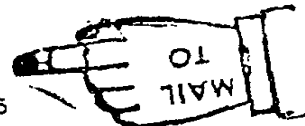


UNOFFICIAL COPY

This Instrument Prepared By: Annette Wiczorek
Glenview State Bank
800 Waukegan Road
Glenview, Illinois 60025



MORTGAGE

88481136

This Mortgage made October 11, 1988, between Leo A. Cardella and James Cardella, (hereinafter referred to as "Mortgagor") and GLENVIEW STATE BANK, an Illinois banking corporation, having an office at 800 Waukegan Road, Glenview, Illinois 60025 (hereinafter referred to as "Mortgagee").

Mortgagor is justly indebted to Mortgagee in the principal sum of ONE HUNDRED THOUSAND AND 00/100 dollars (\$100,000) as evidenced by a certain Mortgage Note of even date herewith executed by Mortgagor, made payable to the order of and delivered to Mortgagee (hereinafter referred to as "Note") whereby Mortgagor promises to pay the said principal sum or so much thereof as may be advanced by the holder or holders of the Note from time to time, together with interest thereon, from date, at the rate set forth therein, in installments as set forth therein at the office of Mortgagee, or at such other place as may be designated in writing by the legal holders thereof until the entire principal and accrued interest have been paid, but in any event, the principal balance (if any) remaining unpaid plus accrued interest shall be due and payable on or before the 1st day of November, 1993.

NOW, THEREFORE, in order to secure the payment of the said principal sum and interest thereon and the performance of the covenants and agreements herein contained, Mortgagor does by these presents grant, bargain, sell, convey, and mortgage unto Mortgagee, its successors and assigns forever, the real estate and all of its estate, right, title, and interest therein situated in the Village of Glenview, County of Cook, and State of Illinois, as more particularly described in Exhibit "A" attached hereto and made a part hereof (sometimes herein referred to as the "real estate"), which real estate, together with the following described property, is collectively referred to as the "premises":

TOGETHER WITH:

- (1) All right, title and interest of Mortgagor, including any after-acquired title or reversion, in to the beds of the ways, streets, avenues, vaults, and alleys adjoining the premises,
- (2) All and singular the tenements, hereditaments, easements, minerals, appurtenances, passages, waters, water courses, riparian irrigation, and drainage rights, and other rights, liberties, and privileges thereof or in any way now or hereafter appertaining, including homestead and any other claim at law or in equity as well as any after-acquired title, franchise, or license and the reversion and reversions and remainder and remainders thereof,
- (3) All rents, issues, proceeds, and profits accruing and to accrue from the premises (which are pledged primarily and on a parity with the real estate, and not secondarily), and
- (4) All buildings and improvements of every kind and description now or hereafter erected or placed thereon and all materials intended for construction, reconstruction, alteration, and repairs of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the premises immediately upon the delivery thereof to the premises, and all fixtures now or hereafter owned by Mortgagor and attached to or contained in and used in connection with the

88481136

RECORDED
INDEXED
OCT 15 1988
GLENVIEW STATE BANK

\$32.25

premises, including, but not limited to, all machinery, motors, elevators, fittings, radiators, awnings, shades, screens, and all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air-conditioning, and sprinkler equipment and fixtures and appurtenances thereto, and all items of furniture, furnishings, equipment, and personal property owned by the Mortgagor used or useful in the operation of the said real estate, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to said building or buildings in any manner, it being mutually agreed, intended, and declared that all the aforesaid property owned by said Mortgagor and placed by it on the premises or used in connection with the operation or maintenance of the premises shall, so far as permitted by law, be deemed to form a part and parcel of the real estate and for the purpose of this Mortgage to be real estate, and covered by this Mortgage, and as to any of the property aforesaid which does not so form a part and parcel of the real estate or does not constitute a "fixture" (as such term is defined in the Uniform Commercial Code), this Mortgage is hereby deemed to be, as well, a Security Agreement under the 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 the Uniform Commercial Code), it being further understood and agreed that the provisions of this subparagraph (4) shall not apply or attach to any trade fixtures or personal property of any tenant of the premises;

TO HAVE AND TO HOLD the same unto the Mortgagee and its successors and assigns forever, for the purposes and uses herein set forth;

PROVIDED, HOWEVER, that if the Mortgagor shall pay the principal and all interest as provided in the Note, and shall pay all other sums herein provided for, or secured hereby, and shall well and truly keep and perform all of the covenants herein contained, then this Mortgage shall be released at the cost of the Mortgagor, otherwise to remain in full force and effect.

MORTGAGOR FURTHER COVENANTS and agrees as follows:

1. Payment of 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 herein and in the Note provided.

2. Tax, Insurance and Other Deposits. (a) Mortgagor shall deposit with the Mortgagee, or a depository designated by Mortgagee, in addition to the monthly installments of principal and interest due under the terms of the Note, and concurrently therewith, monthly until the principal indebtedness evidenced by the Note is paid, the following: (i) a sum equal to all real estate taxes and assessments ("taxes") next due on the premises (all as estimated by Mortgagee in its reasonable direction), divided by the number of months to elapse before one month prior to the date when such taxes will become due and payable; and (ii) a sum equal to the amount of the premium or premiums that will next become due and payable to replace or renew the insurance policies required to be maintained by paragraph 4 hereof (all as estimated by Mortgagee in its reasonable discretion) divided by the number of months to elapse before one month prior to the expiration date of the policy or policies to be replaced or renewed. All such payments described in this paragraph 2 shall be held by Mortgagee or a depository designated by Mortgagee in trust without accruing or without any obligation arising for the payment of interest thereon. If the funds so deposited are insufficient to pay, when due, all taxes and premiums as aforesaid, the 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 the Mortgagee nor depository shall be liable for any failure to make the payments of insurance premiums, or of taxes, unless Mortgagor, while not in default hereunder, shall have requested said Mortgagee or depository in writing to make application of such deposits to the payment of the particular insurance premium or taxes, accompanied by the bills for such insurance premiums or taxes, provided, however, Mortgagee may at its option make or cause the depository to make any such application of the aforesaid deposits without any direction or request to do same by Mortgagor. Mortgagee may suspend, in whole or in part, and

88481136

later reinstate, the application of this paragraph as often as it may determine. (b) Mortgagor shall establish with Mortgagee, or a depository designated by Mortgagee, an account (as approved by Mortgagee), and which shall maintain, at all times, a minimum account balance of at least twice the amount of monthly principal and interest, and monthly tax and insurance premium deposits due under the Note and this Mortgage. In addition, Mortgagor shall irrevocably authorize Mortgagee to debit the account balance on each monthly due date until the Note and all amounts due under this Mortgage have been paid in full.

