental. Mortgagor shall carry and maintain rental insurance to cover a loss~~ of twelve (12) months' rental income from the Premises in form and of content, in amounts, and with companies reasonably satisfactory to Mortgagee. Certificates of such insurance, premiums prepaid, shall be deposited with Mortgagee and shall contain provision for ten (10) days' ~~notice to Mortgagee prior to any cancellation thereof~~.

3.6 Condemnation and Eminent Domain. Any and all awards heretofore or hereafter made or to be made to the present, or any subsequent, owner of the Mortgaged Property, by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Mortgaged Property, any improvement located thereon, or any easement thereon or appurtenance thereof (including any award from the United States Government at any time after the allowance of a claim therefor, the ascertainment of the amount thereto, and the issuance of a warrant for payment thereof), are hereby assigned by Mortgagor to Mortgagee, subject to the rights of the Prior Mortgagee, which awards Mortgagee is hereby authorized to collect and receive from the condemnation authorities, and Mortgagee is hereby authorized to give appropriate receipts and acquittances therefor. Mortgagor shall give Mortgagee immediate notice of the actual or threatened commencement of any condemnation or eminent domain proceedings affecting all or any part of the Premises, or any easement

thereon or appurtenance thereof (including severence of, consequential damage to, or change in grade of streets), and shall deliver to Mortgagee copies of any and all papers served in connection with any such proceedings. Mortgagor further agrees to make, execute, and deliver to Mortgagee, at any time upon request, free, clear, and discharged of any encumbrance of any kind whatsoever, any and all further assignments and other instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning all awards and other compensation heretofore and hereafter made to Mortgagor for any taking, either permanent or temporary, under any such proceeding. At Mortgagee's option and subject to the rights of the Prior Mortgagee, any such award may be applied to restoring the improvements, in which event the same shall be paid out in the same manner as is provided with respect to insurance proceeds in Paragraph 3.5(b) hereof.

3.7 **Maintenance of Property.** No building or other improvement on the Premises shall be altered, removed, or demolished, nor shall any fixtures, chattels, or articles of personal property on, in, or about the Premises be severed, removed, sold, or mortgaged, without the prior written consent of Mortgagee, and in the event of the demolition or destruction in whole or in part of any of the fixtures, chattels, or articles of personal property covered by this Mortgage or by any separate security agreement executed in conjunction herewith, the same shall be replaced promptly by similar fixtures, chattels, and articles of personal property at least equal in quality and condition to those replaced, free from any other security interest therein, encumbrances thereon, or reservation of title thereto. Mortgagor shall promptly repair, restore, or rebuild any building or other improvement now or hereafter situated on the Premises that may become damaged or destroyed. Any such building or other improvement shall be so repaired, restored, or rebuilt so as to be of at least equal value and of substantially the same character as prior to such damage or destruction.

Mortgagor further agrees to permit, commit, or suffer no waste, impairment, or deterioration of the Mortgaged Proerty or any part thereof; to keep and maintain the Mortgaged Property and every part thereof in good repair and condition; to effect such repairs as Mortgagee may reasonably require, and, from time to time, to make all necessary and proper replacements thereof and additions thereto so that the Premises and such buildings, other improvements, fixtures, chattels, and articles of personal property will, at all times, be in good condition, fit and proper for the respective purposes for which they were originally erected or installed.

3.8 **Compliance with Laws.** Mortgagor shall comply with all statutes, ordinances, regulations, rules, orders, decrees, and other requirements relating to the Mortgaged Property or any part thereof by any federal, state, or local authority; and shall observe and comply with all conditions and requirements 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 Mortgaged Property or that have been granted to or contracted for by Mortgagor in connection with any existing or presently contemplated use of the Property.

3.9 **Liens and Transfers.** Without Mortgagee's prior written consent, Mortgagor shall not create, suffer, or permit to be created or filed against the Mortgaged Property or any part thereof hereafter any mortgage lien or other lien

superior or inferior to the lien of this Mortgage, except for the liens of the Prior Mortgage and subject to Mortgagor's right to refinance the prior mortage, provided that Mortgagor may, within ten (10) days after the filing thereof, contest any lien claim arising from any work performed, material furnished, or obligation incurred by Mortgagor upon furnishing Mortgagee security and indemnification satisfactory to Mortgagee for the final payment and discharge thereof. In the event Mortgagor hereafter otherwise suffers or permits any superior or inferior lien to be attached to the Mortgaged Property or any part thereof without either such consent or securing of indemnification for payment and discharge of such lien, Mortgagee shall have the unqualified right, at its option, to accelerate the maturity of the Note, causing the entire principal balance thereof and all interest accrued thereon to be immediately due and payable, without notice to Mortgagor.

