

883515/57991
12/19/88

UNOFFICIAL COPY

-88-592262

Loan No. 88578

MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

THIS MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT (the "Mortgage") is made as of December 20, 1988 by and between HARRIS TRUST AND SAVINGS BANK, not personally but as Trustee under Trust Agreement dated December 13, 1988 and known as Trust No. 94347 and HARRIS TRUST AND SAVINGS BANK, not personally but as Trustee under Trust Agreement dated November 7, 1988 and known as Trust No. 94306 (the "Mortgagor"), whose mailing address is 115 South LaSalle Street, Chicago, Illinois 60603 and THE MIDLAND MUTUAL LIFE INSURANCE COMPANY, (the "Mortgagee"), whose mailing address is 250 East Broad Street, Columbus, Ohio 43215.

W I T N E S S E T H:

THAT, WHEREAS the Mortgagor is justly indebted to the Mortgagee in the principal sum of Two Million Four Hundred Thousand and no/100ths Dollars (\$2,400,000.00) (the "Loan") evidenced by one certain PROMISSORY NOTE of the Mortgagor of even date herewith (the "Note"), made payable to the order of and delivered to the Mortgagee, whereby the Mortgagor promises to pay the said principal sum, late charges (if applicable), prepayment premiums (if applicable) and interest at the rate or rates and in installments, all as provided in the Note. The final payment of principal and interest, if not sooner paid, shall be due on December 30, 1998. All such payments on account of the Indebtedness secured hereby shall be applied first to interest on the unpaid principal balance, secondly to any other sums due thereunder, thirdly to all other advances and sums secured hereby, and the remainder to principal, all of said principal and interest being made payable at such place as the holder of the Note may from time to time in writing appoint, and in the absence of such appointment, then at the office of REGENT REALTY GROUP, INC., 150 North Wacker Drive, Suite 1717, Chicago, Illinois 60606. The maximum amount secured hereby, including future advances, shall not exceed \$3,400,000.

This Document prepared by and after recording return to:

Alan Benjamin Miller, Esq.
Epton, Mullin & Druth, Ltd.
140 South Dearborn Street, Suite 1200
Chicago, Illinois 60603



51186064
pm
b

-88-592262

NOW, THEREFORE, the Mortgagor, to secure the payment of said principal sum of money and said interest and late charges and prepayment premiums in accordance with the terms, provisions and limitations of this Mortgage and of the Note, and the performance and the covenants and agreements herein contained by the Mortgagor to be performed, and also in consideration of the sum of One Dollar (\$1.00) in hand paid, the receipt and sufficiency whereof is hereby acknowledged, does by these presents MORTGAGE, GRANT, REMISE, RELEASE, ALIEN AND CONVEY unto the Mortgagee and its successors and assigns, the following described real estate and all of its present and hereafter-acquired estate, right, title and interest therein, situated, lying and being in the County of Cook and State of Illinois to-wit: SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A" which, with the property hereinafter described, is collectively referred to herein as the "Premises"; TOGETHER with all of Mortgagor's right, title and interest in and to all improvements, tenements, reversions, remainders, easements, fixtures and appurtenances now or hereafter thereto belonging, and all rents, issues and profits thereof for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily); all tenant security deposits, utility deposits and insurance premium rebates to which Mortgagor may be entitled or which Mortgagor may be holding; and all shades, awnings, venetian blinds, screens, screen doors, storm doors and windows, stoves and ranges, refrigerators, curtain fixtures, partitions and attached floor covering now or hereafter therein or thereon, and all fixtures, apparatus, equipment and articles now or hereafter therein or thereon used to supply heat, gas, air conditioning, water, light, power, sprinkler protection, waste removal, refrigeration and ventilation (whether single units or centrally controlled) including (without restricting the foregoing): all fixtures, apparatus, equipment and articles (other than trade fixtures used in the operation of a business and other than inventories held for sale) which relate to the use, occupancy, and enjoyment of the Premises, it being understood that the enumeration of any specific articles of property shall in no way exclude or be held to exclude any items of property not specifically mentioned, except that any property owned by tenants is expressly excluded. All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared (to the maximum extent permitted by law) to form part and parcel of the real estate and to be appropriated to the use of the real estate, and shall be, for the purposes of this Mortgage, deemed to be real estate and conveyed and mortgaged hereby.

-88-592262

TO HAVE AND TO HOLD the Premises unto the Mortgagee and its successors and assigns forever, for the purposes and uses and subject to the terms herein set forth.

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

Maintenance, Repair and Restoration of Improvements,
Payment of Prior Liens, etc.

