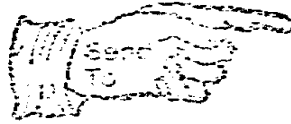


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THIS INSTRUMENT PREPARED BY:  
M. J. A. A. A.  
WHEN RECORDED MAIL TO  
HOME SAVINGS OF AMERICA  
P.O. BOX 7075  
PASADENA, CALIFORNIA 91109-7075

ALL NOTICES TO LENDER SHALL BE  
MAILED OR DELIVERED TO THE ABOVE  
ADDRESS

LOAN NO. 992617-1

Mortgage, Assignment of Rents and Security Agreement

This Mortgage (the "Instrument") is made this 7th day of NOVEMBER, 1988, between

EDWARD TOMCZYK AND MARIA TOMCZYK, HUSBAND AND WIFE AND ANIELA LANGOWSKI, A WIDOW

(the "Mortgagor") whose address is 5405 SOUTH SPRINGFIELD  
CHICAGO, IL. 60632

and HOME SAVINGS OF AMERICA, F.A.

a federally chartered savings and loan association (the "Lender"), whose address is P.O. Box 7075, Pasadena, California 91109-7075.

WITNESSETH: Mortgagor irrevocably grants, conveys, transfers and assigns to Lender that real property in

COOK County, Illinois, described as:

THE WEST HALF OF THE SOUTH 125 FEET OF THE EAST 120 FEET OF THE WEST 480 FEET OF THE SOUTH HALF OF BLOCK 37 IN FREDERICK H. BARTLETT'S CHICAGO HIGHLANDS, IN THE NORTH EAST QUARTER OF THE NORTH WEST QUARTER OF SECTION 19, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS 6918 AND 6920 WEST 60th STREET, CHICAGO, IL. 60638

PTN: 19-19-114-031

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TOGETHER with all interest which Mortgagor now has or may hereafter acquire in or to said property, and in and to (a) all easements and rights of way appurtenant thereto, and all heretofore or hereafter vacated alleys and streets abutting said property; (b) all buildings, structures, tenements, improvements, fixtures and appurtenances now or hereafter placed thereon, including, but not limited to, all fixtures, apparatus, machinery, equipment, engines, boilers, incinerators, building materials, appliances and goods of every nature whatsoever now or hereafter located in, on, or used, or intended to be used in connection with said property, including, but not limited to, those for the purposes of supplying or distributing air cooling, air conditioning, gas, electricity, water, air, refrigeration, ventilation, laundry, drying, dishwashing, garbage disposal and other services; and all related machinery and equipment, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, bathtubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, mirrors, cabinets, panelling, rugs, attached floor coverings, furniture, pictures, antennae, trees and plants, pool equipment, if being intended and agreed that such items, including replacements and additions thereto, be conclusively deemed to be affixed to and be part of the real property that is conveyed hereby; (c) all cabinets, shelving, furniture, displays, lights, machinery and other trade fixtures attached or otherwise installed on said property used for a trade or business, it being intended and agreed that such items, including replacements and additions thereto, be conclusively deemed to be affixed to and be part of the real property that is conveyed hereby; (d) all royalties, minerals, oil and gas rights and profits, water and water rights (whether or not appurtenant) owned by Mortgagor and shares of stock pertaining to such water or water rights, ownership of which affects said property; and (e) the rents, income, issues, and profits of all properties covered by this instrument; and (f) all accounts, accounts receivable, chattel paper, insurance claims, condemnation awards, general intangibles, contract rights, instruments, documents and other rights of Mortgagor arising out of or related to Mortgagor's ownership of such property, SUBJECT, HOWEVER, to the terms and conditions herein set forth. Mortgagor agrees to execute and deliver, from time to time, such further instruments as may be requested by Lender to evidence or confirm the lien of this instrument on any such properties. The properties conveyed to Trustee hereunder are hereinafter referred to as the "Property".

FOR THE PURPOSE OF SECURING:

(1) Payment of the sum of \$ 160,000.00 with interest thereon, according to the terms of a promissory note of even date herewith and having a final maturity date of NOVEMBER 10, 2018 made by Mortgagor payable to Lender or order, and all modifications, extensions or renewals thereof (the "Note"); (2) Payment of such additional sums with interest thereon (a) as may be hereafter advanced by Lender pursuant to paragraph 34 hereof (herein "Future Advances"); and (b) as may be incurred, paid out, or advanced by Lender, or may otherwise be due Lender under any provision of this Instrument; (3) If this is a construction loan, performance by Mortgagor of the covenants and agreements contained in a construction loan agreement between Mortgagor and Lender, of even date herewith, as provided in paragraph 17 hereof; (4) Performance of each agreement of Mortgagor contained herein or incorporated herein by reference or contained in any other agreements or covenants executed by Mortgagor relating to the loan secured hereby; (5) If this loan is secured by a leasehold, performance and keeping by Mortgagor of each of the covenants and agreements required to be kept and performed by Mortgagor as lessee pursuant to the terms of the lease and any and all other instruments creating Mortgagor's leasehold interest in or defining Mortgagor's rights as lessee in respect to the Property; (6) Performance by Mortgagor with each and every monetary obligation to be performed by Mortgagor under any recorded covenants, conditions and restrictions pertaining to the Property; (7) At Lender's option, payment, with interest thereon, of any other present or future indebtedness or obligation of Mortgagor (or of any successor in interest of Mortgagor to such Property) owing to Lender, whether created directly or acquired by absolute or contingent assignment, whether due or not, whether otherwise secured or not, or whether existing at the time of the execution of this Instrument or arising thereafter, the exercise of such option to be evidenced by a notice in writing to Mortgagor or any successor in interest to Mortgagor; (8) Performance of all agreements of Mortgagor to pay fees and charges to the Lender relating to the loan secured hereby; (9) Payment of charges, as allowed by law when such charges are made, for any statement issued by Lender regarding the obligation secured hereby.