If Mortgagor, without Mortgagee's prior written consent, sells, transfers, conveys, assigns, hypothecates, or otherwise transfers the title to all or any portion of the Mortgaged Property or any interest therein, or all or any portion of any beneficial trust or partnership interest of Mortgagor (including a collateral assignment thereof or of the power of direction thereof, other than to Mortgagee), whether by operation of law, voluntarily, or otherwise or contracts to do any of the foregoing, Mortgagee shall have the unqualified right, at its option, to accelerate the maturity of the Note, causing the entire principal balance, accrued interest, and prepayment premium, if any, to be immediately due and payable, without notice to Mortgagor. Without limiting the generality of the foregoing, each of the following events shall be deemed a sale, conveyance, assignment, hypothecation, or other transfer prohibited by the foregoing sentence:

(a) if the owner of the Beneficial Interest in Mortgagor (hereinafter referred to as the "Beneficiary") consists of or includes one or more corporations, any sale, conveyance, assignment, or other transfer of twenty-five percent (25%) of the stock of any such corporation;

(b) if Beneficiary consists of or includes a partnership, any sale, conveyance, assignment, or other transfer of all or any portion of the partnership interest of any partner of such partnership that results in a change of more than forty percent (40%) of ownership interest of such partnership;

(c) any sale, conveyance, assignment, or other transfer of all or any portion of the stock or partnership interest of any entity directly or indirectly in control of any corporation or partnership constituting or included within Beneficiary that results in a sale, conveyance, assignment, or transfer of more than forty percent (40%) control of such identity; and

(d) any hypothecation of all or any portion of the stock thereof, if Beneficiary is or includes a corporation, or of all or any portion of the partnership interest of any general partner thereof, if Beneficiary is or includes a partnership, or of all or any portion of the stock or partnership interest of any entity directly or indirectly in control of such corporation or partnership, that could result in a change of more than forty percent (40%) control of such corporation, partnership, or entity directly or indirectly in control

of such corporation or partnership if the secured party under such hypothecation exercised its remedies thereunder.

Any waiver by Mortgagee of the provisions of this Paragraph 3.9 shall not be deemed to be a waiver of the right of Mortgagee in the future to insist upon strict compliance with the provisions hereof.

3.10 **Mortgagee'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 Mortgaged Property, Mortgagee shall be authorized and empowered to deal with the vendee or transferee with regard to the Mortgaged Property, the indebtedness secured hereby, and any of the terms or conditions hereof as fully and to the same extent as it might with Mortgagor, without in any way releasing or discharging Mortgagor from its covenants hereunder, specifically including those contained in Paragraph 3.9 hereof, and without waiving Mortgagee's right of acceleration pursuant to Paragraph 3.9 hereof.

3.11 **Stamp Taxes.** If at any time the United Stated Government, or any federal, state, or municipal governmental subdivision, requires Internal Revenue or other documentary stamps, levies, or any tax on this Mortgage or on the Note, or requires payment of the United Stated Interest Equalization Tax on any of the indebtedness secured hereby, then such indebtedness and all interest accrued thereon shall be and become due and payable, at the election of the Mortgagee, thirty (30) days after the mailing by Mortgagee of notice of such election to Mortgagor, provided, however, that such election shall be unavailing, and this Mortgage and the Note shall be and remain in effect, if Mortgagor lawfully pays for such stamps or such tax, including interest and penalties thereon, to or on behalf of Mortgagee and Mortgagor does in fact pay, when payable, for all such stamps or such tax, as the case may be, including interest and any penalties thereon.