1. Mortgagor shall: (a) promptly repair, restore or rebuild any buildings and other improvements now or hereafter on the Premises which may become damaged or destroyed to substantially the same character as prior to such damage or destruction, such obligation limited by the amount of any casualty insurance proceeds or eminent domain awards and provided such proceeds or awards are made available for said repair, restoration or rebuilding; (b) keep the Premises constantly in good condition and repair, without waste; (c) keep the Premises free from mechanics' liens or other liens or claims for lien not expressly subordinated to the lien hereof (collectively called "Liens"), subject, however, to the rights of the Mortgagor set forth in Paragraph 1(a) below; (d) immediately pay when due any indebtedness which may be secured by a lien or charge on the Premises on a parity with or superior to the lien hereof (no such lien to be permitted hereunder), and upon request exhibit satisfactory evidence of the discharge of such lien to Mortgagee; (e) complete within a reasonable time any building(s) or other improvement(s) now or at any time in process of erection upon the Premises which Mortgagor as opposed to tenant(s) is obligated to complete; (f) comply with all federal, state and local requirements of law, regulations, ordinances, orders and judgments and all covenants, easements and restrictions of record with respect to the Premises and the use thereof the violation of which could result in material interference with enjoyment of the Premises; (g) make no structural alterations to the Premises without Mortgagee's prior written consent; (h) suffer or permit no change in the general nature of the occupancy of the Premises without Mortgagee's prior written consent; (i) observe and comply with all conditions and requirements (if any) necessary to preserve and continue all rights, easements, licenses, permits (including without limitation zoning variations and any non-conforming uses and structures), privileges, franchises and concessions applicable to the Premises or contracted for in connection with any present use of the Premises; and (j) pay each item of Indebtedness secured by this Mortgage when due according to the terms hereof and of the Note.

As used in this Paragraph 1 and elsewhere in this Mortgage, the term "Indebtedness" means and includes the unpaid principal sum evidenced by the Note, together with all interest, additional interest, late charges and prepayment premiums thereon, and all other sums at any time secured by this Mortgage.

-88-592262

UNOFFICIAL COPY

883515/5799L
12/19/88

1(a). Right to Contest. Anything in Paragraphs 1(c) and (d) of this Mortgage to the contrary notwithstanding, Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any Lien not expressly subordinated to the lien hereof, and defer payment and discharge thereof during the pendency of such contest, provided: (i) that such contest shall have the effect of preventing the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy such Lien; (ii) that, within twenty (20) days after Mortgagor has been notified of the assertion of such Lien, Mortgagor shall have notified Mortgagee in writing of Mortgagor's intention to contest such Lien; and (iii) that Mortgagor shall either, at Mortgagor's election, have (a) deposited with Mortgagee at such place as Mortgagee may from time to time in writing appoint, and in the absence of such appointment, then at the office of REGENT REALTY GROUP, INC. in Chicago, Illinois, a sum of money which shall be sufficient in the reasonable judgment of Mortgagee to pay in full such Lien and all interest which might become due thereon, and shall keep on deposit an amount so sufficient at all times, increasing such amount to cover additional interest whenever, in the reasonable judgment of Mortgagee, such increase is advisable; or (b) provided Mortgagee with a title insurance endorsement in form, content and from an issuer reasonably satisfactory to Mortgagee, insuring Mortgagee against any adverse outcome from the enforcement of such lien, such insurance protection to be in addition to and not part of the limit of title insurance liability of the title policy issued upon the initial advance of the proceeds of the Loan. Any deposits of money are to be held without any allowance of interest.

If Mortgagor shall fail to prosecute such contest with reasonable diligence or shall fail to pay the amount of the Lien plus any interest finally determined to be due upon the conclusion of such contest, to the extent such amount exceeds the amount which Mortgagee will pay as provided below, or shall fail to maintain sufficient funds on deposit or to furnish title insurance protection as hereinabove provided, Mortgagee may, at its option after written notice to Mortgagor, apply the money so deposited in payment of or on account of such Lien, or that part thereof then unpaid, together with all interest thereon. If the amount of money so deposited shall be insufficient for the payment in full of such Lien, together with all interest thereon, Mortgagor shall forthwith, upon demand, deposit with Mortgagee a sum which, when added to the funds then on deposit, shall be sufficient to make such payment in full. Mortgagee shall, upon the final disposition of such contest in the event Mortgagor did not provide title insurance protection, apply the money so deposited in full payment of such Lien or that part thereof then unpaid, together with all interest thereon (provided Mortgagor is not then in default hereunder after the expiration of any applicable grace period) when so requested in writing by Mortgagor and when furnished by

-88-592262

Mortgagor with sufficient funds to make such payment in full and with evidence satisfactory to Mortgagee of the amount of payment to be made. Any overdeposit shall be refunded promptly to Mortgagor, provided Mortgagor is not in default hereunder, after the expiration of any applicable grace period.

2. Payment of Taxes. Mortgagor shall pay all general taxes before any penalty or interest attached, and shall pay special taxes, special assessments, water charges, sewer service charges, and all other charges against the Premises of any nature whatsoever when due, and shall, upon written request of Mortgagee given more than thirty (30) days prior to the payment due date, furnish to Mortgagee duplicate receipts therefor within thirty (30) days following the date of payment. Mortgagor shall pay in full "under protest" any tax or assessment which Mortgagor may desire to contest, in the manner provided by law.