Mortgagor covenants that Mortgagor is lawfully seized of the estate hereby conveyed and has the right to grant, convey, transfer and assign the Property to Lender.

TO PROTECT THE SECURITY OF THIS MORTGAGE, MORTGAGE COVENANTS AND AGREES AS FOLLOWS

(1) Payment of Principal and Interest. Mortgage shall pay when due the principal of and interest on the indebtedness evidenced by the Note, any prepayment and late charges provided in the Note and all other sums secured by this instrument.

(2) Funds for Taxes, Insurance and Other Charges. Upon request by Lender, Mortgage shall pay to Lender on the day monthly installments of principal and interest are payable under the Note (or on another day designated in writing by Lender, until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth of (a) the yearly water and sewer rates, taxes, assessments, insurance premiums, rent loss levied on the Property; (b) the yearly ground rents, if any; (c) the yearly premium installment for fire and other hazard insurance; rent loss insurance and such other insurance covering the Property as Lender may require pursuant to paragraph 5 hereof; (d) the yearly premium installment for mortgage insurance, if any; and (e) if this instrument is on a leasehold, the yearly fixed rents, if any, under the ground lease. All as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof. Any waiver by Lender of a requirement that Mortgage pay such Funds may be revoked by Lender, in Lender's sole discretion, at any time upon notice in writing to Mortgage. Lender may require Mortgage to pay to Lender, in advance, such sums for other taxes, charges, premiums, assessments and other items or security interests of Lender covered by this instrument. ("Other Installments"). Unless otherwise provided by applicable law, Lender may require Funds for Other Installments to be paid to Lender by Mortgage in a lump sum or in periodic installments, at Lender's option.

(3) Application of Payments. Unless applicable law requires otherwise, all payments received by Lender from Mortgage under the Note or this instrument, shall be applied by Lender in the following order of priority: (a) amounts payable to Lender by Mortgage under paragraph 2 hereof; (b) interest payable on advances pursuant to paragraph 8 hereof; (c) principal of the Note; (d) interest payable on advances made pursuant to paragraph 8 hereof; (e) principal of advances made pursuant to paragraph 8 hereof; (f) interest payable on any Future Advance, provided that it more than one Future Advance is outstanding; Lender may apply payments received among the amounts of interest payable on the Future Advances in such order as Lender, in Lender's sole discretion, may determine; (g) principal of any Future Advance, provided that it more than one Future Advance is outstanding; Lender may apply payments received among the principal balances of the Future Advances in such order as Lender, in Lender's sole discretion, may determine; and (h) any other sums secured by this instrument in such order as Lender, at Lender's option, may determine. However, that Lender may, at Lender's option, apply any sums payable pursuant to paragraph 8 hereof prior to interest on and principal of the Note, but such application shall not otherwise affect the order of priority of application specified in this paragraph 3.

(4) Charges, Liens, Mortgages and Other Encumbrances. Taxes, assessments, premiums, rents, taxes, assessments, and other obligations attributable to the Property shall be paid by Lender in the manner provided under paragraph 2 hereof or, if not paid in such manner, by Mortgage or other party. Upon request by Lender, Mortgage shall promptly furnish to Lender receipts evidencing such payments. Mortgage shall promptly discharge any lien which has, or may have, priority over or materially to, in connection with the Property.

(5) Hazard Insurance. Mortgage shall keep in force and maintain in full force and effect hazard insurance covering the Property against all times satisfactory to Lender against loss by fire, hazards included within the term "extended coverage", rent loss and such other casualties, liabilities and contingencies as Lender and if its instrument is on a leasehold, the ground lease shall require, including, among other things, flood, earthquake, tornado or similar event, and in such amounts and for such periods as Lender shall require. All premiums on insurance policies shall be paid at Lender's expense, in the manner provided under paragraph 2 hereof or by Mortgage making payment when due, directly to the carrier, or in such other manner as Lender may designate in writing.

All insurance policies and renewals thereon shall be in a form acceptable to Lender and shall include a standard mortgage loss payable clause in favor of and in form acceptable to Lender. Lender shall have the right to hold the policy, and when requested by Lender, Mortgage shall promptly furnish to Lender all renewal notices and all receipts of all premiums. At least thirty days prior to the expiration date of a policy, Mortgage shall deliver to Lender a renewal policy in form satisfactory to Lender, if this instrument is on a leasehold, Mortgage shall furnish Lender a duplicate of all policies, renewal notices, and receipts of all premiums. Lender, in the event of any loss covered by any such policy, shall immediately notify Lender and request that Lender assign the insurance carrier and to Lender, Mortgage shall assign and empower Lender as attorney-in-fact for Mortgage to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Lender's expenses incurred in the collection of such proceeds. Mortgage, however, that nothing contained in this paragraph 5 shall require Lender to incur any expense or take any action thereunder. Mortgage further authorizes Lender, at Lender's option, (a) to hold the balance of such proceeds to be used to reimburse Mortgage for the cost of reconstruction or repair of the Property or (b) to apply the balance of such proceeds to the payment of the sums secured by this instrument, whether or not then due, in the order of application set forth in paragraph 3 hereof (subject, however, to the rights of the lessor under the ground lease, if this instrument is on a leasehold).