3.12 **Change in Tax Laws.** In the event of the enactment, after the date of this Mortgage, of any law of the state in which the Premises are located deducting from the value of the Premises, for the purpose of taxation, the amount of any lien thereon, or imposing upon Mortgagee the payment of all or any part of the taxes, assessments, charges, or liens hereby required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagor's interest in the Mortgaged Property, or the manner of collection of taxes, so as to adversely affect this Mortgage or the indebtedness secured hereby or the holder thereof, then Mortgagor, upon demand by Mortgagee, shall pay such taxes, assessments, charges, or liens or reimburse Mortgagee therefor. Provided, however, that if, in the opinion of counsel for Mortgagee, it might be unlawful to require Mortgagor to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness secured hereby to become due and payable within sixty (60) days after the giving of such notice. Provided, further, that nothing contained in this Paragraph 3.13 shall be construed as obligating Mortgagee to pay any portion of Mortgagor's federal or state income tax.

3.13 **Inspection of Property.** Mortgagor shall permit Mortgagee and its representatives and agents to inspect the Mortgaged Property from time to time during normal business hours and as frequently as Mortgagee considers reasonable.

3.14 **Inspection of Books and Records.** Mortgagor shall keep and maintain full and correct books and records showing in detail the income and expenses of the Mortgaged Property and, within ten (10) days after demand therefor by Mortgagee, to permit Mortgagee or its agents to examine such books and records and all supporting vouchers and data at any time and from time to time on request at its offices, at the address hereinabove identified or at such other location as may be mutually agreed upon.

3.15 **Certified Annual Operating Statements.** Mortgagor shall furnish to Mortgagee, within ninety (90) days after the close of each calendar year, an annual operating statement of income and expenses of the Mortgaged Property and also of Mortgagor, if so required by Mortgagee, signed and certified by the beneficiary of Mortgagor. Such report shall contain such detail and embrace such items as Mortgagee may reasonably require.

3.16 **Acknowledgement of Debt.** Mortgagor shall furnish from time to time, within fifteen (15) days after Mortgagee's request, a written statement, duly acknowledged, specifying the amount due under the Note and this Mortgage and disclosing whether any alleged offsets or defenses exist against the indebtedness secured hereby.

3.17 **Other Amounts Secured.** At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures in addition to any loan proceeds disbursed from time to time, any advances pursuant to Paragraphs 3.4, 3.6 and 3.9 hereof, litigation and other expenses pursuant to Paragraphs 5.4 and 5.5 hereof, and any other amounts as provided herein, the payment of any and all loan commissions, service charges, liquidated damages, expenses, and advances due to or paid or incurred by Mortgagee in connection with the loan commitment issued in connection with this transaction, if any, and the other Loan Documents.

3.18 **Assignments of Rents and Leases.** The terms, covenants, conditions, and other provisions of any Junior Assignment of Rents or Junior Assignment of Leases described in Exhibit B hereto are hereby expressly incorporated herein by reference and made a part hereof, with the same force and effect as though the same were more particularly set forth herein.

3.19 **Declaration of Subordination.** At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation or eminent domain award) to any and all leases of all or any part of the Mortgaged Property upon the execution by Mortgagee and recording thereof, at any time hereafter, in the appropriate official records of county wherein the Premises are situated, of a unilateral declaration to the affect.

3.20 **Security Instruments.** Mortgagor shall execute, acknowledge, and deliver to Mortgagee, within ten (10) days after request by Mortgagee, a junior security agreement, financing statements, and any other similar security instrument required by Mortgagee, in form and of content satisfactory to Mortgagee, covering all property of any kind whatsoever owned by Mortgagor that, in the sole opinion of Mortgagee, is essential to the operation of the Mortgaged Property and concerning which there may be any doubt whether title thereto has been conveyed, or a security interest therein

perfected, by this Mortgage under the laws of the state in which the Premises are located. Mortgagor shall further execute, acknowledge, and deliver any financing statement, affidavit, continuation statement, certificate, or other document as Mortgagee may request in order to perfect, preserve, maintain, continue, and extend such security instruments. Mortgagor further agrees to pay to Mortgagee all costs and expenses incurred by Mortgagee in connection with the preparation, execution, recording, filing, and refiling of any such document.