3. Tax Deposits. Mortgagor shall deposit with the Mortgagee or such depository ("Depository") as the Mortgagee may from time to time in writing appoint, and in the absence of such appointment, then at the office of REGENT REALTY GROUP, INC. in Chicago, Illinois, commencing on the date of disbursement of the proceeds of the loan secured hereby and on the first day of each month following the month in which said disbursement occurs, a sum equal to the amount of all real estate taxes and assessments (general and special) next due upon or for the Premises (the amount of such taxes next due to be based upon the Mortgagee's reasonable estimate as to the amount of taxes and assessments to be levied and assessed) reduced by the amount, if any, then on deposit with the Mortgagee or the Depository, divided by the number of months to elapse before one month prior to the date when such taxes and assessments will become due and payable. Such deposits are to be held without any allowance of interest to Mortgagor and are to be used by Mortgagee for the payment of taxes and assessments (general and special) on the Premises next due and payable when they become due.

If the funds so deposited are deemed insufficient, in Mortgagee's reasonable judgment, to pay any such taxes or assessments (general or special) when the same become due and payable, the Mortgagor shall, within ten (10) days after receipt of written demand therefor from the Mortgagee or Depository, which demand shall be not more than fifteen (15) days before the due date thereof, deposit such additional funds as may be necessary to pay such taxes and assessments (general and special) in full, which Mortgagee shall then pay over when due.

If the funds so deposited exceed the amount required to pay such taxes and assessments (general and special) for any year, the excess shall be applied on a subsequent deposit or deposits. Said deposits need not be kept separate and apart

from any other funds of the Mortgagee or the Depository. If any such taxes or assessments (general or special) shall be levied, charged, assessed or imposed upon or for the Premises, or any portion thereof, and if such taxes or assessments shall also be a levy, charge, assessment or imposition upon or for any other premises not encumbered by the lien of this Mortgage, then the computation of any amount to be deposited under this Paragraph 3 shall be based upon the entire amount of such taxes or assessments, and Mortgagor shall not have the right to apportion the amount of any such taxes or assessments for the purposes of such computation.

3(a) Insurance Deposits. For the purpose of providing funds with which to pay premiums when due on all policies of fire and other hazard insurance covering the Premises and the Collateral (defined below), Mortgagor shall deposit with the Mortgagee or the Depository, commencing on the date of disbursement of the proceeds of the Loan secured hereby and on the first day of each month following the month in which said disbursement occurs, a sum equal to the Mortgagee's reasonable estimate of the premiums that will next become due and payable on such policies reduced by the amount, if any, then on deposit with the Mortgagee or the Depository, divided by the number of months to elapse before one (1) month prior to the date when such premiums become due and payable.

No interest shall be allowed to Mortgagor on account of any deposit made hereunder and said deposit need not be kept separate and apart from any other funds of the Mortgagee or the Depository. Such deposits are to be used by Mortgagee for the payment of premiums on all policies of fire and other hazard insurance covering the Premises and the Collateral.

If the funds so deposited are deemed insufficient in Mortgagee's reasonable judgment, to pay any such premiums when the same are to become due and payable, the Mortgagor shall, within ten (10) days after receipt of written demand therefor from the Mortgagee or Depository, which demand shall be not more than fifteen (15) days before the due date thereof, deposit such additional funds as may be necessary to pay such premiums, which Mortgagee shall then pay over when due.

If the funds so deposited exceed the amount required to pay such premiums for any year, the excess shall be applied on a subsequent deposit or deposits.

4. Mortgagee's Interest In and Use of Tax and Insurance Deposits; Security Interest. In the event of a default hereunder, after the expiration of any applicable grace period the Mortgagee may, at its option but without being required so to do, apply any monies at the time on deposit pursuant to Paragraphs 3 and 3(a) hereof on any of Mortgagor's obligations contained herein or in the Note, in such order and manner as

the Mortgagee may elect. When the Indebtedness has been fully paid, any remaining deposits shall promptly be paid to Mortgagor or to the then owner or owners of the Premises as the same appear on the records of the Mortgagee. A security interest, within the meaning of the Uniform Commercial Code of the State in which the Premises are located, is hereby granted to the Mortgagee in and to all monies at any time on deposit pursuant to Paragraphs 3 and 3(a) hereof and such monies and all of Mortgagor's right, title and interest therein are hereby assigned to Mortgagee, all as additional security for the Indebtedness hereunder and shall, in the absence of default hereunder after the expiration of any applicable grace period, be applied by the Mortgagee or Depository for the purposes for which made hereunder and shall not be otherwise subject to the direction or control of the Mortgagor; provided, however, that neither the Mortgagee nor the Depository shall be liable for any failure to apply to the payment of taxes or assessments or insurance premiums any amount so deposited unless Mortgagor, while not in default hereunder after the expiration of any applicable grace period, shall have requested Mortgagee or the Depository in writing to make application of such funds to the payment of the particular taxes or assessments or insurance premiums for payment of which they were deposited, accompanied by the bills for such taxes or assessments or insurance premiums.