If the insurance proceeds are held by Lender to reimburse Mortgage for the cost of restoration and repair of the Property, the Property shall be restored to the equivalent of its original condition or such other condition as Lender may approve in writing. Lender may, at Lender's option, condition disbursement of said proceeds on Lender's approval of such plans and specifications of an architect satisfactory to Lender, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and other evidence of costs, percentage completion of construction, application of payments, and satisfaction of liens as Lender may reasonably require. If the insurance proceeds are applied to the payment of the sums secured by this instrument, in paragraph 1 and 2 hereof or proceeds to principal, no interest or portion of the monthly installments referred to in paragraphs 1 and 2 hereof or change the amount of such installments. If Lender acquires title to the Property by foreclosure or otherwise, Lender (thereupon shall also be deemed to have acquired exclusively all of the right, title and interest of Mortgage, in and to any insurance policies and unshared premiums thereon and in and to any insurance proceeds resulting from, or which may be payable as a consequence of, any damage to the Property prior to such sale or acquisition.

(6) Preservation and Maintenance of Property. Lesseehold, Mortgage, (a) shall not commit waste or permit any physical deterioration of the Property; (b) shall not abandon the Property; (c) shall restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, in the event of any damage, injury or loss thereof, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair; (d) shall keep the Property, including improvements, fixtures, equipment, machinery and appliances in good repair and shall replace fixtures, equipment, machinery and appliances on the Property when necessary to keep such items in good repair; (e) shall comply with all applicable local, state and federal laws, regulations and requirements of any governmental body applicable to the Property; (f) shall provide for professional management of the Property by a real property manager satisfactory to Lender pursuant to a contract approved by Lender in writing, unless such requirement shall be waived by Lender in writing; (g) shall generally operate and maintain the Property in a manner to ensure maximum rental and (h) shall give notice in writing to Lender of any action or proposed action of Lender, and defend any action or proceeding brought against the Property; the security of this instrument or the rights or powers of Lender, Neither Mortgage nor any tenant or other person shall remove, demolish or alter any improvement, now existing or hereafter erected on the Property or any fixture, equipment, machinery or appliance on or on the Property except when incident to the replacement of fixtures, equipment, machinery and appliances with items of like kind.

If this instrument is on a leasehold, Mortgage (i) shall comply with the provisions of the ground lease; (ii) shall give immediate written notice to Lender of any default by the lessor under the ground lease or of any notice received by Mortgage from such lessor or of any default under the ground lease by Mortgage; (iii) shall exercise any option to renew or extend the ground lease and give written confirmation thereof to Lender within thirty days after such option becomes exercisable; (iv) shall give immediate written notice to Lender of the commencement of any remedial proceedings under the ground lease by any party thereto and, if requested by Lender, shall permit Lender to obtain from the lessor, expressly or by operation of law, any necessary documents or records in connection with the ground lease, whether or not Mortgage or hereby expressly transferred to Lender, or any other person or entity, and to produce the same to Lender, if requested by Lender, within thirty days after request. Mortgage shall have no liability with respect to such covenants nor any other covenants contained in the ground lease.

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Mortgagor shall not surrender the leasehold estate and interest herein conveyed nor terminate or cancel the ground lease creating said estate and interest, and Mortgagor shall not without the express written consent of Lender alter or amend said ground lease. Mortgagor covenants and agrees that there shall not be a merger of the ground lease and the leasehold estate created thereby, with the fee estate covered by the ground lease by reason of said ground lease or fee estate or by operation of law, coming into common ownership, unless Lender shall consent in writing to such merger. If Mortgagor shall add to such fee estate then this instrument shall simultaneously and without further action be spread so as to become a lien on such fee estate.

(7) **Use of Property.** Unless required by applicable law or unless Lender has otherwise agreed in writing, Mortgagor shall not allow changes in the use for which all or any part of the Property was intended at the time this instrument was executed. Mortgagor shall not initiate or acquiesce in a change in the zoning classification of the Property without Lender's prior written consent.

(8) **Protection of Lender's Security.** If Mortgagor fails to perform the covenants and agreements contained in this instrument, or if any action or proceeding is commenced which affects the Property or title thereto or the interest of Lender therein, including, but not limited to, eminent domain, insolvency, building code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, disburse such sums and take such action as Lender deems necessary, in its sole discretion, to protect Lender's interest, including, but not limited to: (a) disbursement of attorneys' fees; (b) entry upon the Property to make repairs or otherwise to protect the same as security for the indebtedness secured by this instrument; (c) procurement of satisfactory insurance as provided in paragraph 5 hereof; and (d) if this instrument is on a leasehold, exercise of any option to renew or extend the ground lease on behalf of Mortgagor and the curing of any default of Mortgagor in the terms and conditions of the ground lease.

Any amounts disbursed by Lender pursuant to this paragraph 8, with interest thereon, shall become additional indebtedness secured by this instrument. Unless Mortgagor and Lender agree to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the rate as adjusted from time to time in accordance with the terms of the Note, compounded monthly, unless collection from Mortgagor of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Mortgagor under applicable law. Mortgagor hereby covenants and agrees that Lender shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by any advances made by Lender hereunder. Nothing contained in this paragraph 8 shall require Lender to incur any expense or take any action hereunder.

(9) **Inspection.** Lender may make or cause to be made reasonable entries upon and inspections of the Property.

