

MORTGAGE and SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (hereinafter referred to as this "Mortgage") is made as of the 13th day of February, 1987 by and between PHILIP J. FARLEY and CHICAGO TITLE & TRUST COMPANY, not personally but as Trustee under a Trust Agreement dated January 27, 1987 and known as Trust No. 1089365 whose address' are 111 West Washington Street, Chicago, Illinois 60602 Attn: Land Trust Department (hereinafter referred to as "Mortgagor") and THE ARTHUR KEATING GIFT TRUST FOR EDWARD KEATING and THE ARTHUR KEATING GIFT TRUST FOR LUCY K. BURNS each CREATED BY TRUST AGREEMENTS DATED FEBRUARY 1, 1964, c/o Katten, Muchin, Zavis, Pearl & Galler, 525 West Monroe, Suite 1600, Chicago, Illinois 60606-3693, Attn: Gerald H. Galler (hereinafter referred to as "Mortgagee").

WITNESSETH:

The "Note" (as hereinafter defined) and this Mortgage are being given by Mortgagor as a portion of the consideration paid by Mortgagor to Mortgagee to evidence and in fulfillment of the payment obligations incurred in the purchase of the Mortgaged Property from Mortgagee and consequently constitutes a purchase money mortgage.

DEFINITIONS

1.1 Wherever used in this Mortgage, "Mortgagor's Liabilities" means any and all of the following: (i) the payment of any and all monies, including but not limited to, the payment, when due or declared due, of the principal sum thereof and interest thereon, now and/or hereafter owed or to become owing by Phillip Farley Mortgagor to Mortgagee under and/or pursuant to the terms and provisions of a Mortgage Note of even date herewith, executed and delivered by Phillip Farley the beneficiary of Mortgagor to Mortgagee and payable to Mortgagee in the principal sum of Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) which matures on or before March 13, 1991. A default under the terms of the Note constitutes a default under the terms of this Mortgage; (ii) the payment of any and all other debts, claims, obligations, demands, monies, liabilities and/or indebtedness (of any and every kind or nature) now and/or hereafter owing, arising, due or payable from Mortgagor to Mortgagee under and/or pursuant to the terms and provisions of this Mortgage. Notwithstanding the foregoing, this Mortgage shall not secure indebtedness in excess of Two Million and No/100 Dollars (\$2,000,000.00).

1.2 Wherever used in this Mortgage, "Mortgagor's Obligations" means the prompt, full and faithful performance, discharge, compliance and observance by Mortgagor of each and every term, condition, warranty, representation, agreement, undertaking, covenant and provision to be performed, discharged, observed or complied with by Mortgagor in this Mortgage and/or in the Note.

1.3 Wherever used in this Mortgage, "Mortgaged Property" means any and all of the following: (i) all of the following described real estate, and all of Mortgagor's estate, right, title and interest therein, whether now owned or hereafter acquired, situated, lying and being in the City of Chicago, County of Cook, State of Illinois, and legally described on Exhibit "A" attached

THIS INSTRUMENT WAS PREPARED BY AND RETURN TO:
Barnett P. Ruttenberg
Katten, Muchin, Zavis, Pearl, Greenberger & Galler
525 West Monroe Street, Suite 1600
Chicago, Illinois 60606-3639

5ale
70-75-059-03

87089741

1303990



UNOFFICIAL COPY

Property of Cook County Clerk's Office

2.2 This Mortgage shall operate as and constitute a Security Agreement with respect to that portion of the Mortgaged Property consisting property or interests in property, whether real or personal, tangible or intangible, which are subject to the

2.1 To secure the payment by Mortgagor of Mortgagor's Liabilities and the performance by Mortgagor of Mortgagor's Obligations, Mortgagor hereby does MORTGAGE to Mortgagor, its successors and assigns, forever, the Mortgaged Property for the purposes and uses set forth in this Mortgage; provided, nevertheless, that if Mortgagor, its successors or assigns, shall satisfy, discharge and otherwise pay to Mortgagor, its successors or assigns, in full, Mortgagor's Liabilities and keep and perform all of Mortgagor's Obligations, then this Mortgage shall become null and void and shall be released at Mortgagor's expense.

2. CONVEYANCE

1.4 Wherever used in this Mortgage, the term "and/or" means one or the other or both, or any one or all, or the things, events or persons or parties in connection with which the term is used.