Neither Mortgagee nor the Depository shall be liable for any act or omission taken in good faith, but only for its gross negligence or willful misconduct.

5. Insurance. Mortgagor, so long as and to the extent such insurance is issued in the state where the Premises is located, shall keep all buildings and improvements and the Collateral (defined in Paragraph 27 below) now or hereafter situated on said Premises insured against loss or damage on a so-called "All Risks" basis and against such other hazards as may reasonably be required by Mortgagee, including without limitation of the generality of the foregoing: (a) rent loss or business interruption insurance whenever in the opinion of Mortgagee such protection is necessary, but in all events in an amount not to exceed \$377,460; and (b) flood insurance whenever same is available, the Premises are located in a state or federally designated flood plain area, and, in the opinion of Mortgagee, such protection is necessary. Mortgagor shall also provide insurance coverages with such limits for personal injury and death and property damage as Mortgagee may require, but in all events not less than \$1,000,000 per occurrence combined single limit (bodily injury and property damage) with umbrella liability of \$5,000,000 per occurrence and in the aggregate. All policies of insurance to be furnished hereunder shall be in forms, companies and amounts reasonably satisfactory to Mortgagee and subject to the limits hereinabove contained, with waiver of subrogation and replacement cost endorsements and a standard non-contributory mortgagee clause

-88-592262

attached to all policies, including a provision requiring that the coverages evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to the Mortgagee. Mortgagor shall deliver all original policies, including additional and renewal policies, to Mortgagee and, in the case of insurance about to expire, shall deliver renewal policies not less than thirty (30) days prior to their respective dates of expiration. A blanket coverage insurance policy which is otherwise acceptable to Mortgagee will suffice, so long as it allocates an agreed amount for replacement cost of not less than \$3,000,000 to the Premises.

Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon under a standard non-contributory mortgagee clause acceptable to Mortgagee. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee the original policy or policies of such insurance.

In the event of a foreclosure of the lien of this Mortgage, or of a transfer of title to the Premises either in lieu of foreclosure or by purchase at the foreclosure sale, all interest in all insurance policies in force shall pass to Mortgagee, transferee or purchaser, as the case may be. If Mortgagee so requests, Mortgagor shall furnish not more frequently than annually evidence of replacement cost of the Premises, without cost to Mortgagee.

6. Adjustment of Losses with Insurer and Application of Proceeds of Insurance. In case of loss or damage by fire or other casualty, Mortgagee is authorized to settle and adjust any claim under insurance policies which insure against such risks, but shall allow Mortgagor, provided Mortgagor is not then in default hereunder after the expiration of any applicable grace period, to agree with the insurance company or companies on the amount to be paid in regard to total loss, so long as it is equal to or greater than the then indebtedness secured hereby. In either case, Mortgagee is authorized to collect and receipt for any such insurance monies. Such insurance proceeds may, at the option of the Mortgagee, be: (a) applied in reduction of the Indebtedness, whether due or not, in which case any prepayment premium which might otherwise be due shall be waived by Mortgagee; or (b) held by the Mortgagee and applied to pay for the cost of repair, rebuilding or restoration of the buildings and other improvements on the Premises. Mortgagee shall make said proceeds available to reimburse Mortgagor or any lessee for the cost of repair, rebuilding or restoration of the buildings or other improvements on the Premises, provided that (a) Mortgagor is not in default hereunder, after the expiration of any applicable grace period, (b) no tenant of the Premises is entitled by virtue of

-88-592262

the casualty to terminate its lease, (c) the total cost of repair, rebuilding or restoration is deposited with the Disbursing Party (hereinafter defined), (d) the rents under the tenants' leases continue to be paid during the period of repair, rebuilding or restoration or the equivalent thereof is paid by Mortgagor's rent loss or business interruption insurance, and (e), such proceeds shall be made available in the manner and under the conditions that the Mortgagee may require. In any event, the buildings and other improvements shall be so repaired, restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction, such obligation limited by the amount of the casualty insurance proceeds and provided such proceeds are made available for such repair, rebuilding or restoration. If the cost of rebuilding, repairing or restoring the buildings and other improvements may reasonably exceed the sum of Fifty Thousand Dollars (\$50,000.00), then the Mortgagee must approve plans and specifications of such work before such work shall be commenced, such approval not to be unreasonably withheld, delayed or conditioned. If the proceeds are made available by the Mortgagee to reimburse the Mortgagor or any lessee for the cost of repair, rebuilding or restoration, any surplus, after payment of the cost of repair, rebuilding, restoration and the reasonable charges of the Disbursing Party (hereinafter defined) shall be paid to any party entitled thereto as the same appears on the records of the Mortgagee. Interest shall be allowed to Mortgagor on any proceeds of insurance held by the Disbursing Party at the best interest rate available to it for deposits withdrawable on demand without penalty. As used in this Paragraph 6, the term "Disbursing Party" refers to the Mortgagee and to any responsible trust company or title insurance company selected by the Mortgagee.