(10) **Books and Records.** Mortgagor shall keep and maintain at all times at Mortgagor's address as provided in the Note, or such other place as Lender may approve in writing, complete and accurate books of accounts and records, in accordance with generally accepted accounting principles, consistently applied, adequate to reflect correctly the results of the operation of the Property and copies of all written contracts, budgets, change orders, leases and other instruments which affect the Property. Such books, records, contracts, budgets, change orders, leases and other instruments shall be subject to examination and inspection at any reasonable time by Lender. Within seven days of Lender's request, Mortgagor shall furnish to Lender a balance sheet, a statement of income and expenses of the Property and a statement of changes in financial position, each in reasonable detail and certified by Mortgagor and, if Lender shall require, by an independent certified public accountant. Mortgagor shall furnish, together with the foregoing financial statements and at any other time upon Lender's request, a rent schedule for the Property, certified by Mortgagor or Mortgagor's beneficiary, showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable and the rent paid. In addition to the foregoing, at Lender's request, Mortgagor shall furnish such financial statements and other documents or records within 120 days following the close of each calendar year. All financial statements and other documents or records pursuant to this paragraph 10 shall be provided at Mortgagor's sole expense.

(11) **Condemnation.** Mortgagor shall promptly notify Lender of any action or proceeding relating to any condemnation or other taking, whether direct or indirect or whether by eminent domain or otherwise, of the Property, or part thereof, and Mortgagor shall appear in and prosecute any such action or proceeding unless otherwise directed by Lender in writing. Mortgagor authorizes Lender, at Lender's option, as attorney-in-fact for Mortgagor, to commence, appear in and prosecute, in Lender's or Mortgagor's name, any action or proceeding relating to any such condemnation or other taking of the Property, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any such condemnation or other taking, of the Property, or part thereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Lender subject, if this instrument is on a leasehold, to the rights of the lessor under the ground lease.

Mortgagor authorizes Lender to apply such awards, payments, proceeds or damages, after the deduction of Lender's expenses incurred in the collection of such amounts, at Lender's option, to restoration or repair of the Property or to payment of the sums secured by this instrument, whether or not then due, in the order of application set forth in paragraph 3 hereof, with the balance, if any, to Mortgagor. Unless Mortgagor and Lender otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in paragraphs 1 and 2 hereof or change the amount of such installments. Mortgagor agrees to execute such further evidence of assignment of any awards, proceeds, damages or claims arising in connection with such condemnation or taking as Lender may require.

(12) **Lien Not Released.** From time to time, Lender may, at Lender's option, without giving notice to or obtaining the consent of Mortgagor, Mortgagor's successors or assigns or of any junior lienholder or guarantors, without liability on Lender's part and notwithstanding Mortgagor's breach of any covenant or agreement of Mortgagor in this instrument, extend the time for payment of said indebtedness or any part thereof, reduce the payments thereon, release any other persons secondarily or otherwise liable on any of said indebtedness, accept a renewal note or notes therefor, modify the terms and time of payment of said indebtedness, release from the lien of this instrument any part of the Property, take or release other or additional security, reconvey any part of the Property, consent to any map or plan of the Property, consent to the granting of any easement, join in any extension or subordination agreement, and agree in writing with Mortgagor to modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable thereunder. Any actions taken by Lender pursuant to the terms of this paragraph 12 shall not affect the obligations of Mortgagor or Mortgagor's successors or assigns to pay the sums secured by this instrument and to observe the covenants of Mortgagor contained herein, shall not affect the guaranty of any person, corporation, partnership or other entity for payment of the indebtedness secured hereby, and shall not affect the lien or priority of lien hereof on the Property. Mortgagor shall pay Lender a reasonable service charge, together with such title insurance premiums and attorneys' fees as may be incurred, at Lender's option, for any such action if taken at Mortgagor's request.

(13) **Forbearance by Lender Not a Waiver.** No waiver by Lender of any right under this instrument shall be effective unless in writing. Waiver by Lender of any right granted to Lender under this instrument or of any provision of this instrument as to any transaction or occurrence shall not be deemed a waiver as to any future transaction or occurrence. By accepting payment of any sum secured hereby after its due date or by making any payment or performing any act on behalf of Mortgagor that Mortgagor was obligated hereunder but failed to make or perform, or by adding any payment so made by Lender to the indebtedness secured hereby, Lender does not waive its right to require prompt payment when due of all sums so secured or to require prompt performance of all other acts required hereunder, or to declare a default for failure so to pay.

(14) **Estoppel Certificate.** Mortgagor shall within ten days of a written request from Lender furnish Lender with a written statement duly acknowledged, setting forth the sums secured by this instrument and any right of set-off, counterclaim or other defense which exists against such sums and the obligations of this instrument.

(15) **Uniform Commercial Code Security Agreement.** This instrument is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the items specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Mortgagor hereby grants Lender a security interest in said items. Mortgagor agrees that Lender may file this instrument, or a reproduction thereof, in the appropriate records or index for Uniform Commercial Code filings as a financing statement for any of the items specified above as part of the Property. Any reproduction of this instrument or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Mortgagor agrees to execute and deliver to Lender, upon Lender's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this instrument in such form as Lender may require to perfect a security interest with respect to said items. Mortgagor shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Lender may reasonably require. Without the prior written consent of Lender, Mortgagor shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said items, including replacements and additions thereto. Upon Mortgagor's breach of any covenant or agreement of Mortgagor contained in this instrument including the covenants to pay when due all sums secured by this instrument, Lender shall have the remedies of a secured party under the Uniform Commercial Code and, at Lender's option, may invoke the remedies provided in paragraph 21 of this instrument as to such items. In exercising any of said remedies, Lender may proceed against the items of real property and any items of personal property specified above as part of the Property separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies under the Uniform Commercial Code or of the remedies provided in paragraph 21 of this instrument.