3.21 **Interest Laws.** It being the intention of Mortgagee and Mortgagor to comply with the laws of the State of Illinois, it is agreed that 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 3.23 shall govern and control; (b) neither Mortgagor nor any of the other "Obligors" (as that term is defined in the Note) shall be obligated to pay any Excess Interest; (c) any Excess Interest that Mortgagee may have received hereunder shall, at the option of Mortgagee, be (i) applied as a credit against the then unpaid principal balance under the Note, accrued and unpaid interest thereon not to exceed the maximum amount permitted by law, or both, (ii) refunded to the payor thereof, or (iii) any combination of the foregoing; (d) the "Interest Rate" (as that term is defined in the Note) shall be subject to automatic reduction to the maximum lawful contract rate allowed under the applicable usury laws of the aforesaid State, 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 the Interest Rate; and (e) neither Mortgagor nor any of the other Obligors shall have any action against Mortgagee for any damages whatsoever arising out of the payment or collection of any Excess Interest.

ARTICLE IV
PRIOR MORTGAGE PROVISIONS

4.1 **Prior Mortgage.** This Mortgage is junior and subordinate to (a) the terms, conditions, and security of that certain prior mortgage or trust deed described in Exhibit C and any successor first mortgage on the mortgage property having a principal amount not in excess of $800,000.00 and, to the extent it encumbers property subject to the lien hereof, of any other security documents given in connection therewith and recorded prior to the recording hereof, and (b) the rights of each respective holder thereof from time to time (which prior mortgage is referred to herein as the "Prior Mortgage", and such holder whereof is referred to herein as "Prior Mortgagee").

4.2 **Defaults and Modifications.** Mortgagor hereby covenants and agrees (a) not to suffer or permit any default to occur under the terms of any of the Prior Mortgage and all other documents or instruments evidencing or securing the indebtedness secured thereby; and (b) without the prior written consent of Mortgagee, not to cause any modification to be made in any of the Prior Mortgage and such other documents or instruments. Mortgagor covenants and agrees that any default or breach of any

covenants, as contained in any note or notes secured by the Prior Mortgage (which note is herein referred to as the "Prior Note") or any other document or instrument securing the Prior Note that remains uncured for the applicable period of time allowed for the curing of defaults under the Prior Mortgage, shall constitute a default under this Mortgage and, thereafter, Mortgagee at its option may declare all indebtedness hereby secured, without notice, to be immediately due and payable, and Mortgagee may foreclose this Mortgage as in the case of any other default hereunder, without regard as to whether the Prior Mortgage is then being foreclosed upon. Notwithstanding anything to the contrary that may be contained in or implied from this Mortgage, Mortgagor shall not be obligated to perform any obligation hereunder that would place it in default, or that would, upon notice or passage of time or both, place it in default, under the Prior Mortgage.

4.3 **Performance by Mortgagee.** Mortgagor hereby authorizes Mortgagee, at its option, to perform any covenants, do any acts, and make any payments required by the terms of the Prior Mortgage, the Prior Note, or any other document securing the Prior Note that have not been performed by, done by, or paid by Mortgagor at the times required by such documents and instruments. All expenses incurred and all sums paid by Mortgagee relative to the foregoing authority shall be secured hereby with interest thereon at the Default Interest Rate and shall be payable to Mortgagee on demand. The exercise of the option by Mortgagee to perform any of such covenants, do any of such acts, or make any of such payments as aforesaid may be made by Mortgagee prior to, simultaneously with, or subsequent to the exercise by Mortgagee of the option in this paragraph contained to declare all indebtedness hereby secured, without notice, to be immediately due and payable.

ARTICLE V
DEFAULTS AND REMEDIES

5.1 **Events Constituting Defaults.** Each of the following events shall constitute a default (a "Default") under this Mortgage:

(a) Failure of Mortgagor to pay any amount secured hereby, interest thereon, or any installment of principal thereof or interest thereon, for a period in excess of ten (10) days after the same becomes due, under the Note, this Mortgage, or any of the other Loan Documents;

(b) Failure of Mortgagor to perform or observe any other covenant, warranty, or other provision contained in any of the Note, this Mortgage, or the other Loan Documents for a period in excess of fourteen (14) days after the date on which notice of the nature of such failure is given by Mortgagee to Mortgagor by certified mail, return receipt requested;

(c) Untruth or material deceptiveness of any representation or warranty contained in the Note, this Mortgage, the other Loan Documents or any other document or writing submitted to Mortgagee by or on behalf of Mortgagor pertaining to the Loan;