7. Stamp Tax; Effect of Changes in Laws Regarding Taxation. If, by the laws of the United States of America or of any state or subdivision thereof having jurisdiction over the Mortgagor, any tax is due or becomes due in respect of the issuance of the Note, in all events, however, income tax on Mortgagee's earnings under the Note shall not be included in this section's definition of "tax," the Mortgagor covenants and agrees to pay such tax in the manner required by any such law. The Mortgagor further covenants to reimburse the Mortgagee for any sums which Mortgagee may expend by reason of the imposition of any tax on the issuance of the Note.

7.1. In the event of the enactment, after this date, 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 the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Premises, 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, the Mortgagor,

UNOFFICIAL COPY

883515/5799L

12/19/88

upon demand by the Mortgagee, shall pay when due such taxes or assessments or reimburse the Mortgagee therefor; provided, however, that if in the opinion of counsel for the Mortgagee: (a) it might be unlawful to require Mortgagor to make such payment; or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law; then and in any such event, the Mortgagee may elect, by notice in writing given to the Mortgagor, to declare all of the Indebtedness to be and become due and payable ninety (90) days from the giving of such notice, and no prepayment premium shall be payable by Mortgagor under these circumstances.

8. Observance of Lease Assignment. As additional security for the payment of the Note and for the faithful performance of the terms and conditions contained herein, Mortgagor and its beneficiary or beneficiaries have assigned to the Mortgagee all of their right, title and interest as landlords in and to the leases listed on the SCHEDULE OF LEASES attached hereto, if any, and all future leases of the Premises. All future leases of the Premises are subject to the approval of the Mortgagee as to form, content and tenant(s). Mortgagor will not and Mortgagor's beneficiary or beneficiaries will not, without Mortgagee's prior written consent, not to be unreasonably withheld, delayed or conditioned and which shall take into account current market conditions in the locale of the Premises: (i) execute any assignment or pledge of any rents or any leases of the Premises except assignments or pledges securing the Indebtedness and Junior Financing (hereinafter defined); or (ii) accept any payment of an installment of rent more than thirty (30) days before the due date thereof; or (iii) make any lease of the Premises except for actual occupancy by the tenant thereunder. Mortgagor at its sole cost and expense will: (i) at all times before expiration of any applicable grace period promptly and faithfully abide by, discharge and perform all of the covenants, conditions and agreements contained in all leases of the Premises, on the part of the landlord thereunder to be kept and performed; (ii) enforce or secure the performance of all of the covenants, conditions and agreements of such leases on the part of the tenants to be kept and performed, but Mortgagor shall not and Mortgagor's beneficiary or beneficiaries shall not materially modify or amend and shall not except in the case of default by tenant thereunder, cancel, terminate or accept surrender of any lease without prior written consent of Mortgagee; (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with Mortgagor's role as landlord under such leases or the obligations, duties or liabilities of the landlord thereunder; (iv) transfer and assign or cause to be separately transferred and assigned to Mortgagee, upon written request of Mortgagee, any lease or leases of the Premises heretofore or hereafter entered into, and make, execute and deliver to Mortgagee upon demand, any and all instruments required to effectuate said assignment;

-88-592262

(v) furnish Mortgagee, within ten (10) days after a request by Mortgagee so to do, a written statement containing the names of all tenants and the terms of all leases of the Premises, including the spaces occupied and the rentals payable thereunder; and (vi) exercise within five (5) days of any demand therefor by Mortgagee but not more than once per year any right to request from the tenant under any lease of the Premises a certificate with respect to the status thereof. Nothing in this Mortgage or in any other documents relating to the Loan secured hereby shall be construed to obligate Mortgagee, expressly or by implication, to perform any of the covenants of any landlord under any of the leases assigned to Mortgagee or to pay any sum of money or damages therein provided to be paid by the landlord, each and all of which covenants and payments Mortgagee agrees to perform materially and to pay or cause to be performed materially and paid. At the option of the Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in eminent domain), to any one or more leases affecting any part of the Premises, upon the execution by Mortgagee and recording or registration thereof, at any time hereafter, in the office wherein this Mortgage was registered or recorded for record, of a unilateral declaration to that effect.

In the event of the enforcement by Mortgagee of any remedies provided for by law or by this Mortgage, the tenant under each lease of the Premises shall, at the option of the Mortgagee, attorn to any person succeeding to the interest of landlord as a result of such enforcement and shall recognize such successor in interest as landlord under such lease without change in the terms or other provisions thereof; provided, however, that said successor in interest shall not be bound by any payment of rent or additional rent for more than one month in advance or any amendment or modification to any lease made without the consent of Mortgagee or said successor in interest. Each tenant, upon request by said successor in interest, shall execute and deliver an instrument or instruments confirming such attornment, but it is acknowledged that Mortgagee shall not be liable for failure of any tenant to comply with the preceding terms of this paragraph. Mortgagee shall execute and deliver upon request of any subordinate-to-it tenant of the Premises a non-disturbance agreement in form and content reasonably acceptable to Mortgagee. Mortgagee shall have the option to declare this Mortgage in default because of a material default of landlord in any lease of the Premises, after the expiration of any applicable grace period, whether or not such default is cured by Mortgagee pursuant to the right granted herein. It is covenanted and agreed that a default under any Assignment of Rents or Leases executed pursuant to this Paragraph 8 shall constitute a default hereunder, on account of which the whole of the Indebtedness secured hereby shall, after the expiration of any applicable grace period, at

-88-592262

once, at the option of the Mortgagee, become immediately due and payable, without further notice to the Mortgagor.