3. Taxes. Mortgagor shall immediately pay, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer service charges, and all other charges of whatever kind, ordinary or extraordinary, which may be levied or imposed against the premises, and to furnish to Mortgagee, upon Mortgagee's request, official receipts therefor within thirty (30) days after payment thereof, provided, however, if Mortgagee has not suspended the monthly deposits for taxes required by paragraph 2 hereof, Mortgagee, at its option, either may make such deposits available to Mortgagor for the payments required under this paragraph 3, or may make such payments on behalf of Mortgagor.

4. Insurance.

(a) Casualty. Mortgagor shall keep the improvements now existing or hereafter erected on the premises constantly insured against loss or damage under such types and forms of insurance policies and in the minimum amount of the outstanding balance of the principal sum from time to time and for such periods as Mortgagee may from time to time require, and Mortgagor shall pay promptly, when due, any premiums on such insurance, provided, however, that if the Mortgagee has not suspended the monthly deposits for insurance required by paragraph 2 hereof, Mortgagee, at its option, either may make such deposits available to Mortgagor for the payments required under this paragraph 4(a), or may make such payments on behalf of Mortgagor. Unless Mortgagee otherwise agrees, all such insurance shall provide "all risk" full insurable value replacement cost coverage and shall be carried with companies having a Best's rating of A+ or A acceptable to the Mortgagee and the policies and renewals (or certificates evidencing same), marked by the insurer "PAID", shall be delivered to the Mortgagee at least thirty (30) days before the expiration of the old policies and shall have attached thereto standard noncontributing mortgage clauses in favor of and entitling the Mortgagee alone to collect any and all of the proceeds payable under all such insurance, as well as standard waiver of subrogation endorsements, and shall contain provision for ten (10) days notice to Mortgagee prior to any cancellation or amendment thereof. Mortgagor shall not carry separate insurance, concurrent in kind or form and contributing in the event of loss, with any insurance required hereunder. In the event of a change in ownership or of occupancy of the premises (if approved in writing by Mortgagee), immediate notice thereof by mail shall be delivered to all insurers. In the event of any loss covered by such insurance, Mortgagor shall immediately notify Mortgagee in writing, and Mortgagor hereby authorizes and directs each and every insurance company concerned to make payments for such loss directly and solely to Mortgagee (who may, but need not, make proof of loss) and Mortgagee is hereby authorized to adjust, collect, and compromise in its discretion all claims under all policies, and Mortgagor shall sign, upon demand by Mortgagee, all receipts, vouchers, and releases required by such insurance companies. After deducting any costs of collection, Mortgagee may use or apply the proceeds, at its option, (i) as a credit upon any portion of the indebtedness secured hereby, or (ii) in the event there is no default hereunder, to repairing and restoring the improvements in which event the Mortgagee shall not be obliged to see to the proper application thereof nor shall the amount so released or used for restoration be deemed a payment on the indebtedness secured hereby, or (iii) to deliver same to the Mortgagor. In the event Mortgagee shall elect to apply such proceeds to restoring the improvements, such proceeds shall be made available, from time to time, upon Mortgagee being furnished with satisfactory evidence of the estimated cost of such restoration and with such architect's certificates, waivers of lien, contractors' sworn statements and other evidence of cost and of payments as Mortgagee may reasonably require and approve, and if the estimated cost of the work exceeds ten percent (10%) of the original principal amount of the indebtedness secured hereby, Mortgagor shall furnish Mortgagee with all plans and specifications for such rebuilding or restoration as Mortgagee may reasonably require and approve. No payment made prior to the

68181136

UNOFFICIAL COPY

final completion of the work shall exceed ninety percent (90%) of the value of the work performed, from time to time, and at all times the undisbursed balance of said proceeds remaining in the hands of Mortgagee shall be at least sufficient to pay for the cost of completion of the work, free and clear of any liens. In the event of foreclosure of this Mortgage, or other transfer of title to the premises in the extinguishment of the indebtedness secured hereby, all right, title, and interest of Mortgagor, in and to any insurance policies then in force, and any claims or proceeds thereunder shall pass to Mortgagee or any purchaser or grantee. In the event Mortgagee, in its reasonable discretion, determines that any insurance provided by Mortgagor, does not comply with the insurance requirements set forth herein, then Mortgagee may, at any time and at its own discretion, procure and substitute for any and all of the insurance so held as aforesaid, such other policy or policies of insurance, in such amount and carried in such company as it may determine, the cost of which shall be repaid to Mortgagee by Mortgagor upon demand. Mortgagor shall furnish to Mortgagee, upon its request, estimates or appraisals of insurable value, without cost to the Mortgagee, such as are regularly and ordinarily made by insurance companies to determine the then replacement cost of the building or buildings and improvements on the premises.

(b) Liability. Mortgagor shall carry and maintain comprehensive public liability insurance as may be required from time to time by Mortgagee in forms, amounts, and with companies having a Best's rating of A+ or A or satisfactory to Mortgagee, and Mortgagor will apply all insurance proceeds under such policies to the payment and discharge of the liabilities in respect of which such proceeds are collected. It is understood and agreed that the amounts of coverage shall not be less than ONE MILLION DOLLARS single limit and ONE MILLION DOLLARS umbrella coverage and that the policy 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 or amendment thereof.

(c) Rental Insurance. Mortgagor shall carry and maintain rental insurance to cover a loss of six (6) months' rental income from the premises in form, amount, and with companies having a Best's rating of A+ or A or satisfactory to Mortgagee. Certificates of such insurance, premiums prepaid, shall be deposited with Mortgagee and shall contain provision for twenty (20) days' notice to the Mortgagee prior to any cancellation thereof.