hereo and made a part hereof (the "Land"), together with all buildings, improvements, tenements, easements, hereditaments, and appurtenances now and/or at any time or times hereafter upon, belonging or otherwise appertaining to or situated on said real estate and all heretofore or hereafter roads, alleys, streets and other public ways abutting said real estate, whether before or after vacation thereof (hereinafter collectively with the land referred to as the "Premises"); (ii) all present and future rents, issues, avails, profits and proceeds under present or future leases (which are pledged primarily and on a parity with said Premises and not secondarily), (hereinafter referred to as the "Rents") of or from the Premises, the "Leases" and/or the "Equipment" (both of which terms are hereinafter defined), however occurring, existing, created or arising; (iii) all present and future leases, agreements, tenancies, licenses and franchises (hereinafter referred to as the "Leases"), of or from the Premises and/or the Equipment or in any way, manner or respect required, existing, used or usable in connection with the Premises and/or the Equipment, and all deposits of money as advance rent or for security under any or all of the Leases and all guarantees of lessors, performances thereunder; (iv) all present and future judgments, awards of damages and settlements made as a result or in lieu of any taking of the Premises, the Equipment and/or the Leases, or any part thereof, under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) thereo; (v) all present and future apparatus, machinery, equipment, fixtures and articles of personal property of any and every kind and nature whatsoever now owned or hereafter acquired by the Mortgagor, and used, attached to, installed or located in or on the Premises, or required for use in or on or in connection with the Premises or the management, maintenance, operation or business thereof and all replacements thereof and acccessions thereto (hereinafter referred to as the "Equipment"), including, but not limited to, any such item of equipment now or at any time or times hereafter situated on the Premises and used to supply or otherwise deliver heat, gas, air conditioning, water, light, electricity, power, plumbing, refrigeration, sprinkling, ventilation, mobility, communication, incineration, recreation and all other related or other such services (all of the immediately above mentioned items of equipment being deemed to be a part of the Premises, whether physically attached hereto or not); (vi) all the Premises, the Rents, the Leases or the Equipment; (vii) all proceeds of each and all of the foregoing.

87069741

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

(v) The location, existence and use of the premises and the equipment shall remain in compliance with all applicable laws, rules, ordinances and regulations, including, but not limited to, building and zoning laws, and all covenants and restrictions of record.

(iv) Mortgagor shall timely file all federal, state and other governmental tax and similar returns which mortgagor is required by law to file with respect to the mortgaged property and the operation and business thereof. All taxes and other sums which are shown to be payable under such returns shall be timely and fully paid, and mortgagor or its beneficiary shall maintain adequate reserves in amount to fully pay all such liabilities which hereafter may accrue.

(iii) The execution, delivery and performance by mortgagor of and under this mortgage and the note does not and will not constitute a violation of any applicable law and does not under, or an acceleration of any obligation arising, existing or created by or under any agreement, instrument, document, mortgage, deed, trust deed, note, judgment, order, award, decree or other restriction to which mortgagor or any of the mortgaged property is or hereafter shall become a party, or by which mortgagor or any of the mortgaged property is or hereafter shall become bound, or any law or regulatory provision now or hereafter affecting mortgagor or any of the mortgaged property.

(ii) Mortgagor now has and hereafter shall maintain the standing, right, power and lawful authority to own the mortgaged property, to carry on the business of and operate the mortgaged property, to enter into, execute and deliver this mortgage and the note to mortgagee, to encumber the mortgaged property to mortgagee as provided herein and to perform all of mortgagor's obligations and to consummate all of the transactions described in or contemplated by this mortgage and the note.

(i) Mortgagor promptly will pay, or cause to be paid, when due or declared due, mortgagor's liabilities and promptly, fully and faithfully will perform, discharge, observe and comply with each and all of mortgagor's obligations.

3.1 Mortgagor covenants with and represents to mortgagee as follows:

3. COVENANTS AND REPRESENTATIONS

2.3 Mortgagor, within ten (10) days after request by mortgagee therefor, will certify, in writing, to mortgagee, or to any proposed assignee of this mortgage, the amount of principal and interest then owing and unpaid under the note and whether mortgagor has or asserts any offsets or defenses thereto.

priority and perfection of security interest provisions of the Uniform Commercial Code or any similar and applicable law, statute, code or other governing body of law. Therefore, to secure the payment by mortgagor of mortgagor's liabilities and the performance by mortgagor of mortgagor's obligations, mortgagor hereby grants to mortgagee a security interest in the mortgaged property and mortgagor does hereby set over, assign, and transfer to mortgagee all of the leases and rents subject to the terms and conditions of this mortgage.