(16) **Lease of the Property.** As used in this paragraph 16, the word "lease" shall mean "sublease" if this instrument is on a leasehold. Mortgagor shall comply with and observe Mortgagor's obligations as landlord under all leases of the Property or any part thereof. Mortgagor, at Lender's request, shall furnish Lender with executed copies of all leases now existing or hereafter made of all or any part of the Property, and all leases now or hereafter entered into will be in form and substance subject to the approval of Lender. Unless otherwise waived by Lender, all leases of the Property shall specifically provide that such leases: (a) are subordinate to this instrument; (b) that the tenant attorns to Lender, such attornment to be effective upon Lender's acquisition of title to the Property; (c) that the tenant agrees to execute such further evidences of attornment as Lender may from time to time request; (d) that the attornment of the tenant shall not be terminated by foreclosure; and (e) that Lender may, at Lender's option, accept or reject such attornments. Mortgagor shall not, without Lender's written consent, execute, modify, surrender or terminate, either orally or in writing, any lease now existing or hereafter made of all or any part of the Property providing for a term of three years or more, permit an assignment or sublease of such a lease without Lender's written consent, or request or consent to the subordination of any lease of all or any part of the Property to any lien subordinate to this instrument. If Mortgagor becomes aware that any tenant proposes to do, or is doing, any act or thing which may give rise to any right of set-off against rent, Mortgagor shall: (i) take such steps as shall be reasonably calculated to prevent the accrual of any right to a set-off against rent; (ii) notify Lender thereof and of the amount of said set-offs; and (iii) within ten days after such accrual, reimburse the tenant who shall have acquired such right to set-off or take such other steps as shall effectively discharge such set-off and as shall assure that rents thereafter due shall continue to be payable without set-off or deduction.

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Upon Lender's request, Mortgagee shall assign to Lender, by written instrument satisfactory to Lender, all leases now existing or hereafter made of all or any part of the Property and all leases in connection with such leases of the Property. Upon assignment by Mortgagee to Lender of any leases of the Property, Lender shall have all of the rights and powers possessed by Mortgagee prior to such assignment and Lender shall have the right to modify, extend or terminate such existing leases and to execute new leases, in Lender's sole discretion.

(17) Construction Loan Provisions. Mortgagee agrees to comply with the conditions and conditions of the construction loan agreement if any, which is hereby incorporated by reference in and made a part of this instrument. All advances made by Lender pursuant to the construction loan agreement shall be made by check or cash advance. All such advances may be obligated as provided in the construction loan agreement. All sums disbursed by Lender prior to completion of the improvements to protect the security of this instrument up to the principal amount of the Note shall be treated as disbursements pursuant to the construction loan agreement. All such sums shall bear interest in accordance with the provisions of the Note and the construction loan agreement.

From time to time as Lender deems necessary to protect Lender's interests, Mortgagee shall upon request of Lender, execute and deliver to Lender, in such form as Lender shall direct, assignments of any and all rights or claims which relate to the construction of the Property and which Mortgagee may have against any party supplying labor, materials or services in connection with construction of the Property. In case of breach by Mortgagee of the covenants and conditions of the construction loan agreement, Lender at Lender's option, with or without entry upon the Property, (a) may invoke any of the rights or remedies provided in the construction loan agreement (b) may accelerate the sums secured by this instrument and invoke those remedies provided in paragraph 21 hereof; or (c) may do both. If, after the commencement of amortization of the Note, the Note and this instrument are sold by Lender, from and after such sale the construction loan agreement shall cease to be a part of this instrument and Mortgagee shall not be bound by or set-off, counterclaim or other claim or defense arising out of or in connection with the construction loan agreement against the obligations of the Note and this instrument.

(18) Assignment of Rents; Appointment of Receiver. Lender in Possession. As part of the consideration for the loan evidenced by the Note, Mortgagee hereby absolutely and unconditionally assigns and transfers to Lender all the rents and revenues of the Property, including those now due, past due, or to become due by virtue of any lease or other agreement for the occupancy or use of all or any part of the Property, regardless of to whom the rents and revenues of the Property are payable. Mortgagee hereby authorizes Lender or Lender's agents to collect the aforesaid rents and revenues and hereby directs each tenant of the Property to pay such rents to Lender or Lender's agents; provided, however, that prior to written notice given by Lender to Mortgagee of the breach by Mortgagee of any covenant or agreement of Mortgagee in this instrument, Lender shall immediately be entitled to possession of all rents and revenues of the Property as specified in this paragraph 18 as the same become due and payable, including, but not limited to, rents then due and unpaid, and all such rents shall immediately upon delivery of such notice be held by Mortgagee as trustee for the benefit of Lender, provided, however, that the written notice by Lender to Mortgagee of the breach by Mortgagee shall contain a statement that Lender exercises its rights to such rents. Mortgagee agrees that commencing upon delivery of such written notice of Mortgagee's breach by Lender to Mortgagee, each tenant of the Property shall make such rents payable to and pay such rents to Lender or Lender's agents on Lender's written demand to each tenant therefor, delivered to each tenant personally, by mail or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of a default by Mortgagee.

Mortgagee hereby covenants that Mortgagee has not executed, and will not execute, and will not execute, any instrument which would prevent Lender from exercising its rights under this paragraph 18, and that at the time of execution of this instrument there has been no anticipation or prepayment of any of the rents of the Property for more than two months prior to the due dates of such rents. Mortgagee covenants that Mortgagee will not hereafter collect or accept payment of any rents of the Property more than two months prior to the due dates of such rents. Mortgagee further covenants that Mortgagee will execute and deliver to Lender such further assignments of rents and revenues of the Property as Lender may from time to time request.