9. Mortgagor and Lien Not Released. From time to time Mortgagee may, at Mortgagee's option, without giving notice to or obtaining the consent of the Mortgagor or Mortgagor's successors or assigns or the consent of any junior lien holder, guarantor, if any, or tenant, without liability on Mortgagee's part and notwithstanding Mortgagor's breach of any covenant, agreement or condition: (a) release anyone primarily or secondarily liable on any of the Indebtedness; (b) accept a renewal note or notes therefor; (c) release from the lien of this Mortgage any part of the Premises; (d) take or release other or additional security for the Indebtedness; (e) consent to any plat, map or plan of the Premises; (f) consent to the granting of any easement; (g) join in any extension or subordination agreement; and (h) waive or fail to exercise any right, power or remedy granted by law or herein or in any other instrument given at any time to evidence or secure the payment of the Indebtedness.

Any actions taken by Mortgagee pursuant to the terms of this Paragraph 9 shall not impair or affect: (a) the obligation of Mortgagor or Mortgagor's successors or assigns to pay any sums at any time secured by this Mortgage and to observe all of the covenants, agreements and conditions herein contained; (b) the guaranty, if any, of any individual or legal entity for payment of the Indebtedness; and (c) the lien or priority of the lien hereof against the Premises. Mortgagor shall pay to Mortgagee a customary and reasonable service charge and such title insurance premiums and reasonable attorneys' fees as may be incurred by Mortgagee for any action described in this Paragraph 9 taken at the request of Mortgagor or its beneficiary or beneficiaries.

10. Mortgagee's Performance of Defaulted Acts. In case of default herein, after expiration of any applicable grace period Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner Mortgagee deems expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and, subject to Mortgagor's right to do so under paragraph 1(a) hereof, purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof or contest any tax or assessment, or redeem from any tax sale or forfeiture affecting said Premises or cure any default of any landlord in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by Mortgagee in regard to any tax referred to in Paragraphs 7 or 7.1 or to protect the Premises or the lien hereof, shall be so much additional Indebtedness secured hereby, and shall become

-88-592262

immediately due and payable without notice and with interest thereon at the rate of interest set forth in the Note applicable to a period when a default exists thereunder. 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.

11. Mortgagee's Reliance on Tax Bills, etc. Mortgagee, in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted; unless before payment Mortgagor provides evidence reasonably satisfactory to Mortgagee to the contrary.

12. Acceleration of Indebtedness in Case of Default. If: (a) default be made in the due and punctual payment of principal or interest on the Note, or any other payment due in accordance with the terms thereof and such default has not been cured on or prior to ten (10) days after such payment is due; or (b) the Mortgagor or any beneficiary thereof or any guarantor of the Note shall file (i) a petition for liquidation, reorganization or adjustment of debt under Title 11 of the United States Code (11 U.S.C. Sec. 101 et seq.) or any similar law, state or federal, whether now or hereafter existing, or (ii) any answer admitting insolvency or inability to pay its debts, or (iii) fail to obtain a vacation or stay of involuntary proceedings within sixty (60) days, as hereinafter provided; or (c) any order for relief of the Mortgagor or any beneficiary thereof or any guarantor of the Note shall be entered in any case under Title 11 of the United States Code, or a trustee or a receiver shall be appointed for the Mortgagor or for any beneficiary thereof or for any guarantor of the Note, or for all or the major part of the property of Mortgagor or of any beneficiary thereof or of any guarantor of the Note in any voluntary or involuntary proceedings, or any court shall have taken jurisdiction of all or the major part of the property of the Mortgagor or of any beneficiary thereof or of any guarantor of the Note in any voluntary or involuntary proceeding for the reorganization, dissolution, liquidation, adjustment of debt or winding up of the Mortgagor or of any beneficiary thereof or of any guarantor of the Note and such trustee or receiver shall not be discharged or such jurisdiction not be relinquished or vacated or stayed on appeal or otherwise stayed within sixty (60) days; or (d) the Mortgagor or any beneficiary thereof or any guarantor of the Note secured hereby shall make an assignment for the benefit of creditors,