58481136

5. Preservation, Restoration and Use of Premises. Mortgagor shall complete, within a reasonable time, any building or buildings or other improvements now or at any time in the process of being constructed upon the real estate. No building or other improvement on the premises shall (except as required by law) be altered, removed, or demolished nor shall any fixtures or appliances on, in or about said buildings or improvements 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 hereby or by any separate security agreement given 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 security interest in or encumbrances thereon or reservation of title thereto. Mortgagor shall promptly repair, restore, or rebuild any buildings or improvements now or hereafter on the premises which may become damaged or be destroyed. 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. Mortgagor shall not permit, commit, or suffer any waste, impairment, or deterioration of the premises or any part or improvement thereof, and shall keep and maintain the premises and every part thereof in good repair and condition and effect such repairs as Mortgagee may reasonably require, and, from time to time, make all needful and proper replacements and additions thereto so that said buildings, fixtures, machinery, and appurtenances will, at all times, be in good condition, fit and proper for the respective purposes for which they were originally erected or installed. Mortgagor shall not suffer or permit the premises to be abandoned or to be used for a purpose other than that for which the premises are presently used, or represented to Mortgagee to be used. Mortgagor shall not subject the premises to any use

8. Sale, Conveyance or Other Transfers. In the event Mortgagor shall, without the prior written consent of Mortgagee, which consent Mortgagee may, in its absolute discretion, withhold, sell, transfer, convey, encumber, lease, or assign the title to all or any portion of the premises, or the rents, issues, or profits therefrom, whether by operation of law, voluntarily, or otherwise, or shall contract to do any of the foregoing, or in the event the owner, or if there be more than one, any of the owners, of the beneficial interest in the trust of which Mortgagor is trustee (any such owner being hereinafter referred to as a

7. Liens and Encumbrances. Mortgagor shall keep the premises free from liens of mechanics and materialmen and from all other liens, charges, and encumbrances of whatever nature, regardless of (i) whether the same arise voluntarily or involuntarily on the part of Mortgagor and (ii) whether the same are subordinate to, prior to, or on a parity with the lien of this Mortgage, and shall furnish to Mortgagee satisfactory evidence of the payment and discharge of any such liens, charges, and encumbrances, asserted or claimed to exist against the premises, excepting, however, any lien or encumbrance expressly consented to by Mortgagee with respect to which Mortgagor shall pay, when due, the indebtedness secured thereby and upon Mortgagee's request, furnish to Mortgagee satisfactory evidence of such payment or payments. In the event Mortgagor shall suffer or permit any superior or junior lien to be attached to the premises, Mortgagee, at its option, has the unqualified right to accelerate the maturity of the Note causing the full principal balance and accrued interest to be immediately due and payable without notice to Mortgagor.

6. Compliance with Governmental, Insurance and Other Requirements. Mortgagor shall comply with all statutes, ordinances, orders, regulations, decrees relating to the premises or the use thereof of any federal, state, or municipal authority, and shall observe and comply with all conditions and requirements necessary to maintain in force the insurance required under paragraph 4 hereof and to preserve and extend any and all rights, licenses, permits (including, but not limited to, zoning variances, special exceptions, and nonconforming uses) privileges, franchises, and concessions which are applicable to the premises or which have been granted to or contracted for by Mortgagor in connection with any existing or presently contemplated use of the premises. In the event that any building or other improvement on the premises must be altered or removed to enable Mortgagor to comply with the foregoing provisions of this paragraph 6, Mortgagor shall not commence any such alterations or removals without Mortgagee's prior approval of the need therefor and the plans and specifications pertaining thereto. After such approval, which shall not be unreasonably withheld or delayed, Mortgagor, at its sole cost and expense, shall effect the alterations or removal so required and approved by Mortgagee. Mortgagor shall not by act or omission permit any building or other improvement on land not subject to the lien of this Mortgage to rely on the premises or any part thereof or any interest therein to fulfill any governmental or municipal requirement. Mortgagor shall not by act or omission impair the integrity of the premises as a single zoning lot separate and apart from all other premises. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this paragraph shall be void. Mortgagor shall duly and punctually perform and comply with all covenants and conditions expressed as binding upon it under any recorded document or any other agreement of any nature whatsoever binding upon it which pertains to the premises.

covenants or restrictions and shall not initiate, join in or consent to any change in any existing private restrictive covenant, zoning ordinance, or other public or private restriction limiting or defining the uses which may be made of or the kind of improvements which can be constructed on the premises or any part thereof, and shall promptly notify Mortgagee of, and appear in and defend, at its sole cost and expense, any such proceedings seeking to effect any of the foregoing. Mortgagor shall not subdivide the real estate and shall not subject the premises to the provisions of the condominium laws of the state in which the premises are situated.

55-181136

UNOFFICIAL COPY

-9-

"Beneficial Owner" shall, without the prior written consent of Mortgagee, which consent Mortgagee may, in its absolute discretion, withhold, transfer or assign all or any portion of such beneficial interest, or the rents, issues, or profits from the premises (including, without being limited to, a collateral assignment), whether by operation of law, voluntarily or otherwise, or shall contract to do any of the foregoing, then any of the foregoing acts, omissions, or occurrences shall constitute an event of default hereunder and Mortgagee, at its option, shall then have the unqualified right to accelerate the maturity of the Note, causing the full principal balance and accrued interest, to be immediately due and payable without notice to Mortgagee; and, in addition, Mortgagee shall also be entitled to pursue any and all rights and remedies granted hereunder or otherwise available to it, at law or in equity.

9. Stamp Tax. If at any time the United States government or any state, or municipal government shall require Internal Revenue or other documentary stamps hereon or on the Note secured hereby, or shall otherwise impose a tax or impose an assessment on this Mortgage or on the Note or shall require payment of an interest equalization tax upon the indebtedness secured hereby, then the said indebtedness and the accrued interest thereon shall be and become due and payable at the election of Mortgagee thirty (30) days after the mailing of notice of such election to Mortgagee, provided, however, said election shall be unavailing and this Mortgage and the Note shall be and remain in effect, if Mortgagee lawfully may pay for such stamps or such tax including interest and penalties thereon, or on behalf of Mortgagee and Mortgagee does in fact pay, when payable, for all such stamps or such tax, as the case may be, including interest and penalties thereon.