87089741

UNOFFICIAL COPY

Illinois and reasonably acceptable to Mortgagee, security acceptable to bond over such charge, imposition, levy, claim, demand, assessment or lien. Mortgagor agrees that each contest hereunder shall be promptly prosecuted to a final conclusion. Mortgagor further agrees to pay, and save Mortgagee harmless against, any and all losses, judgments, decrees and costs (including all reasonable attorneys' fees and expenses) in connection with any such contest and will, promptly with the final settlement, compromise or determination of such contest, fully pay and discharge the amounts which may be levied, assessed, charged or imposed or be determined to be payable therein or in connection therewith, together with penalties, fines, interests, costs and expenses thereof or in connection therewith, and perform all acts the performance of which shall be ordered or decreed as a result thereof. No such contest shall subject Mortgagee to the risk of any loss, damage, civil liability or criminal liability. In the event Mortgagor shall fail to contest the validity of any charge, imposition, levy, claim, demand, assessment, or lien and give security to Mortgagee or a title insurance company, as aforesaid, to insure payment thereof as hereinabove permitted, or having commenced to contest the same and having given such security, shall fail to prosecute such contest with diligence, or shall fail to have the same released and satisfy any judgment rendered thereon, then Mortgagee may, at its election (but shall not be required to do so), remove or discharge the same by paying said charge, imposition, levy, claim, demand, assessment or lien, or any judgment resulting therefrom, in full without obligation to verify the validity thereof (or, in its sole and absolute discretion, to settle or compromise the same), and any amounts advanced by Mortgagee for such purposes shall be an additional indebtedness due under the Note and secured hereby and due Mortgagee and payable immediately upon demand, with interest thereon at the Default Interest as defined in the Note. If Mortgagee is required by legislative enactment or judicial decision to pay the United States of America, the State of Illinois or any political subdivision thereof, any charge, imposition, assessment, levy or tax on the Mortgaged Property (or on any interest therein), this Mortgage, or Mortgagor's Liabilities, all of Mortgagor's Liabilities shall become and be due and payable, at the election of Mortgagee, thirty (30) days after the mailing of notice of such election to Mortgagor; provided, however, said election and right to elect will be unavailing and this Mortgage or the Note will be and remain in full force and effect as though said law had not been enacted or said decision had not been rendered if, notwithstanding such law or decision, Mortgagor lawfully may pay such charge, imposition, assessment, levy or tax to or for Mortgagee and does, in fact, pay, when payable, such charge, imposition, assessment, levy or tax. Notwithstanding the foregoing, Mortgagor shall have no obligation to pay any income or profit tax that is or may be imposed upon Mortgagee as a consequence of its general business activities, including the receipt of interest or other charges under the Note or this Mortgage. If at any time the United States of America shall require internal revenue stamps to be affixed to this Mortgage or the Note, Mortgagor will pay for the same, together with any interest or penalties imposed in connection therewith.

(iii) Mortgagor shall keep the Mortgaged Property free and clear of all Encumbrances (including, but not limited to, mechanics liens and other similar liens or claims for liens) of any and every kind and nature, shall promptly pay or cause to be paid, as and when due and payable or when declared due and payable, any indebtedness which may become or be secured by such an Encumbrance and, immediately upon request by Mortgagee, shall deliver to Mortgagee evidence satisfactory to Mortgagee of the payment and discharge thereof.

87069741

87089741

3.5 Notwithstanding anything contained herein, Mortgagee shall not be obligated to perform or discharge, and does not hereby undertake to perform or discharge, any obligation, duty or liability of Mortgagee, whether hereunder, under any of the leases affecting the Mortgaged Property, under any contract relating to the Mortgaged Property or otherwise, and Mortgagee shall and does hereby agree to indemnify against and hold Mortgagee harmless of and from: any and all liability, loss or damage which Mortgagee may incur under or with respect to any portion of rights hereunder; and any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligation or covenants or agreements contained in any of the contracts, documents or instruments affecting any portion of the Mortgaged Property or effecting any rights of the Mortgagee thereto. Mortgagee shall not have responsibility for the control, care, management, or repair of the Mortgaged Property or be responsible or liable for any negligence other than acts of gross negligence

3.4 If Mortgagee, immediately after written demand from Mortgagee: shall neglect or refuse to keep the Mortgaged Property in good operating condition and repair or to replace or maintain the same as herein agreed; or shall fail to pay the premiums for the insurance which is required to be maintained hereunder, shall fail to pay and discharge all Encumbrances or Mortgagee's obligations as herein agreed, or otherwise defaults in the performance of Mortgagee's obligations, Mortgagee, at its sole election, may cause such repairs or replacements to be made, obtain such insurance, pay such Encumbrances or perform such obligations. Any amounts paid by Mortgagee in taking such action, together with interest thereon at the Default Interest Rate, as defined in the Note, from the date of Mortgagee's payment thereof until repaid by Mortgagee to Mortgagee, shall be due and payable by Mortgagee upon demand, and, until paid, shall constitute a part of Mortgagee's liabilities secured by this Mortgage. Notwithstanding the foregoing, such advances by Mortgagee shall not be deemed to relieve Mortgagee from any default hereunder or impair any right or remedy consequent thereon. The exercise of the right to take such action shall be optional with Mortgagee and not obligatory upon Mortgagee and Mortgagee shall not in any case be liable to Mortgagee for failure or refusal to exercise any such right. In making any payments pursuant to the exercise of any such right, Mortgagee may rely upon any bills delivered to it by Mortgagee or any such payee and shall not be liable for any failure to make payments in any amounts other than as set forth in any such bills.

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

(iv) Mortgagee shall not, at any time or times hereafter, pledge, hypothecate or otherwise encumber all or any portion of the Mortgaged Property or Mortgagee's interest therein. Without the prior written consent of Mortgagee, Mortgagee shall not sell or otherwise transfer all or any portion of the Mortgaged Property or Mortgagee's interest therein. The death or legally adjudicated incompetency, or transfer by bankruptcy of Phillip Farley constitutes a default hereunder.