-98-592262

or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator of all or any major part of its property; or (e) default shall be made in the due observance or performance of any other covenant, agreement or condition hereinbefore or hereinafter contained (other than those set forth in clauses (a) through (d) of this paragraph 12) and required to be kept or performed or observed by the Mortgagor or its beneficiary and such default has not been cured within thirty (30) days after written notice to Mortgagor; or (f) default shall be made in the due observance or performance of any covenant, agreement or condition required to be kept or observed by Mortgagor or its beneficiary or beneficiaries in any other instruments given at any time to secure the payment of the Note or to evidence or secure any Junior Financing and such default has not been cured within any applicable grace period and in the absence of any applicable grace period then within thirty (30) days after written notice to Mortgagor; with regard to (e) and (f) above, should the default be of such a nature as not to be susceptible of immediate cure, provided Mortgagor or its beneficiary has commenced a cure of the default before the expiration of any applicable grace period and thereafter continues to diligently prosecute such cure, then Mortgagor or its beneficiary shall have a total of ninety (90) days after the receipt of said notice to complete such cure; then and in any such event, the whole of the Indebtedness shall at once, at the option of the Mortgagee, become immediately due and payable without further notice to Mortgagor. If while any insurance proceeds or condemnation awards are held by or for the Mortgagee to reimburse Mortgagor or any lessee for the cost of repair, rebuilding or restoration of building(s) or other improvement(s) on the Premises, as set forth in Paragraphs 6 and 18 hereof, the Mortgagee shall be or become entitled to accelerate the maturity of the Indebtedness, then and in such event, the Mortgagee shall be entitled to apply all such insurance proceeds and condemnation awards then held by or for it in reduction of the Indebtedness, and any excess held by it over the amount of Indebtedness shall be paid to Mortgagor or any party entitled thereto, without interest, as the same appears on the records of the Mortgagee.

13. Foreclosure; Expense of Litigation. When the Indebtedness or any part thereof shall become due, whether by acceleration or otherwise, and is not paid, Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof. In any civil action to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the order or judgment for foreclosure and sale all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry

-88-592262

of said order or judgment) of procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens' Certificates and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such civil action or to evidence to bidders at any sale which may be had pursuant to such order or judgment the true condition of the title to, or the value of, the Premises. All expenditures and expenses of the nature in this paragraph mentioned and such expenses and fees as may be incurred in the protection of the Premises after notice to Mortgagor and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorneys employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the Premises, including probate, appellate and bankruptcy proceedings, or in preparations for the commencement or defense of any action or proceeding or threatened action or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the rate set forth in the Note applicable to a period when a default exists thereunder, and shall be secured by this Mortgage. At all times, upon notice from Mortgagee the Mortgagor shall appear in and defend any suit, action or proceeding that might in any way in the sole reasonable judgment of Mortgagee affect the value of the Premises, the priority of this Mortgage or the rights and powers of Mortgagee hereunder or under any document given at any time to secure the indebtedness. Mortgagor shall, at all times, indemnify, hold harmless and reimburse Mortgagee on demand for any and all loss, damage, expense or cost, including cost of evidence of title and reasonable attorneys' fees, arising out of or incurred in connection with any such suit, action or proceeding, and the sum of such expenditures shall be secured by this Mortgage, and shall bear interest after demand at the rate specified in the Note applicable to a period when an uncured default exists thereunder, and such interest shall be secured hereby and shall be due and payable on demand.

14. Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Premises 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 the preceding Paragraph hereof; second, all other items which may under the terms hereof constitute secured Indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the Note; and fourth, any overplus to any party entitled thereto as its rights may appear.

15. Appointment of Receiver or Mortgagee In Possession. Upon, or at any time after, the commencement of an action to foreclose this Mortgage, the court in which such action was commenced may, upon request of the Mortgagee, appoint a receiver of the Premises either before or after foreclosure sale, without notice and without regard to the solvency or

insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not; and the Mortgagee or any holder of the Note may be appointed as such receiver or as mortgagee in possession. Such receiver or the mortgagee in possession shall have power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure action and, in case of a sale and a deficiency, during the full statutory period of redemption (if any), whether there be redemption or not, as well as during any further times (if any) when Mortgagor, except for the intervention of such receiver or mortgagee in possession, 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 Premises 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 in its hands in payment in whole or in part of: (a) the Indebtedness secured hereby or by order or judgment foreclosing the lien of this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or the lien of such order or judgment, provided such application is made prior to foreclosure sale; or (b) the deficiency in case of a sale and deficiency.

16. Rights Cumulative. Each right, power and remedy conferred upon the Mortgagee by this Mortgage and by all other documents evidencing or securing the Indebtedness and conferred by law and in equity is cumulative and in addition to every other right, power and remedy, express or implied, given now or hereafter existing, at law and in equity; and each and every right, power and remedy herein or therein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagee; and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of, or discontinuance by, the Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

17. Mortgagee's Right of Inspection. Mortgagee shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

18. Condemnation. Mortgagor hereby assigns, transfer and sets over unto the Mortgagee the entire proceeds of any award and any claim for damages for any of the Premises taken or damaged under the power or threat of eminent domain or by condemnation. The Mortgagee may apply such proceeds of the award or claim upon or in reduction of the Indebtedness,