10. Effect of Change in Laws Regarding Taxation. 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 land for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagee, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagee's interest, in the property, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holder thereof, then, and in any such event, Mortgagee, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse for Mortgagee, provided, however, that if, in the opinion of counsel for Mortgagee, it might be unadvisable to require Mortgagee to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then, and in such event, Mortgagee may elect, by notice in writing given to Mortgagee, to declare all of the indebtedness secured hereby to be and become due and payable within thirty (30) days from the giving of such notice. Notwithstanding the foregoing, Mortgagee shall not be obligated to pay any portion of Mortgagee's federal or state income tax.

11. Mortgagee's Performance of Defaulted Acts. In case of default herein, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagee in any form and manner deemed expedient by Mortgagee. By way of illustration and not in limitation of the foregoing, Mortgagee may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise, or settle any tax lien or other prior or junior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the premises or contest any tax or assessment. Mortgagee is hereby authorized to make or advance, in the place and stead of the Mortgagee, any payment relating to taxes, assessments, water rates, sewer rentals, and other governmental or municipal charges, fines, impositions, or liens asserted against the premises and may do so according to any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of the bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien, or title or claim thereof; and the Mortgagee is further authorized to make or advance in the place and stead of the Mortgagee any payment relating to any apparent or threatened adverse title, lien, statement of lien, encumbrance, claim, or charge, or payment otherwise relating to any other purpose herein and hereby authorized, but not enumerated in this paragraph, and may do so whenever, in its judgment and discretion, such advance or advances shall seem necessary or desirable to protect the full

UNOFFICIAL COPY

(b) Assignment of Leases. All right, title and interest of the Mortgagor in and to certain present leases to rent certain portions of

(a) Assignment of Rents. All right, title and interest of the Mortgagor in and to all present leases affecting the premises, and including and together with any and all future leases upon all or any part of the premises, and together with all of the rents, income, receipts, revenues, issues and profits from or due or arising out of the premises have been transferred and assigned simultaneously herewith to the Mortgagee as further security for the payment of said indebtedness under provisions of a certain instrument captioned Assignment of Rents, of even date herewith, executed by Mortgagor and to be recorded simultaneously herewith, the terms, covenants and conditions of which 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. All leases affecting the premises shall be submitted by the Mortgagor to the Mortgagee for its approval prior to the execution thereof. All approved and executed leases shall be specifically assigned to the Mortgagee by instrument in form satisfactory to Mortgagee. All or any such leases shall, at the option of Mortgagee, be paramount or subordinate to this Mortgage.

14. Rents and Leases.

13. Acknowledgment of Debt. Mortgagor shall furnish from time to time within seven (7) days after Mortgagee's request, a written statement, duly acknowledged, verifying the amount due under this Mortgage (as reflected on the books and records of Mortgagee) and whether any alleged offsets or defenses exist against the indebtedness secured by this Mortgage.

12. Eminent Domain. Any and all awards heretofore or hereafter made or to be made to the present and all subsequent owners of the premises, by any governmental or other lawful authority for taking, by condemnation or eminent domain, the whole or any part of the premises or any improvement located thereon or any easement therein or appurtenant thereto (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for payment thereof), are hereby assigned by Mortgagor to Mortgagee, which award 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 such proceedings under condemnation or eminent domain, affecting all or any part of the said premises or any easement therein or appurtenant thereto, including severance and consequential damage and change in grade of streets, and will deliver to Mortgagee copies of any and all papers served in connection with any such proceedings. Mortgagor shall make, execute, and deliver to Mortgagee, at any time or times upon request, free, clear, and discharged of any encumbrances of any kind whatsoever, any and all further assignments and instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning to Mortgagee all awards and other compensation heretofore and hereafter to be made to Mortgagor for any taking, either permanent or temporary, under any such proceeding. The proceeds of all such awards shall be paid to Mortgagee and may be applied by Mortgagee, at its option, after the payment of all of its expenses in connection with such proceedings, including costs and attorneys' fees, to the redemption of the indebtedness secured hereby or to restoring the improvement, in which even the same shall be paid out in the same manner as is provided, with respect to insurance proceeds, in paragraph 4(a) hereof.

security intended to be created by this instrument, and in connection with any such advance, Mortgagee, at its option, may and is hereby authorized to obtain a continuation report of title or title insurance policy prepared by a title insurance company of Mortgagee's choosing. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Mortgagee to protect the premises and the lien hereof, 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 considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

88481136

UNOFFICIAL COPY

88181135

the premises, and including and together with any and all future leases to rent all or any part of the premises, and together with all of the income, receipts, revenues, issues and profits from or due or arising out of the said leases, have been transferred and assigned simultaneously herewith to the mortgagee as further security for the payment of said indebtedness under provisions of a certain instrument captioned Assign- ment of Interest in Leases of even date herewith, executed by Mortgagee and to be recorded simultaneously herewith, the terms, covenants and con- ditions of which 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. All future leases to rent the premises shall be submitted by the Mortgagee to the Mortgagee for its approval prior to the execution thereof. All approved and executed leases shall be specifically assigned to mortgagee by instrument in form satisfactory to Mortgagee. All or any such leases shall, at the option of Mortgagee, be paramount or subordinate to this Mortgage.

15. Inspection of Premises. Mortgagee shall permit Mortgagee or its agents to inspect the premises at all reasonable times, and access there- to shall be permitted for such purpose.

16. Inspection of Books and Records. Mortgagee shall keep and main- tain full and correct records showing in detail the income and expenses of the premises and within ten (10) days after demand therefor shall al- low Mortgagee to examine such books and records and all supporting vouch- ers and data at any time and from time to time on request at its offices, heretofore identified, or at such other location as may be mutually agreed upon.