(d) Admission by Mortgagor in writing, including without limitation an answer or other pleading filed in any court, of Mortgagor's insolvency or its inability to pay its debts generally as they fall due;

(e) Institution by Mortgagor of bankruptcy, insolvency, reorganization, or arrangement proceedings of any kind under the Federal Bankruptcy Code, whether as now existing or as hereafter amended, or any similar debtors' or creditors' rights law, federal or state, now or hereafter existing, or the making by Mortgagor of a general assignment for the benefit of creditors;

(f) Institution of any such proceedings against Mortgagor that are consented to by Mortgagor or are not dismissed, vacated, or stayed within sixty (60) days after the filing thereof;

(g) Appointment by any court of a receiver, trustee, or liquidator of or for, or assumption by any court of jurisdiction of, all or any part of the Mortgaged Property for all or a major portion of the property of Mortgagor, if such appointment or assumption is consented to by Mortgagor or, within sixty (60) days after such appointment or assumption, such receiver, trustee, or liquidator is not discharged or such jurisdiction is not relinquished, vacated, or stayed;

(h) Declaration by any court or governmental agency of the bankruptcy or insolvency of Mortgagor; or

(i) The occurrence of any default under any of the Prior Note, Prior Mortgage or other documents securing repayment of the indebtedness evidenced by the Prior Note as described in Paragraph 4.2 hereof which is not cured within the time period, if any, provided therein.

5.2 **Foreclosure of Mortgage.** Upon the occurrence of any Default, or at any time thereafter, Mortgagee 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 premises are located. Any failure by Mortgagee to exercise such option shall not constitute a waiver of its right to exercise the same at any other time.

5.3 **Mortgagee's Continuing Options.** The failure of Mortgagee to exercise either or both of its options to accelerate the maturity of the indebtedness secured hereby and to foreclose the lien hereof following any Default as aforesaid or to exercise any other option granted to Mortgagee hereunder in any one or more instances, or the acceptance by Mortgagee of partial payments of such indebtedness, shall neither constitute a waiver of any such Default or of Mortgagee's options hereunder nor establish, extend, or affect any grace period for payments due under the Note, but such options shall remain continuously in force. Acceleration of maturity, once claimed hereunder by Mortgagee, may at Mortgagee's option be rescinded by written acknowledgement to that effect by Mortgagee and shall not affect Mortgagee's right to accelerate maturity upon or after any future Default.

5.4 **Litigation Expenses.** In any proceedings to foreclose the lien of this Mortgage or enforce any other remedy of Mortgagee under any of the Note, this

Mortgage, and the other Loan Documents, or in any other proceeding whatsoever in connection with any of the Loan Documents or any of the Mortgaged Property in which Mortgagee is named as a party, there shall be allowed and included, as additional indebtedness in the judgment or decree resulting therefrom, all expenses paid or incurred in connection with such proceeding by or on behalf of Mortgagee, including without limitation, reasonable attorney's fees, appraiser's fees, outlays for documentary evidence and expert advice, stenographers' 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, and any similar data and assurances with respect to title to the Mortgaged Property as Mortgagee 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 Mortgaged Property. All expenses of the foregoing nature, and such expenses as may be incurred in the protection of any of the Mortgaged Property and the maintenance of the lien of this Mortgage thereon, including without limitation the reasonable fees of any attorney employed by Mortgagee in any litigation affecting the Note, this Mortgage, or any of the Mortgaged Property, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding in connection therewith, shall be immediately due and payable by Mortgagor with interest thereon at the Default Interest Rate.

5.5 **Performance by Mortgagee.** In the event of any Default, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient by Mortgagee, and Mortgagee may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any; purchase, discharge, compromise, or settle any tax lien or other prior or junior lien or title or claim thereof; redeem from any tax sale or forfeiture affecting the Mortgaged Property; or contest any tax or assessment thereon. All monies paid for any of the purposes authorized herein and all expenses paid or incurred in connection therewith, including attorney's fees, and any other monies advanced by Mortgagee to protect the Property and the lien of this Mortgage, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Mortgagor to Mortgagee without notice and with interest thereon at the Default Interest Rate. Inaction of Mortgagee shall never be construed to be a waiver of any right accruing to Mortgagee by reason of any default by Mortgagor.