Upon breach of any covenant or agreement in this instrument, Lender may in person, by agent or by a court-appointed receiver, regardless of the adequacy of Lender's security, enter upon and take possession and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof and the conducting thereof of any business or businesses then being conducted by Mortgagee including, but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the Property, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property or the conducting of such businesses thereon, all on such terms as are deemed best to protect the security of this instrument in the event Lender elects to seek the appointment of a receiver for the property upon Mortgagee's breach of any covenant or agreement in this instrument. Mortgagee hereby expressly consents to the appointment of such receiver. Lender or the receiver shall be entitled to receive a reasonable fee for so managing the Property. All rents and revenues collected subsequent to delivery of written notice by Lender to Mortgagee of the breach by Mortgagee of any covenant or agreement of Mortgagee in this instrument shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the rents and revenues of the Property, but not limited to, attorneys' fees, premiums on receiver's bonds, costs of repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Mortgagee or as lessor or landlord of the Property and then to the sums secured by this instrument. Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents actually received. Lender shall not be liable to Mortgagee, at Mortgagee's expense, for the collection of any rents of the Property or for those rents actually received. Lender shall not be liable to Mortgagee, at Mortgagee's expense, for the collection of any rents of the Property or for those rents actually received. Lender shall not be liable to Mortgagee, at Mortgagee's expense, for the collection of any rents of the Property or for those rents actually received. Lender shall not be liable to Mortgagee, at Mortgagee's expense, for the collection of any rents of the Property or for those rents actually received.

If the rents of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the rents, any funds expended by Lender for such purposes shall become indebtedness of Mortgagee to Lender secured by this instrument pursuant to paragraph 8 hereof. Unless Lender and Mortgagee agree in writing to other terms of payment, such amounts shall be immediately due and payable by Mortgagee and shall bear interest from the date of disbursement at the rate as adjusted from time to time in accordance with the terms of the Note, compounded monthly, unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Mortgagee under applicable law. Any entering upon and taking and maintaining of control of the Property by Lender or the receiver and any application of rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Lender under applicable law or provided herein. This assignment of rents of the Property shall terminate at such time as this instrument is so secured by the indebtedness held by Lender.

(19) Acceleration in Case of Insolvency. Notwithstanding anything in this Mortgage or the Note to the contrary, if Mortgagee or the owner of the beneficial interest of Mortgagee or its successor or assignee shall voluntarily file a petition under the Federal Bankruptcy Act or under any state or Federal statute relating to bankruptcy, insolvency, arrangement, reorganization, or liquidation under a bankruptcy or insolvency act, or if there is an attachment, execution or other judicial seizure of any portion of their respective assets and such seizure is not discharged within ten days, then Lender may, at Lender's option, declare all indebtedness due under this Mortgage and the Note secured hereby to be immediately due and payable without prior notice, and Lender may invoke any remedies permitted by paragraph 18 of this Mortgage. Any attorneys' fees and other expenses incurred by Lender in connection with such bankruptcy or any of the other aforesaid events shall be additional indebtedness of Mortgagee secured by this Mortgage and payable on demand.

(20) Transfers of the Property or Beneficial Interests in Mortgage. On sale or transfer of all or any part of the Property, or any interest therein, or (b) beneficial interests in Mortgagee, Lender may, at Lender's option, declare all of this instrument due and payable, and Lender may invoke any remedies permitted by paragraph 21 of this instrument. This option shall not apply in case of:

(i) transfers by devise or descent or by operation of law upon the death of a joint tenant

(ii) the grant of a leasehold interest in a part of the Property of three years or less, including all renewal options, for such longer lease term as Lender may permit by prior written approval (except any interest in purchase) not containing an option to purchase the ground lease, if this instrument is on a leasehold;

(iii) sales or transfers of beneficial interests in Mortgagee provided that such sales or transfers, together with any prior sales or transfers of beneficial interests in Mortgagee, but excluding sales or transfers under subparagraphs (i) and (ii) above, do not result in more than 25% of the beneficial interests in Mortgagee having been sold or transferred since commencement of amortization of the Note; and

(iv) sales or transfers of fixtures or any personal property pursuant to the replacement of Mortgagee with property of the same kind and quality.

(21) Acceleration; Remedies. Upon Mortgagee's breach of any covenant or agreement or agreement of Mortgagee in this instrument or the Note, including, but not limited to, the covenants to pay when due any sums secured by this instrument, Lender at Lender's option, may declare all of the sums secured by this instrument due and payable immediately upon the occurrence of any of the following events:

(i) Mortgagee or its successor or assignee shall voluntarily file a petition under the Federal Bankruptcy Act or under any state or Federal statute relating to bankruptcy, insolvency, arrangement, reorganization, or liquidation under a bankruptcy or insolvency act, or if there is an attachment, execution or other judicial seizure of any portion of their respective assets and such seizure is not discharged within ten days, then Lender may, at Lender's option, declare all indebtedness due under this Mortgage and the Note secured hereby to be immediately due and payable without prior notice, and Lender may invoke any remedies permitted by paragraph 18 of this Mortgage. Any attorneys' fees and other expenses incurred by Lender in connection with such bankruptcy or any of the other aforesaid events shall be additional indebtedness of Mortgagee secured by this Mortgage and payable on demand.

(ii) Transfers of the Property or Beneficial Interests in Mortgage. On sale or transfer of all or any part of the Property, or any interest therein, or (b) beneficial interests in Mortgagee, Lender may, at Lender's option, declare all of this instrument due and payable, and Lender may invoke any remedies permitted by paragraph 21 of this instrument. This option shall not apply in case of:

(i) transfers by devise or descent or by operation of law upon the death of a joint tenant

(ii) the grant of a leasehold interest in a part of the Property of three years or less, including all renewal options, for such longer lease term as Lender may permit by prior written approval (except any interest in purchase) not containing an option to purchase the ground lease, if this instrument is on a leasehold;

(iii) sales or transfers of beneficial interests in Mortgagee provided that such sales or transfers, together with any prior sales or transfers of beneficial interests in Mortgagee, but excluding sales or transfers under subparagraphs (i) and (ii) above, do not result in more than 25% of the beneficial interests in Mortgagee having been sold or transferred since commencement of amortization of the Note; and

(iv) sales or transfers of fixtures or any personal property pursuant to the replacement of Mortgagee with property of the same kind and quality.