17. Future Advances. Mortgagee may, at its option upon request of Mortgagee, at any time before full payment of this Mortgage, make further advances to Mortgagee, and the same with interest shall be on a parity with, and not subordinate to, the indebtedness evidenced by the Note and herein contained, provided, that the amount of principal secured hereby and remaining unpaid shall not, including the amount of such advances, exceed the original principal amount secured hereby, and provided, that if Mortgagee shall make further advances as aforesaid, Mortgagee shall repay all such advances in accordance with the note or notes, or agreement or de- agreements, evidencing the same, which Mortgagee shall execute and de- liver to Mortgagee and which shall be payable no later than the maturity of this Mortgage and shall include such other terms as Mortgagee shall require.

18. Purpose of Loan. The entire proceeds of the Note will be used for the purposes specified in Paragraph 6404, Section 4(c), of Chapter 17, Illinois Revised Statutes, and the indebtedness secured hereby con- stitutes a "business loan" which comes within the purview of said Paragraph 6404, Section 4(c).

19. Partial Invalidity. Mortgagee and Mortgagee intend and believe that each provision in this Mortgage and the Note comports with all ap- plicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Mortgage or the Note is found by a court of law to be in violation of any applicable local, state or federal ordinance, stat- ute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Mortgage or the Note to be illegal, invalid, unlawful, void or unenforce- able as written, then it is the intent both of Mortgagee and Mortgagee that such portion, provision or provisions shall be given force to the fullest possible extent that it or they are legal, valid and enforceable, that the remainder of this Mortgage and the Note shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obliga- tions and interest of Mortgagee and Mortgagee under the remainder of this Mortgage and the Note shall continue in full force and effect. If, under the circumstances, interest in excess of the limit allowable by law shall have been paid by Mortgagee in connection with the loan evidenced by the Note, such excess shall be applied to Mortgagee in the manner to be deter- mined by Mortgagee and if any such excess interest has accrued, Mortgagee shall eliminate such excess interest so that under no circumstances shall

88481136

interest on the loan evidenced by the Note exceed the maximum rate allowed by law.

20. Subrogation. In the event the proceeds of the loan made by Mortgagee to Mortgagee, or any part thereof, or any amount paid out or advanced by Mortgagee, be used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior lien or encumbrance upon the premises or any part thereof, then Mortgagee shall be subrogated to such other lien or encumbrance and to any additional security held by the holder thereof and shall have the benefit of the priority of all of same.

21. Mortgagee's Right to Deal with Transferee. In the event of the voluntary sale, or transfer by operation of law, or otherwise, of all or any part of the premises, Mortgagee is hereby authorized and empowered to deal with such vendee or transferee with reference to the premises, or the debt secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might with Mortgagee, without in any way releasing or discharging Mortgagee from Mortgagee's covenants and/or undertakings hereunder, including, without limitation, paragraph 8 hereof, and without Mortgagee waiving its right to accelerate the Note as set forth in said paragraph 8.

22. Execution of Security Agreement and Financing Statement. Mortgagee, within ten (10) days after request by mail, shall execute, acknowledge, and deliver to Mortgagee a Security Agreement, Financing Statement, or other similar security instrument, in form satisfactory to Mortgagee, covering all property, of any kind whatsoever owned by Mortgagee, which, in the sole opinion of Mortgagee, is essential to the operation of the premises and concerning which there may be any doubt as to whether the title to same has been conveyed by or a security interest therein perfected by the Mortgagee under the laws of the State of Illinois and shall further execute, acknowledge, and deliver any financing statement, affidavit, continuation statement, or certificate or other documents as Mortgagee may request in order to perfect, preserve, maintain, continue, and extend the security instrument. Mortgagee further agrees to pay to Mortgagee, on demand, all costs and expenses incurred by Mortgagee in connection with the preparation, execution, recording, filing, and recording of any such document. To the extent that this instrument 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 said term is defined in the Uniform Commercial Code).

23. Releases. Mortgagee, without notice, and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens, may release any part of the premises or any person liable for any indebtedness secured hereby, without in any way affecting the liability of any party to the Note and this Mortgagee or guaranty, if any, given as additional security for the indebtedness secured hereby and without in any way affecting the priority of the lien of this Mortgagee, and may agree with any party obligated on said indebtedness herein to extend the time for payment of any part or all of the indebtedness secured hereby. Such agreement shall not, in any way, release or impair the lien created by this Mortgagee, or reduce or modify the liability, if any, of any person or entity personally obligated for the indebtedness secured hereby, but shall extend the lien hereof as against the title of all parties having any interest in said security which interest is subject to the indebtedness secured by this Mortgagee.

24. Expenses Incurred by Mortgagee. Any costs, damages, expenses or fees, including attorneys' fees, incurred by Mortgagee in connection with (i) sustaining the lien of this Mortgagee or its priority, (ii) obtaining any commitment for title insurance or title insurance policy, (iii) protecting the premises, (iv) recovering any indebtedness secured hereby, (v) any litigation or proceedings (including, but not limited to, bankruptcy, probate and administrative law proceedings) affecting this Mortgagee, the Note, or the premises, or (vi) preparing for the commencement, defense or participation in any threatened litigation or proceedings as aforesaid, or as otherwise enumerated in paragraph 25(c) hereof, shall be so much additional indebtedness secured hereby and shall be immediately due and payable by Mortgagee, without notice, with interest thereon at the default interest rate.

UNOFFICIAL COPY

-10-

(d) Mortgagor's Right of Possession in Case of Default. In any case in which, under the provisions of this Mortgage, Mortgagor has a

of the premises. had pursuant to such decree the true condition of the title to or value to prosecute such suit or to evidence to bidders at any sale which may be with respect to title as Mortgagor may deem reasonably necessary either during all abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and similar data and assurances estimated as to items to be expended after entry of the decree) of pro- piers' charges, publication costs, survey costs, and costs (which may be appraisers' fees, outlays for documentary and expert evidence, stenogra- gage or the Note there shall be allowed and included, as additional in- this Mortgage or enforce any other remedy of Mortgagor under this Mort- Expense of Litigation. In any suit to foreclose the lien of