0 0 7 9 8 7 4 1

All such policies and renewals thereof (hereinafter referred to as the "policies"), to be issued by companies satisfactory to Mortgage, shall contain, in form and substance acceptable to Mortgage, standard mortgage loss payable clauses naming Mortgage as "mortgagee", as well as a standard waiver of subrogation endorsement and a "Replacement Cost Endorsement" together with an agreed amount endorsement sufficient to prevent Mortgage from being deemed a co-insurer and shall be delivered, as issued, to Mortgage, with premiums therefor paid in full by Mortgage. Mortgage shall also keep in effect rent loss insurance and/or business interruption insurance. All policies

87089711

(iv) Statutory Worker's Compensation Insurance. All such policies and renewals thereof (hereinafter referred to as the "policies"), to be issued by companies satisfactory to Mortgage, shall contain, in form and substance acceptable to Mortgage, standard mortgage loss payable clauses naming Mortgage as "mortgagee", as well as a standard waiver of subrogation endorsement and a "Replacement Cost Endorsement" together with an agreed amount endorsement sufficient to prevent Mortgage from being deemed a co-insurer and shall be delivered, as issued, to Mortgage, with premiums therefor paid in full by Mortgage. Mortgage shall also keep in effect rent loss insurance and/or business interruption insurance. All policies

(ii) Comprehensive general liability insurance in an amount not less than \$1,000,000 for injury to or death of one person and \$3,000,000 for injury to or death of more than one person;

(i) Fire and casualty insurance on an "all risk" basis for 100% of the insurable value of the improvements on the land, including materials in storage and while in transit, against loss or damage by fire or other casualty, with extended coverage, "X," "C" and "U" coverage, vandalism and malicious mischief coverage, bearing replacement cost and agreed amount endorsements;

4.1 (A) Mortgage, 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 extended coverage, malicious mischief and vandalism, and such other hazards, casualties and contingencies as Mortgage, from time to time, may require in companies, form, amounts and for such periods as is satisfactory to Mortgage, but, in any event, for not less than the greater of the outstanding principal balance of the Note or the full replacement value of the equipment from time to time on the land, without deduction for depreciation. Without limiting the generality of the foregoing, such policies shall include:

4. INSURANCE AND CONDEMNATION

3.6 Mortgage and Mortgagee acknowledge and agree that in no event shall Mortgagee be deemed to be a partner or joint venturer with Mortgage. Without limitation of the foregoing, Mortgagee shall not be deemed to be such a partner or joint venturer 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 indebtedness secured hereby, or otherwise.

In the management, operation, upkeep, repair or control of the Mortgaged Property or be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Mortgaged Property resulting in loss or injury or death to any tenant, licensee, employee, stranger or other person. No exercise of the powers herein granted to it, and Mortgagee expressly waives and releases any such liability except as provided hereinabove. Should Mortgagee incur any such liability, loss or damage under any of the Leases affecting the premises or under or by reason hereof, or in the defense of any claims or demands, Mortgagee agrees to reimburse Mortgagee immediately upon demand for the full amount thereof, including reasonable costs, expenses and attorneys' fees.

87069741

(c) satisfactory evidence of sufficient contractor's comprehensive general liability insurance covering the mortgaged property, mortgagor and mortgagor, together with such builder's risk insurance as shall reasonably be required by mortgagor;

(b) an estimate of the cost of the proposed work, certified to by said architect or engineer;

(a) before mortgagor commences such alteration, reconstruction, repair or restoration plans and specifications therefor, prepared by a licensed engineer or architect reasonably satisfactory to mortgagor shall be submitted to mortgagor for written approval;

(ii) Such insurance proceeds may, at the option of the mortgagor, be applied in the reduction of the indebtedness secured hereby, whether due or not, or be held by the mortgagor without any allowance of interest and used to reimburse mortgagor for the cost of the rebuilding or restoration of improvements on said premises. If, for any reason, the mortgagee elects or agrees to make said proceeds available to reimburse mortgagor for the cost of the rebuilding or restoration of the buildings or improvements on said premises. The insurance proceeds shall be applied to reimburse mortgagor for the cost of rebuilding or restoration of buildings or improvements on the land. Such proceeds shall be made available in the manner and under conditions that mortgagor may require, including but not limited to the following:

(d) to assign all policies to any holder of mortgaged property in the event of the foreclosure of this mortgage or other transfer of title to the mortgaged property.