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(a) When the indebtedness hereby secured shall become due whether by acceleration or otherwise, the Lender shall have the right to foreclose the lien hereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the order of foreclosure or sale all expenditures and expenses which may be paid or incurred by or on behalf of Lender for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication cost and costs of procuring all abstracts of title or commitments for title insurance. Such fees, charges and costs may be estimated as to items to be expended after entry of the order of foreclosure or sale as Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of such property. All expenditures and expenses of the nature mentioned in this paragraph shall become so much additional indebtedness secured hereby and shall be immediately due and payable with interest thereon at the rate specified in the Note secured hereby. Such expenditures and expenses shall include expenditures made in connection with: (a) any proceeding to which Lender shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any indebtedness hereby secured; (b) preparation for the commencement of any suit for foreclosure hereof after accrual of such right to foreclose whether or not actually commenced; (c) preparations for the defense of any threatened suit or proceeding which might affect the property or the security hereof, whether or not actually commenced; (d) any efforts for collection of any past due indebtedness secured hereby. The proceeds of any foreclosure sale of the Property shall be distributed and applied in the following order of priority: first on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in this paragraph; second, all other items which under the terms hereof constitute indebtedness secured by this Mortgage; third, any surplus to Mortgagee, its successors or assigns, as their rights may appear.

(b) Upon or at any time after the filing of a complaint to foreclose this Mortgage the court in which such complaint is filed may appoint Lender as mortgagee in possession or may appoint a receiver of the Property. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency at the time of application 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 Property or whether the same shall be then occupied as a homestead or not. Such receiver or mortgagee in possession shall have power to collect the rents, issues and profits of the Property during the pendency of such foreclosure suit, as well as during any further times when Mortgagee, its 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 usual in such cases for the protection, possession, control, management and operation of the Property during the whole of said period. The court from time to time may authorize the receiver or mortgagee in possession to apply the net income held by either of them in payment in whole or in part of the indebtedness and other sums secured hereby, or in payment of any tax, special assessment or other lien which may be or become superior to the lien hereof or superior to an order foreclosing this Mortgage, provided such application is made prior to foreclosure sale. In case of a judicial sale, the Property, or so much thereof as may then be affected by this Mortgage, may be sold in one parcel.

(22) **Remedies Cumulative.** Each remedy herein provided shall be exclusive of any other remedy herein or now or hereafter existing by law, and may be exercised concurrently, independently or successively in any order whatsoever. Every power or remedy hereby given to Mortgagee or to Lender or to which either of them may be otherwise entitled, may be exercised from time to time and as often as may be deemed expedient by them, and with any of them may pursuant to inconsistent remedies. If Lender notes any additional security for any obligation secured hereby, Lender may enforce the sale thereof at Lender's option, either before, contemporaneously with, or after the sale is made hereunder, and on any default of Mortgagee, Lender may, at its option, offset against any indebtedness owed hereunder to it by Mortgagee the whole or any part of any indebtedness owing by it to Mortgagee, and the Lender is hereby authorized and empowered at its option, without any further obligation to do, and without affecting the obligations hereof, to apply towards the payment of any indebtedness secured hereby of the Mortgagee to the Lender, any and all sums of money belonging to Mortgagee which the Lender may have in its possession or under its control, including, without limiting the generality of the foregoing, any unapplied funds held by Lender. No offset by Lender hereunder shall relieve Mortgagee from paying installments on the obligation secured hereby as they become due.

(23) **Notice.** Except for any notice required under applicable law to be given in another manner, all notices and other communications required or permitted under this instrument shall be in writing and shall be personally delivered or sent by registered or certified mail, return receipt requested, and if mailed shall be deemed received on the third business day after deposit in the mail in the continental United States, postage prepaid, addressed to the party to receive such notice at the address set forth above. Notice of change of address shall be given by written notice in the manner set forth in this paragraph 23.

(24) **Successors and Assigns Bound; Joint and Several Liability; Agents; Captions.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Mortgagee, subject to the provisions of paragraph 20 hereof. All covenants and agreements of Mortgagee shall be joint and several in exercising any rights hereunder or taking any actions provided for herein. Lender may act through its employees, agents or independent contractors as authorized by Lender. The captions and headings of the paragraphs of this instrument are for convenience only and are not to be used to interpret or define the provisions hereof.

(25) **Governing Law; Severability.** The loan secured by this Mortgage is made pursuant to, and shall be construed and governed by, the laws of the United States and the rules and regulations promulgated thereunder, including the federal laws, rules and regulations for federal savings and loan associations. If any paragraph, clause or provision of this Mortgage or the note or any other notes or obligations secured by this Mortgage is determined by a court of competent jurisdiction to be void, invalid or unenforceable, such decision shall affect only those paragraphs, clauses or provisions so determined and shall not affect the remaining paragraphs, clauses and provisions of this Mortgage or the note or other notes secured by this Mortgage.

(26) **Waiver of Statute of Limitations.** Time is of the essence for all of Mortgagee's obligations hereunder, and to the extent permitted by law, Mortgagee waives all present or future statutes of limitation with respect to any debt, demand or obligation secured hereunder in any action or proceeding for the purpose of enforcing this instrument or any rights or remedies hereunder.