the laws of the state in which the premises are situated. (v) enforce this Mortgage in any other manner permitted under elect, or (vi) enforce this Mortgage in any other manner permitted under appropriate legal or equitable remedy or otherwise as Mortgagor shall for any foreclosure hereunder, or for the enforcement of any other ap- this Mortgage, or in aid of the execution of any power herein granted, or the performance of any covenant, condition or agreement in the Note or in whether by action, suit or proceeding in equity or at law for the speci- indebtedness, (iv) take such steps to protect and enforce its rights shall be and continue as a lien on the premises securing the unmatured shall not affect the unmatured part of the indebtedness and this Mortgage premises under such a foreclosure proceeding shall be subject to and installment or installment of such indebtedness only and any sale of the ing with foreclosure of this Mortgage with respect to any delinquent in- without accelerating the due date of the entire indebtedness by proceed- delinquent installment or installment of the indebtedness secured hereby closing of this Mortgage, (iii) institute proceedings to collect any ately due and payable, (ii) institute proceedings for the complete fore- expressly waived by Mortgagor) thereupon the same shall become immedi- ately due and payable, without notice or demand (each of which is hereby option, (i) declare the entire indebtedness secured hereby to be immedi- Remedies. In addition to any other remedy herein specified, If any default under this Mortgage shall occur, Mortgagor may, at its

and remains in force, undischarged or unsatisfied for a period of sixty days. any bankruptcy or other similar laws of the United States or any state or any guarantor of the indebtedness secured hereby seeking relief under (b) approving any petition filed against Mortgagor, any Beneficial Owner (trustee) or of such Beneficial Owner or guarantor, as the case may be, or part of the assets of Mortgagor (as trustee) at the time Mortgagor is a jurisdiction, (c) appointing a receiver or trustee of all or a substantial sent of the party against whom it is entered, by a court of competent Owner, or guarantor of the indebtedness secured hereby, without the con- trustee, (d) at the time Mortgagor is a trustee, or of any Beneficial or decree is entered upon an application of a creditor of Mortgagor (as purpose of effecting any of the foregoing, or (iv) if any order, judgment ability to pay its debts as they mature, or (f) takes any action for the signment for the benefit of creditors, or (e) admits in writing its in- lar laws of the United States or any state, or (d) makes a general as- allegations of a petition filed against it under any bankruptcy or simi- a petition seeking relief under or files an answer admitting the material or trustee for itself or for all or any part of its property or (c) files the indebtedness secured hereby (a) is voluntarily adjudicated a bankrupt or insolvent, or (b) seeks or consents to the appointment of a receiver assigning said indebtedness, including, without limitation, any guaranty, assignment of rents or assignment of leases given to secure such indebt- edness, or (iii) if Mortgagor, any Beneficial Owner, or any guarantor of the indebtedness secured hereby, or in any other instrument now or hereafter evidencing or pliance with any other term, covenant or condition in this Mortgage, or (ii) if any default occurs in the due and punctual performance of or com- thereof, or of interest thereon, or of any installment of interest, or ment of the entire principal sum secured hereby, or of any installment Mortgage when and (i) if any default occurs in the due and punctual pay- (a) Events of Default. It shall constitute a default under this

UNOFFICIAL COPY

-11-

right to institute foreclosure proceedings whether or not the entire principal sum secured hereby is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after surrender to Mortgagee and upon demand of Mortgagee, Mortgagee shall be entitled to take actual possession of the premises, or any part thereof, personally or by its agent or attorneys, as for condition broken and Mortgagee in its discretion may enter upon and take and maintain possession of all or any part of said premises, together with all documents, books, records, papers, and accounts of Mortgagee or the then manager of the premises relating thereto, and may exclude Mortgagee, its agents, or servants, wholly therefrom and may, as attorney in fact or agent of Mortgagee, or in its own name as Mortgagee and under the powers herein granted: (i) hold, operate, manage, and control the premises and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avals, rents, issues and profits of the premises including actions for recovery of rent, actions in forcible detainer and actions in distress for rent, hereby granting full power and authority to exercise each an every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Mortgagee, (ii) cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagee to cancel the same, (iii) elect to disaffirm any lease or sublease made subsequent to this Mortgage or subordinated to the lien hereof, (iv) extend or modify any then existing leases and make new leases, 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 hereunder and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it 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 Mortgagee and all persons whose interests in the premises are subject to the lien hereof and to be also binding upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser, (v) make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements to the premises as to Mortgagee may seem judicious, (vi) insure and reinsure the premises and all risks incidental to Mortgagee's possession, operation, and management thereof, and (vii) receive all avals, rents, issues and profits.

(e) Application of Rental Proceeds. Any avals, rents, issues and profits of the premises received by Mortgagee after having possession of the premises, or pursuant to any assignment thereof to Mortgagee under the provisions of this Mortgage or of any separate Assignment of Rents or Assignment of Leases, 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: (i) to the payment of the operating expenses of the premises, including reasonable compensation to Mortgagee or the receiver and its agent or agents, its management of the premises has been delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases and the payment of premiums on insurance hereinabove authorized, (ii) to the payment of taxes, special assessments, and water taxes now due or which may hereafter become due on the premises, or which may become a lien prior to the lien of this Mortgage, (iii) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of said premises, including the cost from time to time of installing or replacing personal property or fixtures necessary to the operation of the premises, and of placing said property in such condition as will, in the judgment of Mortgagee or receiver, make the premises readily rentable, (iv) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale, or (v) with respect to any overplus or remaining funds to the Mortgagee, its successors, or assigns, as their rights may appear.

(f) Appointment of Receiver. Upon or at any time after the filing of any complaint to foreclose this Mortgage, Mortgagee consents upon application by Mortgagee to the appointment of a receiver of the premises. Such appointment may be made either before or after sale without

88481136

UNOFFICIAL COPY

-12-

88181135

notice and 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 and without regard to the then value of the premises or whether the same shall be then occupied as a homestead or not, and without bond being required of the applicant. Such receiver shall have the power to take possession, control, and care of the premises and to collect the rents, issues, and profits of the premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption (provided that the period of redemption has not been waived by Mortgagor), as well as during any further times when Mortgagor, its heirs, administrators, executors, successors, or assigns, except for the intervention of such receiver, would be entitled to collect such rents, issues, and profits, and all other powers which may be necessary or are useful in such cases for the protection, possession, control, management, and operation of the premises, during the whole of said period. To the extent permitted by law, said receiver may be authorized by the court to extend or modify any then existing leases and to make new leases, which extensions, options to leases may provide for terms to expire, or for the maturity date of the indebtedness hereunder it being understood and agreed that any such leases and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser.