5.6 **Right of Possession.** In any case in which, under the provisions of this Mortgage or the other Loan Documents, Mortgagee has a right to institute foreclosure proceedings, whether or not the entire principal sum secured hereby becomes immediately due and payable as aforesaid, or whether before or after sale thereunder, Mortgagor shall, forthwith upon demand of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to take actual possession of, the Mortgaged Property or any part thereof, personally or by its agent or attorneys, and Mortgagee, in its discretion, may enter upon and take and maintain possession of all or any part of the Mortgaged Property, together with all documents, books, records, papers, and accounts of Mortgagor or the then owner of the Mortgaged Property relating thereto, and may exclude Mortgagor, such owner, and any agents and servants thereof wholly therefrom and may, as attorney-in-fact or agent of Mortgagor or such owner, or in its own name as Mortgagee and under the powers herein granted:

(a) hold, operate, manage, and control all or any part of the Mortgaged Property and conduct the business, if any, thereof, either personally or by its agents, with 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 Mortgaged Property, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Mortgagor;

(b) cancel or terminate any lease or sublease of all or any part of the Mortgaged Property for any cause or on any ground that would entitle Mortgagor to cancel the same;

(c) elect to disaffirm any lease or sublease of all or any part of the Mortgaged Property made subsequent to this Mortgage or subordinated to the lien thereof;

(d) extend or modify any then existing leases and make new leases of all or any part of the Mortgaged Property, which extensions, modifications, and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the loan evidenced by the Note and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor, all persons whose interest in the Mortgaged Property are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the indebtedness secured hereby, 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, decoration, renewals, replacements, alterations, additions, betterments, and improvements in connection with the Mortgaged Property as may seem judicious to Mortgagee, to insure and reinsure the Mortgaged Property and all risks incidental to Mortgagee's possession, operation, and management thereof, and to receive all rents, issues, deposits, profits, and avails therefrom.

5.7 **Priority of Payments.** Any rents, issues, deposits, profits, and avails of the Property received by Mortgagee after taking possession of all or any part of the Mortgaged Property, or pursuant to any assignment thereof to Mortgagee 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 Mortgagee or, in case of a receivership, as the court, may determine:

(a) operating expenses of the Mortgaged Property (including reasonable compensation to Mortgagee, any receiver of the Mortgaged Property, any agent or agents to whom management of the Mortgaged 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 hereafter become due on the Mortgaged Property, or that may become a lien thereon prior to the lien of this Mortgage;

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

(d) any indebtedness secured by this Mortgage or any deficiency that may result from any foreclosure sale pursuant hereto; and

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

5.8 **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 Mortgaged Property. Such appointment may be made either before or after foreclosure sale, ~~without notice;~~ 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 indebtedness secured hereby; without regard to the value of the Mortgaged Property at such time and whether or not the same is then occupied as a homestead; and without bond being required of the applicant. Such receiver shall have the power to take possession, control, and care of the Mortgaged Property and to collect all rents, issues, deposits, profits, and avails thereof during the pendency of such foreclosure suit and, in the event of a sale and deficiency, where Mortgagor has not waived its statutory rights of redemption, during the full statutory period of redemption, as well as during any further times when 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, and shall have all other powers that may be necessary or useful in such cases for the protection, possession, control, management, and operation of the Mortgaged 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 Mortgaged Property or any part thereof, which extensions, modifications, and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness secured hereby, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Mortgaged Property are subect to the lien hereof, 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.

5.9 **Foreclosure Sale.** In the event of any foreclosure sale of the Mortgaged Property, the same may be sold in one or more parcels. Mortgagee may be the purchaser at any foreclosure sale of the Mortgaged Property or any part thereof.

5.10 **Application of Proceeds.** The proceeds of any foreclosure sale of the Mortgaged Property, or any part thereof, shall be distributed and applied in the following order of priority: (a) on account of all costs and expenses incidental to the foreclosure proceedings, including all such items as are mentioned in Paragraphs 5.4 and 5.5 hereof; (b) 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; (c) all principal and interest remaining unpaid under the Note, in the order of priority specified by Mortgagee in its sole discretion; and (d) the balance to Mortgagor or its successors or assigns, as their interests and rights may appear.