(27) **Injury to Property.** All causes of action of Mortgagee, whether accrued before or after the date of this instrument for damages or injury to the Property or any part thereof, or in connection with the transaction financed in whole, or in part by the funds loaned to Mortgagee by Lender, or in connection with or affecting the Property, or any part thereof, including causes of action arising in tort or contract and causes of action for fraud or concealment of a material fact, are, at Lender's option, assigned to Lender, and the proceeds thereof shall be paid to Lender who, after deducting therefrom all its expenses, including reasonable attorneys' fees, may apply such proceeds to the sums secured by this instrument or to any deficiency under this instrument or may release any monies so received by it or any part thereof as Lender may elect. Lender may, at its option, appear in and prosecute in its own name any action or proceeding to enforce any such cause of action and may make any compromise or settlement thereof. Mortgagee agrees to execute any further assignments and other instruments as from time to time may be necessary to effectuate the foregoing provisions and as Lender shall require.

(28) **Offsets.** No indebtedness secured by this instrument shall be deemed to have been offset or compensated by all or part of any claim, cause of action, counterclaim or part of any claim, cause of action, counterclaim or crossclaim, whether litigated or unlitigated, which Mortgagee now or hereafter may have or may claim to have against Lender, and in respect to the indebtedness now or hereafter secured hereby, Mortgagee waives to the fullest extent permitted by law, the benefits of any applicable law, regulation or procedure which substantially provides that where cross-demands for money have existed between persons at any point in time when either demand was barred by the applicable statute of limitations, and an action is thereafter commenced by one such person, the other person may assert in his answer the defense of payment in that the two demands are compensated so far as they equal each other, notwithstanding that an independent action asserting his claim would at the time of filing his answer be barred by the applicable statute of limitations.

(29) **Misrepresentation or Nondisclosure.** Mortgagee has made certain written representations and disclosures in order to induce Lender to make the loan evidenced by the Note or notes which this instrument secures, and in the event that Mortgagee has made any material misrepresentations or failed to disclose any material fact, Lender, at its option and without prior notice, shall have the right to declare the indebtedness secured by this instrument, irrespective of the maturity date specified in the Note or notes, immediately due and payable.

(30) **Statement of Obligation.** Lender may collect a fee of \$50.00 or such greater maximum amount as is allowed by law for furnishing any statement of obligation or any other statement regarding the condition of or balance owing under the Note secured by this instrument.

(31) **Waiver of Marshalling.** Notwithstanding the existence of any other security interests in the Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided herein. Lender shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Mortgagee, any party who consents to this instrument and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice hereof hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

(32) **Waiver of Homestead.** Mortgagee hereby waives all right of homestead exemption in or relating to such Property.

(33) **Adjustable Mortgage Loan Provisions.** The Note which this Mortgage secures is an adjustable mortgage loan on which the interest rate may be adjusted from time to time in accordance with a monthly increase or decrease in an index all as provided in said Note. From time to time the monthly installment payments due under said Note may not be sufficient to pay all interest due in which case unpaid interest will be added to principal. In no case shall the unpaid interest added to the principal exceed one hundred and fifty percent (150%) of the original principal indebtedness. Mortgagee agrees that at Lender's request it shall provide to Lender additional title insurance to the full amount of the outstanding principal indebtedness due hereunder if the principal indebtedness has increased by reason of negative amortization as provided in the Note.

UNOFFICIAL COPY \$16.00 MAIL

(34) Future Advances. Upon request of Mortgagor, Lender, at Lender's option prior to release of this Mortgage, may make Future Advances to Mortgagor. Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Mortgage, not including sums advanced in accordance herewith to protect the security of this Mortgage, exceed the original amount of the Note plus

(35) General Provisions. (a) This Mortgage applies to, inures to the benefit of, and binds, all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. (b) The term "Lender" shall mean the owner and holder (including a pledgee) of any note secured hereby, whether or not named as Lender herein. (c) Wherever the context so requires, the masculine gender includes the feminine and neuter, the singular number includes the plural, and vice versa. (d) Captions and paragraph headings used herein are for convenience only, are not a part of this Mortgage and shall not be used in construing it.

IN WITNESS WHEREOF, MORTGAGOR has executed this instrument or has caused the same to be executed by its representatives thereunto duly authorized.

LOAN NO. 992617-1

*Edward Tomczyk*  
 EDWARD TOMCZYK  
 ANIELA LANDOWSKI

*Maria Tomczyk*  
 MARIA TOMCZYK

88524971

88524971

State of Illinois  
 COOK County ss.  
 I, THE UNDERSIGNED  
 a notary public in and for said county and state, do hereby certify that

EDWARD TOMCZYK AND MARIA TOMCZYK, HIS WIFE AND ANIELA LANDOWSKI, A WIDOW

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 same instrument as THEIR free and voluntary act for the uses and purposes therein set forth. Given under my hand and official seal this 19th day of NOVEMBER 1988

My commission expires 2-25-89

*[Signature]*  
 Notary Public

STATE OF ILLINOIS  
 COUNTY OF COOK  
 SS.  
 DEPT-01  
 \$16.25  
 TWA444 FROM 3621 11/14/88 13:58:00  
 8310 3 3 \* 88-524971  
 COOK COUNTY RECORDER

I, a Notary Public, in and for said and residing in County, in the State aforesaid, DO HEREBY CERTIFY that Secretary, respectively, of personally known to me to be the same persons whose names are subscribed in the foregoing instrument as such President and Secretary, respectively, appeared before me this day in person and being first duly sworn by me severally 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 the uses and purposes therein set forth and the said Secretary, as custodian of the corporate seal of said company, did affix the corporate seal of said company to said instrument as said Secretary's own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal this day of Notary Public