(g) Sale of premises. Any real estate or any interest or estate therein sold pursuant to any court order or decree obtained pursuant to the mortgage shall be sold in one parcel, as an entirety, or in such parcels and in such manner or order as Mortgagor, in its sole discretion, may elect, to the maximum extent permitted by the laws of the state in which the premises are situated. At any such sale, Mortgagor may bid for and acquire, as purchaser, the premises or any part thereof, and in lieu of paying cash therefor, may make settlement for the purchase price by crediting upon the indebtedness due the amount of Mortgagor's bid.

(h) Application of Proceeds From Foreclosure Sale. The proceeds of any foreclosure sale of the premises shall be distributed and applied in the following order of priority: (i) on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in paragraph 25(c) hereof, (ii) all other items which, under the terms hereof, constitute secured indebtedness additional to that evidenced by the Note, with interest thereon, at the default interest rate, (iii) all principal and interest remaining unpaid on the Note, and (iv) any overplus to Mortgagor, its successors or assigns, as their rights may appear.

(i) Application of Deposits Held by Mortgagor. With respect to any deposits made with or held by Mortgagor or any depository pursuant to any of the provisions of this mortgage, in the event of a default in any of the provisions contained in this mortgage or in the Note secured hereby, Mortgagor may, at its option, without being required to do so, apply any monies or securities which constitute such deposits on any of Mortgagor's obligations herein or in the Note contained in such order and manner as Mortgagor 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 premises. Such deposits are hereby pledged as additional security for the prompt payment of the Note and any other indebtedness hereunder and shall be held to be irrevocably applied by the depository for the purposes for which made hereunder and shall not be subject to the direction or control of the Mortgagor.

(j) Waiver of Statutory Rights. Mortgagor shall not apply for or avail itself of any appraisal, 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, waives any and all right to have the property and estates comprising the premises marshalled upon any foreclosure of the lien hereof and agrees

(p) Remedies Cumulative and Concurrent. The rights and remedies of Mortgagee as provided in the Note, in this Mortgage and in the guaranty of any guarantor shall be cumulative and concurrent and may be pursued separately, successively or together against Mortgagor, any guarantor or the premises, or any one or more of them, at the sole discretion of Mortgagee, and may be exercised as often as occasion therefor shall arise, all to the maximum extent permitted by the laws of the state in which the premises are situated. If Mortgagee elects to proceed under one right or remedy under this Mortgage or the Note, Mortgagee may at any time cease proceeding under such right or remedy and proceed under any other right or remedy under this Mortgage or the Note.

(o) Rescission of Election. Acceleration of maturity, once made by Mortgagee may, at the option of Mortgagee be rescinded, and any proceedings brought to enforce any rights or remedies hereunder may, at Mortgagee's option, be discontinued or dismissed, whereupon, in either of positions, and the rights, remedies and power of Mortgagee shall continue as if such acceleration had not been made or such proceedings had not been commenced, as the case may be.

(n) Delays and Omissions. No delay in the exercise of or failure to exercise any remedy or right accruing or any default under this Mortgage shall impair any such remedy or right or be construed to be a waiver of any such default or acquiescence therein, nor shall it affect any subsequent default of the same or of a different nature.

(m) Tender of Payment After Acceleration. Upon default by Mortgagor and following the acceleration of maturity as aforesaid, a tender of payment of the amount necessary to satisfy the entire indebtedness secured hereby made at any time prior to foreclosure sale by Mortgagor, its successors or assigns shall constitute an evasion of the prepayment privilege and shall be deemed to be a voluntary prepayment hereunder. In case, after legal proceedings are instituted to foreclose the lien of this Mortgage, tender is made of the entire indebtedness due hereunder, Mortgagee shall be entitled to reimbursement for expenses incurred in connection with such legal proceedings, including such expenditures as are enumerated above, and such expenses shall be so much additional indebtedness secured by this Mortgage, and no such suit or proceedings shall be dismissed or otherwise disposed of until such fees, expenses, and charges shall have been paid in full.

(l) Partial Payments. Acceptance by Mortgagee of any payment which is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of Mortgagee's right to exercise its option to declare the whole of the principal sum then remaining unpaid, together with all accrued interest thereon, immediately due and payable without notice, or any other rights of the Mortgagee at that time or any subsequent time, nor nullify any prior exercise of such option or such rights of Mortgagee without its express consent except and to the extent otherwise provided by law.

(k) Waiver of Defenses. No action for the enforcement of the lien of this Mortgage shall be subject to any defense which would not be good and available to the party interposing the same in an action of law upon the Note.

THE TRUST ESTATE) ACQUIRING ANY INTEREST IN OR TITLE TO THE PREMISES OR JUDGMENT CREDITORS OF MORTGAGOR IN ITS REPRESENTATIVE CAPACITY AND OF BENEFICIARILY INTERESTED THEREIN, AND EACH AND EVERY PERSON (EXCEPT DECREEE MORTGAGE, ON BEHALF OF MORTGAGOR, THE TRUST ESTATE, ALL PERSONS REDEMPTION FROM SALE UNDER ANY ORDER OR DECREE OF FORECLOSURE OF THIS TRUST INSTRUMENT OR BY A PERSON HAVING A POWER OF DIRECTION OVER MORTGAGOR TO, AND MORTGAGOR DOES HEREBY WAIVE ANY AND ALL RIGHTS OF PURPOSES. MORTGAGOR WARRANTS IT HAS BEEN AUTHORIZED OR EMPOWERED BY THE this mortgage is not used or intended to be used for agricultural dwelling for not more than four families and that the land covered by not be used, in whole or in part, to finance the construction of a proceeds of the loan secured hereby have not been, are not being and will improved with a dwelling for not more than four families and that the land covered by this Mortgage at the time of execution hereof is not premises sold as an entirety. Mortgagor acknowledges and agrees that the that any court having jurisdiction to foreclose such lien may order the

88191136

68181136

26. Giving of Notice. All notices to Mortgagor that are either required or contemplated in connection with this Mortgage shall be in writing, and shall be deemed given upon the earlier of the actual receipt thereof by Mortgagor and forty-eight (48) hours after mailing the same to Mortgagor at Mortgagor's address first above written with postage prepaid via certified first class mail. By notice complying with the foregoing provisions of this section, Mortgagor may from time to time change its address for notice purposes, except that any such notice shall not be deemed delivered until actually received. Except as otherwise specifically required, notice of the exercise of any option granted to the Mortgagor herein, or in the Note secured hereby, is not required to be given.