5.11 **Application of Deposits.** In the event of any Default, Mortgagee may, at its option, without being required to do so, apply any monies or securities that constitute deposits made to or held by Mortgagee or any depository pursuant to any of the provisions of this Mortgage toward payment of any of Mortgagor's obligations under the Note, this Mortgage, or any of the other Loan Documents, in such order and manner as Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the Mortgaged Property. Such deposits are hereby pledged as additional security for the prompt payment of the indebtedness evidenced by the Note and any other indebtedness secured hereby and shall be held to be applied irrevocaby by such depository for the purposes for which made hereunder and shall not be subject to the direction or control of Mortgagor.

5.12 **Waiver of Statutory Rights.** 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 prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor, for itself and all who may claim through or under it, hereby also waives any and all rights to have the Mortgaged Property and estates comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof, and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold in its entirety. Mortgagor hereafter further waives any and all rights of homestead and redemption from sale under any order or decree of foreclosure of the lien hereof 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 Mortgaged Property or title to the Premises subsequent to the date of this Mortgage, and, if the Mortgaged Property is located in Illinois, on behalf of all other persons to the extent permitted by the applicable provisions of the Illinois Statutes.

ARTICLE VI
MISCELLANEOUS

6.1 **Notices.** Any notice that Mortgagee, Mortgagor or Beneficiary may desire or be required to give to the other shall be in writing and shall be mailed or

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delivered to the intended receipient thereof at its address hereinabove set forth or at such other address as such intended receipient may, from time to time, by notice in writing, designate to the sender pursuant hereto. Any such notice shall be deemed to have been delivered two (2) business days after mailing by United States registered or certified mail, return receipt requested, or when delivered in person with written acknowledgement of the receipt thereof. Except as otherwise specifically required, herein, notice of the exercise of any right or option granted to Mortgagee by this Mortgage is not required to be given.

6.2 **Time of Essence.** It is specifically agreed that time is of the essence of this Mortgage.

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

6.4 **Governing Law.** The place of negotiation, execution, and delivery of this Mortgage, the location of the Mortgaged Property, and the place of payment and performance under the Loan Documents being the State of Illinois, this Mortgage shall be construed and enforced according to the laws of that state. To the extent that this Mortgage may operate as a security agreement under the Uniform Commercial Code, Mortgagee shall have all rights and remedies conferred therein for the benefit of a secured party, as such term is defined therein.

6.5 **Rights and Remedies Cumulative.** All rights and remedies set forth in this Mortgage are cumulative, and the holder of the Note and of every other obligation secured hereby may recover judgment hereon, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security of any right or remedy afforded hereby.

6.6 **Severability.** If any provision of this Mortgage, or any paragraph, sentence, clause, phrase, or word, or the application thereof, 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 herein.

6.7 **Non-Waiver.** Unless expressly provided in this Mortgage to the contrary, no consent or waiver, express or implied, by any interested party referred to herein, to or of any breach or default by any other interested party referred to herein, in the performance by such party of any obligations contained herein shall be deemed a consent to or waiver of the party of any obligations contained herein or shall be deemed a consent to or waiver of the performance by such party of any other obligations hereunder or the performance by any other interested party referred to herein of the same, or of any other, obligations hereunder.

6.8 **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.

6.9 **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.

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6.10 **Deed in Trust.** If title to the Mortgaged Property or any part thereof is now or hereafter becomes vested in a trustee, any prohibition or restriction contained herein against the creation of any lien on the Mortgaged 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.

6.11 **Successors and Assigns.** This Mortgage and all provisions hereof shall be binding upon Mortgagor, its successors, assigns, legal representatives, and all other persons or entities claiming under or through Mortgagor, and the word "Mortgagor", when used herein, shall include all such persons and entities and any others liable for the payment of the indebtedness secured hereby or any part thereof, whether or not they have executed the Note or this Mortgage. The word "Mortgagee", when used herein, shall include Mortgagee's successors, assigns, and legal representatives, including all other holders, from time to time, of the Note.