(c) to jointly execute, in the name of mortgagor and in the name of mortgagor, any proofs of loss, notices or other instruments in connection with all claims under all policies; and

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

(a) to settle and compromise all claims; under all policies;

(B) (i) If an event of default has occurred, in case of loss or damage by fire or other casualty full power is hereby conferred on mortgagor:

shall provide that they are non-cancellable by the insurer without first giving at least thirty (30) days prior written notice to mortgagor of any intended cancellation. Mortgagor will give immediate written notice to mortgagor 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 mortgagor renewal policies not less than forty-five (45) days prior to the respective dates of expiration. Mortgagor will deliver and deposit with mortgagor receipts for the payment of the current annual premiums on all policies. In the event of foreclosure of this mortgage or assignment hereof by mortgagor or transfer of title to the mortgaged property in extinguishment of mortgagor's liabilities, all right, title and interest of mortgagor in and to any policies then in force shall pass to the purchaser, grantee or assignee.

(k) Any surplus insurance proceeds remaining with the Depository after payment of such cost of alteration, reconstruction, repair or restoration, shall be paid first on a dollar-for-dollar basis, to the Mortgagee to the extent the Mortgagee had deposited its own funds on account of such work with the Depository, and

(j) Mortgagee shall be reimbursed from the proceeds, or by Mortgagee for costs incurred by Mortgagee with respect to making the proceeds available for rebuilding or restoration. Mortgagee shall pay all costs and fees of the Depository, if any, and shall pay reasonable costs and fees if the Mortgagee is the Depository.

(i) No payment made prior to the completion of the work shall exceed ninety percent (90%) of the value of the work completed and in place from time to time and at all times, except in the case of payments made to materialmen when the materials involved have been delivered to the land in which such payments may equal one-hundred percent (100%) of the value of the materials, the undisbursed balance remaining in the hands of the Depository shall be at least sufficient to pay for the cost of completion of the work free and clear of liens; any deficiency from time to time shall be paid into the Depository by Mortgagee immediately after written request therefor.

(h) The Depository shall pay out construction funds from time to time on the written direction of the Mortgagee provided that the Depository and Mortgagee shall first be furnished with such waivers of lien, contractors and subcontractors sworn statements and such other evidence of cost and payments as they require so that they can verify that the amounts disbursed from time to time are represented by completed and in-place work, and that said work is free and clear of possible mechanics' or materialmen's liens.

(g) Mortgagee shall diligently pursue the alteration, reconstruction, repair or restoration of the mortgaged property, or such portion thereof as shall have been damaged, in a good and workmanlike manner using only high quality workmen and material. The buildings and improvements shall be so restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction.

(f) Mortgagee, or such other party as shall be reasonably acceptable to Mortgagee (said party hereinafter referred to as the "Depository") shall hold and disburse the proceeds of the policies in accordance with the terms hereof. Mortgagee approves the prior completion exceeds the amount of insurance proceeds available, Mortgagee shall immediately deposit with the Depository, in cash, the amount of such estimated excess cost;

(e) such other security as Mortgagee may require to insure payment for the completion of all such work free and clear of all liens;

(d) a performance and payment bond reasonably satisfactory in form and substance to Mortgagee as Mortgagee may require;

87089741

UNOFFICIAL COPY

Property of Cook County Clerk's Office

87089741

(ii) Mortgagee may at its option, commence, appear in and prosecute jointly with Mortgagee, any action or make any compromise or settlement, in connection with such condemnation, taking under the power of eminent domain or sale in lieu thereof. Mortgagee shall and hereby is authorized, directed and empowered to collect and receive the proceeds of any such awards from the authorities making the same and to give proper receipts therefor (in Mortgagee's name, in Mortgagee's name or in both names), and at Mortgagee's sole option shall either (a) use the same, or any part thereof, to replace, repair or restore any or all of the mortgaged property to a condition satisfactory to Mortgagee consistent with the procedure to be used with respect to the use of insurance proceeds as provided in Paragraph 4.1(B) hereof, with the balance thereof, if any, to be applied to Mortgagee's liabilities, whether or not matured and without affecting the amount or time of subsequent installment payments required to be made by Mortgagee under the Note, or (b) apply the proceeds to the Mortgagee's liabilities.

(iii) Mortgagee, immediately upon request by Mortgagee, shall make, execute and deliver and/or cause to be made, executed and delivered to and/or for the benefit of Mortgagee any and all assignments and other instruments sufficient to assign, and cause the payment directly to Mortgagee of, all such awards, free and clear of all encumbrances. Notwithstanding any taking by eminent domain, alteration of the grade of any street or other injury to or decrease in value of the mortgaged property by any public or quasi-public authority or corporation, Mortgagee shall continue to pay all of the Mortgagee's liabilities, as and when due and payable, until any such award or payment shall have been actually received by Mortgagee, and any reduction in Mortgagee's liabilities resulting from the application by Mortgagee of such award or payment as herein set forth shall be deemed to take effect only on the date of such receipt. If, prior to the receipt by Mortgagee of such award or payment, the mortgaged property shall have been sold on foreclosure of this mortgage, Mortgagee shall have the right to receive such award or payment to the extent of any deficiency found to be due upon such sale, with legal interest thereon, and of the reasonable attorneys' fees, costs, expenses and disbursements incurred by Mortgagee in connection with the collection of such award or payment.