27. Time is of the Essence. It is specifically agreed that time is of the essence of this Mortgage. The waiver of the options or obligations secured hereby shall not at any time thereafter be held to be abandonment of such rights.

28. Mortgagee's Lien for Service Charge and Expenses. 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) the payment of any and all loan commissions, service charges, liquidated damages, expenses, and advances due to or incurred by the Mortgagor in connection with this transaction.

29. Default Interest Rate. The term "default interest rate" is deemed to mean interest at the rate of three percent (3%) per annum in excess of the interest rate from time to time prevailing under the Note until paid.

30. Modifications. This Mortgage may not be changed, waived, discharged or terminated orally, but only by an instrument or instruments in writing, signed by the party against which enforcement of the change, waiver, discharge or termination is asserted.

31. Covenants to Run with the Land. All the covenants hereof shall run with the land.

32. Captions. The captions and headings of various paragraphs are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

33. Construction. The place of contract and payment being located in Illinois, this Mortgage and the rights and indebtedness hereby secured shall be construed and enforced according to the laws of the State of Illinois.

34. Binding on Successors and Assigns, etc. This Mortgage and all provisions hereof shall extend and be binding upon Mortgagor's successors and assigns and all persons claiming under or through Mortgagor, and the word "Mortgagor" when used herein shall include and refer to (in addition to Mortgagor) all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage. The word "mortgagee" when used herein shall include the successors and assigns of the Mortgagee named hereby, whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

35. Further Assurances. Mortgagor shall execute, acknowledge and deliver to Mortgagee and to any subsequent holder from time to time upon demand (and pay the costs of preparation and recording thereof) any further instrument or instruments, including, but not limited to, mortgages, security instruments, financing statements, assignments and renewals and substitution notes, so as to reaffirm, to correct and to perfect the evidence of the obligation hereby secured and the lien of Mortgage to all or any part of the premises intended to be hereby mortgaged, whether now mortgaged, later substituted for, or acquired subsequent to the date of this Mortgage and extensions or modifications thereof, and will do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage. Provided the foregoing to the contrary notwithstanding, nothing in this paragraph contained shall be so construed so as to increase the obligations of the Mortgagor beyond those which might arise pursuant to this Mortgage and the Note secured hereby.

UNOFFICIAL COPY

My commission expires: _____

4-3-89

Given under my hand and Notarial Seal this _____ Day of _____, 1988.

I, The undersigned a Notary Public in and for said county and state, do hereby certify that Leo A. Cardella and James Cardella personally known to me to be the same person(s) whose name(s) are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed and delivered the said instrument as their free voluntary act, for the uses and purposes therein set forth.

STATE OF ILLINOIS)
COUNTY OF _____)
SS _____)

BY: James Cardella
BY: Leo A. Cardella

36. Recording and Filing. Mortgagor, at its expense, will cause this Mortgage and all supplements thereto for which constructive notice must be given to protect Mortgagee, at all times to be recorded and filed, and re-recorded and refilled, in such manner and in such places as Mortgagee shall reasonably request, and will pay all such recording, filing rerecording, refiling taxes, fees and other charges to the maximum extent permitted by the laws of the state in which the premises are situated.

37. Right to Contest Taxes and Mechanics' Liens. The obligations of Mortgagor under paragraphs 3 and 7 hereof, and the rights of Mortgagor under paragraph 11 hereof, are subject to the right Mortgagor shall have to contest in good faith the validity or amount of any tax or assessment or lien arising from any work performed at or materials furnished to the premises which right, however, is conditioned upon (1) such contest having the effect of preventing the collection of the tax, assessment or lien so contested and the sale or forfeiture of the premises or any part thereof or interest therein to satisfy the same, (11) Mortgagor giving Mortgagee written notice of its intention to contest the same in a timely manner, which, with respect to any contested tax or assessment, shall mean before any such tax, assessment or lien has been increased by any penalties or costs, and with respect to any contested mechanics' lien claim, shall mean within ten (10) days after Mortgagor receives actual notice of the filing thereof, (111) Mortgagor making and thereafter maintaining with Mortgagee or such other depository as Mortgagee may designate, a deposit of cash (or United States government securities, in discount form, or other security as may, in Mortgagee's sole discretion, be acceptable to Mortgagee, and in either case having a present value equal to the amount herein specified), in an amount not less than One Hundred Percent (100%) of the amount which, in Mortgagee's reasonable opinion, determined from time to time, shall be sufficient to pay in full such contested tax, assessment or lien and penalties, costs and interest that may become due thereon in the event of a final determination thereof adverse to Mortgagor in the event Mortgagor fails to prosecute such contest as hereinafter required, and (1V) Mortgagor diligently prosecuting such contest by appropriate legal proceedings. In the event Mortgagor shall fail to prosecute such contest with other security as aforesaid, on deposit as hereinafter provided, Mortgagee may, at its option, liquidate the securities deposited with Mortgagee, and apply the proceeds thereof and other monies deposited with Mortgagee in payment of, or on account of, such taxes, assessments, or liens or any portion thereof then unpaid, including the payment of all penalties and interest thereon.

981161136

Property

UNOFFICIAL COPY

88181136

"EXHIBIT A"

LOT 1 IN MCLEAN'S SUBDIVISION, OF PART OF LOT 8 IN ASSESSOR'S
DIVISION OD SECTION 35, TOWNSHIP 42 NORTH, RANGE 12, EAST OF
THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.: 04-35-400-014-0000

ADDRESS: 966 WAUKEGAN ROAD GLENVIEW, ILLINOIS 60025

Property of Cook County Clerk's Office
88181136