6.12 **Exculpation.** This Mortgage is executed and delivered by THE ELGIN NATIONAL BANK, not personally, but as Trustee under Trust Agreement dated August 24, 1978, and known as Trust No. 1290, in the exercise of the power and authority conferred upon and vested in it as such Trustee; provided, however, that said Bank hereby personally warrants that it possesses full power and authority to execute and deliver this Mortgage. It is expressly understood and agreed that nothing contained in this Mortgage shall be construed as creating any liability on said Bank personally to pay the indebtedness secured by this Mortgage or any interest that may accrue thereon, or to perform any covenant, express or implied, contained herein, all such personal liability, if any, being expressly waived by Mortgagee and by every person now or hereafter claiming any right or security hereunder.

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed as of the date hereinabove first written.

THE ELGIN NATIONAL BANK OF ELGIN, not personally, but as Trustee under Trust Agreement dated August 24, 1978, and known as Trust Number 1290

By: _____

Title: TRUST OFFICER

ATTEST: _____

TITLE: Vice President & Cashier

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Karen L. DeBack, a Notary Public, in and for and residing in said County, in the State aforesaid, DO HEREBY CERTIFY that Steven Fenton, _____, of The Elgin National Bank, and Judy Lee Schorler, Secretary of said Corporation, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Trust Officer and Vice President & Cashier, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Corporation, as Trustee, as aforesaid, for the uses and purposes therein set forth; and the said ~~Secretary~~ V.P. & Cashier did also then and there acknowledge that she, as custodian of the corporate seal of said Corporation, did affix the said corporate seal of said Corporation to said instrument as his/her own free and voluntary act and as the free and voluntary act of said Corporation, as Trustee as aforesaid, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 27th day of January, 1987.

Karen L. DeBack
Notary Public

My commission expires: August 20, 1989

OFFICIAL SEAL
KAREN L. DeBACK
NOTARY PUBLIC, STATE OF ILLINOIS
My Commission Expires 8/20/1989

This instrument was prepared by:

Edward S. Salomon, Esq.
ROBBINS, RUBINSTEIN, SALOMON & GREENBLATT, LTD.
25 East Washington Street
Suite 1000
Chicago, Illinois 60602
(312) 782-9000

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EXHIBIT A
LEGAL DESCRIPTION

Lot 8 in Barrington Square Industrial Center Unit 1, being a subdivision of part of Fractional Section 6, Township 41 North, Range 10, East of the Third Principal Meridian, in Cook County, Illinois.

PIN: 07-06-201-012
07-06-201-013

F-A-083

ADDRESS OF PROPERTY: 2400 Hassel Road, Hoffman Estates, Illinois

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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 indebtedness secured by this Mortgage, including any and all extensions, renewals, amendments, modifications, and supplements thereof or thereto:

1. The Note of even date herewith executed by Mortgagor and James M. Moser to Mortgagee in the sum of $800,000.00.

2. The following security documents:

(a) This Mortgage;

(b) A Junior Assignment of Leases and Rents of even date herewith, leases executed by Mortgagor and Beneficiary, assigning to Mortgagee all of the rents, issues, deposits, profits, and awards of, and all leases and other agreements in connection with, the Premises (which document shall not be recorded without the consent of the prior Mortgagee);

(c) A Security Agreement in Mortgagor's fixtures and personal property located within and used in the operation of the mortgaged property;

(d) Certain Uniform Commercial Code Financing Statements, executed by Mortgagor.

(e) A Collateral Assignment of Beneficial Interest in Elgin National Bank Trust Number 990.

(f) A Collateral Assignment of Beneficial Interest in Elgin National Bank Trust Number 1290.

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EXHIBIT "C"

A First Mortgage in favor of the REPUBLIC REALTY MORTGAGE CORPORATION, dated April 4, 1979, in the amount of $800,000.00 and recorded in the office of the Recorder of Deeds of Cook County, Illinois, as Document Number 24920290, which Mortgage was assigned to Travelers Insurance Company which assignment was recorded in the Office of the Recorder of Deeds as Document Number 25290980.

DEPT-01 RECORDING $34.00
T#3333 TRAN 6635 01/28/87 16:32:00
#3231 # A *-87-056910
COOK COUNTY RECORDER

87056910

Recorders Box 312

This Instrument Prepared By:
Please Mail To:

Edward S. Salomon, Esquire
Robbins, Rubinstein, Salomon & Greenblatt, Ltd.
25 East Washington Street
Suite 1000
Chicago, Illinois 60602
(312) 782-9000

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