4.2 (1) The Mortgagee immediately upon obtaining knowledge of the institution of any proceeding for the condemnation of the mortgaged property, or any portion thereof, shall notify Mortgagee of the pendency thereof. All awards now or hereafter made by any public or quasi-public authority to or for the benefit of Mortgagee in any way, manner or respect affecting, arising from or relating to the mortgaged property, or any portion thereof, by virtue of an exercise of the right of eminent domain by such authority (including, but not limited to, any award for taking title, possession or right of access to a public way, or for any change of grade of streets affecting the mortgaged property) hereby are assigned to the Mortgagee as additional security for the payment of Mortgagee's liabilities (and for such purpose, Mortgagee hereby grants to Mortgagee a security interest therein).

the balance, if any, to be paid, at the election of Mortgagee, as a payment on account of the Mortgagee's liabilities, or to Mortgagee.

(ii) Failure of Mortgagor or Prior Mortgagee, promptly, fully and faithfully to satisfy, perform, discharge, observe and comply with each and every of Mortgagor's obligations. If the

(i) Failure of Mortgagor or Prior Mortgagee to pay when due or within five (5) days after receipt of notice that such is due or declared due, any of Mortgagor's liabilities.

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

6. DEFAULT

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

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

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

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

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

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

5.1 So long as there shall not have occurred an Event of Default under this Mortgage, Mortgagor shall have the right to collect all of the Rents arising from the Leases, or renewals thereof, and shall hold the same, in trust, to be applied first to the payment of all impositions, levies, taxes, assessments and other charges upon the Mortgaged Property, secondly to the cost of the maintenance of insurance policies upon the Mortgaged Property required hereby, thirdly to the maintenance and repairs required hereby and lastly to the payment of Mortgagor's liabilities then due and payable, before using any part of the Rents for any other purposes.

5. LEASES AND RENTS

147903741

87089741

(ii) Enter upon and take immediate possession of the Mortgaged Property, expel and remove any persons, goods or chattels occupying or upon the same, receive all Rents, and issue receipts therefor, manage, control and operate the Mortgaged Property as fully as Mortgagor might do it in possession thereof, including without limitation, the making of all repairs and replacements deemed necessary by Mortgagor and the leasing of the same, or any part thereof, from time to time, and, after deduction of all reasonable attorneys' fees and all costs and expenses incurred in the protection, care, maintenance, management and operation of the Mortgaged Property, apply the remaining net income, if any, to Mortgagor's liabilities. At the option of Mortgagor, such entry and taking of possession shall be accomplished either by actual entry and possession or by written notice served personally upon or sent by registered mail to the Mortgagor at the address of Mortgagor last appearing on the records of Mortgagor. Mortgagor agrees to surrender possession of the Mortgaged Property to Mortgagor immediately upon the occurrence of an Event of Default. If Mortgagor shall remain in physical possession of the Mortgaged Property, or any part thereof, after any such default, such possession shall be as a tenant of Mortgagor, and Mortgagor agrees to pay to Mortgagor, or to any receiver appointed as provided, below, after such default, a reasonable monthly rental for the Mortgaged Property or the part thereof so occupied by the Mortgagor based upon the rentals in effect at the Mortgaged Property as of the date hereof, to be applied as provided above in the first sentence of this Sub-Paragraph, and to be paid in advance on the first day of each calendar month, and, in default of so doing, Mortgagor may be disposed of by the usual summary proceedings. This covenant shall be effective irrespective of whether any foreclosure proceeding shall have been instituted and irrespective of any application for, or appointment of, a receiver.

(i) Declare all of Mortgagor's liabilities immediately due and payable and collect the same at once by foreclosure or otherwise, without notice of broken covenant or condition, and in case of such default and the exercise of such option, Mortgagor's liabilities shall bear interest, from the date of such default, at the Default Interest rate as defined in the Note.

6.2 Upon the occurrence of an Event of Default, Mortgagor, after notice and demand insofar as required hereby, in its sole discretion and at its sole election, without notice of such election, and without further demand, may do any one or more of the following:

(iii) A petition in bankruptcy is filed by or against Mortgagor, the beneficiary of Mortgagor or any beneficiary of Mortgagor, the beneficiary of Mortgagor, or any general partner of the beneficiary of Mortgagor makes an assignment for the benefit of creditors, or if it is or any of them are adjudged insolvent by any state or federal court of competent jurisdiction, or an attachment or execution is levied against any of the Mortgaged Property.

Event of Default is with respect to a non-monetary obligation, the Mortgagor shall have thirty (30) days after notice thereof to commence to cure the default. The right to cure an Event of Default shall not apply in the event that the Mortgagor shall determine that the Mortgagor is not proceeding in good faith and with all due diligence in effecting such cure.

87089741

6.4 If foreclosure proceedings are instituted upon this Mortgage, or if Mortgagee shall be a party to, shall intervene, or file any petition, answer, motion or other pleading in any suit or proceedings relating to this Mortgage, the Note, or Mortgagor's liabilities, or if Mortgagee shall incur or pay any expenses, costs, charges or reasonable attorneys' fees by reason of the employment of counsel for advice with respect to this Mortgage, the Note, or Mortgagor's liabilities, and whether in court

6.3 In the event of default under this Mortgage, there will be added to and included as part of Mortgagor's Liabilities (and allowed in any decree for sale of the Mortgaged Property or in any judgment rendered upon this Mortgage or the Note) the following: the costs, charges, expenses and attorneys' fees specified in Paragraph 6.4 below; any and all expenditures which may be paid or incurred by or on behalf of Mortgagee for appraisers' fees, publication costs, fees and expenses for examination of title, title searches, guaranty policies, Torrens certificates and similar data and assurances with respect to the title to the Mortgaged Property; all prepayment of like premiums, if any, provided for under the terms of the Prior Mortgage; and all other fees, costs and expenses which Mortgagee deems necessary to prosecute any remedy it has under this Mortgage, or to inform bidders at any sale which may be had pursuant to its rights hereunder, of the true condition of title or of the value of the Mortgaged Property. All such costs, charges, expenses fees and other expenditures shall be a part of Mortgagor's Liabilities, secured by this Mortgage, payable on demand and shall bear interest at the Default Interest Rate, as defined in the Note, from the date of Mortgagee's payment thereof until repaid to Mortgagee.

(v) Sell the Mortgaged Property, either in whole or in parcels, at public auction pursuant to the Statutes of the State of Illinois, and apply the proceeds of such sale in the manner set forth in Section 6.5 hereof.

(iv) Exercise any other remedies or rights permitted or provided under or by the laws or decisions of the State in which the Mortgaged Property is located (including all rights of a secured party under the Uniform Commercial Code of the State of Illinois), accruing to a mortgagee and/or secured party upon a default by a mortgagor and/or debtor.

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

(ii) If fulfillment of any provision herein or in the Note, at the time performance of such provision becomes due, involves exceeding such highest lawful contract rate, then ipso

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

6.8 No right or remedy of Mortgagee hereunder is exclusive of any other right or remedy hereunder or now or hereafter existing at law or in equity, but is cumulative and in addition thereto and the holder of the Note may recover judgment thereon, issue execution therefor, and resort to every other right or remedy afforded by this Mortgage. No day in exercising, or omission to exercise, any such right or remedy will impair any such right or remedy or will be construed to be a waiver of any default by Mortgagee hereunder, or acquiescence therein, nor will it affect any subsequent default hereunder by Mortgagee or the same or different nature. Every such right or remedy may be exercised independently or concurrently, and when and so often as may be deemed expedient by Mortgagee. No terms or conditions contained in this Mortgage or the Note may be waived, altered or changed except as evidenced in writing signed by Mortgagee and Mortgagee.

6.7 Mortgagee shall have the right from time to time to sue for any sums, whether interest, principal or any other sums required to be paid by or for the account of Mortgagee under the terms of this Mortgage or the Note, or any other of Mortgagee's liabilities, as the same shall be due, and without prejudice to the right of the Mortgagee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by the Mortgagee existing at the time such earlier action was commenced.

6.6 In the event of the commencement of judicial proceedings to foreclose this Mortgage, Mortgagee, on behalf of itself, its successors and assigns, and each and every person it may legally bind acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage: (i) does hereby expressly waive any and all rights of appraisal, valuation, stay, extension and (to the extent permitted by law) redemption from sale under any order or decree of foreclosure of this Mortgage; and (ii) does hereby agree that when sale is had under any decree of foreclosure of this Mortgage, upon confirmation of such sale, the master in chancery or other officer making such sale, or his successor in office, shall be and is authorized immediately to execute and deliver to purchaser at such sale a deed conveying the Mortgaged Property, showing the amount paid therefor, or if purchased by the person in whose favor the order or decree is entered, the amount of his bid therefor.

6.5 The proceeds of any foreclosure sale of the Mortgaged Property shall be applied and distributed, first, on account of the fees, charges, costs and expenses described in Paragraph 6.3 above, secondly, to the balance of Mortgagee's liabilities, and thirdly, the surplus, if any, to Mortgagee.

From the date of Mortgagee's payment thereof until repaid to bear interest at the Default Interest Rate as defined in the Note liabilities, secured by this Mortgage, payable on demand and shall reasonable attorneys' fees shall be part of Mortgagee's proceedings or otherwise, such expenses and all of Mortgagee's

87089741

87089741

7.9 This Mortgage is executed by CHICAGO TITLE & TRUST COMPANY, not personally but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee, and under the express direction of the beneficiary of a certain Trust Agreement dated January 27, 1987, and known as Trust Number 1089365 to all provisions of which Trust Agreement this Mortgage is expressly made subject. It is expressly understood and agreed that nothing in this Mortgage contained shall be construed as creating any liability whatsoever against said Trustee personally, and in particular without limiting the generality of the foregoing, there shall be no personal liability to pay any indebtedness accruing hereunder or to perform any covenant, either express or implied, herein contained, or to keep, preserve or sequester any property of said

7.8 This Mortgage constitutes a part purchase money mortgage given in connection with the acquisition of the Mortgaged Property by Mortgagor form Mortgagee.

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

7.6 This Mortgage was executed and delivered in, and shall be governed as to the validity, interpretation, construction, effect and in all other respects by the laws and decisions of the State of Illinois.

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

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

To Mortgagee:
 Katem, Muchin, Zavis,
 Pearl, Greenberger & Galler
 525 West Monroe Street
 Suite 1600
 Chicago, Illinois 60606
 Attn: Gerald H. Galler,
 Esq.

To Mortgagor:
 c/o Daluga & Schneider, Ltd.
 180 North Lasalle Street
 Suite 2507
 Chicago, Illinois 60601

hereinafter provided) the party entitled thereto or on its successors or assigns. If mailed, such notice, demand or request shall be made certified or registered mail, return receipt requested, and deposited in any post office station or letter-box, enclosed in a postage paid envelope addressed to such party at its address set forth below or to such other address as either party hereto shall direct by like written notice and shall be deemed to have been made on the second (2nd) day following posting as aforesaid. For the purposes herein, notices shall be sent to Mortgagor and Mortgagee as follows:

UNOFFICIAL COPY

1 4 7 0 0 0 7 4 1

87089741

Property of Cook County Clerk's Office

CHICAGO TITLE & TRUST COMPANY, not individually but as trustee as aforesaid

BY: Thomas Sandus Its: ASSISTANT PRESIDENT
ATTEST: Shirley B. Bunker Its: SECRETARY

PHILIP J. FARLEY
PF
IN WITNESS WHEREOF, the Mortgagor, has caused these presents to be signed, the day and year first above written.

Trust, and that all personal liability of said Trustee of every sort, if any, is hereby expressly waived by Mortgagee, and by every person now or hereafter claiming any right or security hereunder; and that so far as the parties hereto are concerned, the owner of any indebtedness or liability accruing hereunder shall look solely to the Trust Estate from time to time subject to the provisions of said Trust Agreement for the payment thereof.

1 4 7 0 0 0 7 4 1

UNOFFICIAL COPY

Property of Cook County Clerk's Office

87069741

Property of Cook County Clerk's Office

I, LYNDA S. BARRIE, a Notary Public in and for the said county, in the State aforesaid, DO HEREBY CERTIFY that Monica Santos as Vice President and Suzette Stewart, as Assistant Secretary of CHICAGO TITLE & TRUST COMPANY, as Trustee who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such ASSISTANT Vice President and Assistant Secretary of said Company, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their free and voluntary act and as the free and voluntary act of said Company for uses and purposes set forth herein; and said Assistant Secretary did then and there acknowledge that he, as custodian of the corporate seal of said Company did affix the corporate seal of said Company to said instrument as his free and voluntary act and as the free and voluntary act of said Company for the uses and purposes set forth therein.

STATE OF ILLINOIS)
) ss.)
 COUNTY OF COOK)

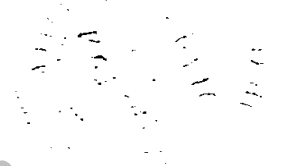
Lynnda S. Barrie
 Notary Public

April 2, 1998
 My Commission expires:

0 9 7 : 0 7 4 1

UNOFFICIAL COPY

Property of Cook County Clerk's Office



87069741

Property of Cook County Clerk's Office

My Commission Expires: 4-2-50

[Signature]
Notary Public

GIVEN under my hand and Notarial Seal this 15th day of February, 1937.

I, the undersigned, a Notary Public in and for said County, in the state aforesaid, DO HEREBY CERTIFY that Philip J. Farley, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

STATE OF)
) SS
COUNTY OF)

UNOFFICIAL COPY

3792741

bc

87089741

609

609

87089741

Property of Cook County Clerk's Office

DEPT-01 RECORDING \$29.60
TR3333 TRAN 3247 02/13/87 16:17:00
#1577 * A * 87-089741
COOK COUNTY RECORDER

1234 N LAKE SHORE DR
CHICAGO, ILLINOIS

17-03-11-008
C 40 MD

THAT PART OF LOT 2 IN BLOCK 7 IN H. O. STONES SUBDIVISION OF ASTORS
ADDITION TO CHICAGO, WHICH LIES WEST OF LAKE SHORE DRIVE
ALSO
THAT PART OF THE NORTH 4 FEET OF LOT 3 IN SAID BLOCK 7, WHICH LIES WEST
OF LAKE SHORE, IN COOK COUNTY, ILLINOIS. 3-28-14

[Handwritten signature]

EXHIBIT "A"
Legal Description

0 8 7 0 3 7 4 1

UNOFFICIAL COPY

18

Property of Cook County Clerk's Office