UNOFFICIAL COPY

883515/5799L

12/19/88

whether due or not in which case any prepayment premium which might otherwise be due shall be waived by Mortgagee; but shall make those proceeds available to Mortgagor or any lessee for repair, restoration or rebuilding of the buildings on other improvements on the Premises, provided that (a) Mortgagor is not in default hereunder, after the expiration of any applicable grace period, (b) no tenant of the Premises is entitled by virtue of the condemnation to terminate its lease, (c) the total cost of repair, rebuilding or restoration is deposited with the Disbursing Party, (d) the rents under the tenants' leases continue to be paid during the period of repair, rebuilding or restoration or the equivalent thereof is paid by Mortgagor's rent loss or business interruption insurance, and (e) such proceeds shall be made available in the manner and under the conditions that the Mortgagee may require. In any event, limited by the amount of any such award and provided same is made available for such repair, restoration or rebuilding, the building(s) and improvement(s) shall be repaired, restored or rebuilt in accordance with plans and specifications to be submitted to and approved by the Mortgagee, such approval not to be unreasonably withheld, delayed or conditioned. If the proceeds are made available by the Mortgagee, any surplus which may remain out of said award after payment of such cost of repair, rebuilding, restoration and the reasonable charges of the Disbursing Party shall be paid to any party entitled thereto as the same appears on the records of the Mortgagee. Interest shall be allowed to Mortgagor on the proceeds of any award held by the Disbursing Party at the best interest rate available to it for deposits withdrawable on demand without penalty.

19. Collateral Purposes Only and Release Upon Payment and Discharge of Mortgagor's Obligations. This Mortgage is executed and delivered upon the express condition that it is for collateral purposes only and if the principal of and interest and any prepayment premium and any late charges which may be due on the Note shall be paid in full and all other indebtedness hereby secured shall be fully paid and performed, then this Mortgage and the estate and rights hereby granted shall cease, terminate and be void and Mortgagee shall release this Mortgage and the lien hereof by proper instrument and upon payment of a customary and reasonable fee to Mortgagee to reimburse it its out-of-pocket expenses for the execution of such proper instrument.

20. Giving of Notice. Any notice which either party hereto may desire or be required to give to the other party shall be in writing and the mailing or transmittal thereof, by certified mail or reliable overnight delivery service addressed to the Mortgagor or to the Mortgagee, as the case may be, at the respective addresses set forth on the first page hereof or at such other place as any party hereto may by notice in writing designate as a place for service of notice, shall constitute service of notice hereunder, effective, subject to

-88-592262

UNOFFICIAL COPY

883515/5799L
12/19/88

the provisions of the next two grammatical paragraphs, upon receipt thereof or upon refusal to accept delivery thereof.

Notice to Mortgagee, to be effective, will have to have a copy thereof, transmitted as herein required for delivering of notices to Mortgagee, delivered to: Alan Benjamin Miller, Esq., Epton, Mullin & Druth, Ltd., 140 South Dearborn Street, Suite 1200, Chicago, Illinois 60603.

Notice to Mortgagor, to be effective, will have to have a copy thereof, transmitted as herein required for delivering of notices to Mortgagor, delivered to: Debra Cafaro, esq., Barack, Ferrazzano, Kirschbaum & Perlman, 333 West Wacker Drive, Suite 1120, Chicago, Illinois 60606.

21. Waiver of Defense. No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Note.

22. Waiver of Statutory Rights. Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, 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 the lien 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 that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. Mortgagor does hereby expressly waive any and all rights of redemption from sale under any order or judgment of foreclosure of the lien of this Mortgage on behalf of the Mortgagor, the trust estate and all persons beneficially interested therein and each and every person acquiring any interest in or title to the Premises subsequent to the date of this Mortgage. The foregoing waiver of right of redemption is made pursuant to the provisions of subsection (b) of Section 15-1601 of the Illinois Mortgage Foreclosure Law (the "Act"). Mortgagor acknowledges that the Premises do not constitute agricultural real estate as that term is defined in Section 15-201 of the Act, or residential real estate as defined in Section 1-1219 of the Act.

23. Furnishing of Financial Statements to Mortgagee. Mortgagor covenants and agrees that it will keep and maintain, or cause its beneficiary or beneficiaries from time to time to keep and maintain, books and records of account in which full, true and correct entries shall be made of all dealings and transactions relative to the Premises, which books and records of account shall, at reasonable times and on reasonable notice, be open to the inspection of the Mortgagee and its accountants and other duly authorized representatives. Such books of

-88-592262

record and account shall be kept and maintained in accordance with generally accepted accounting principles consistently applied.

23.1 Mortgagor covenants and agrees to furnish to the Mortgagee, within forty-five (45) days following the end of every fiscal year applicable to the operation of the improvements on the Premises, a detailed statement of income and expenses, bearing a certificate signed by the chief financial person of beneficiary which certifies that such records as were deemed necessary for such certification were examined and that the statement is true, correct and complete.

23.2 If Mortgagor fails to furnish promptly the statement required by Paragraph 23.1, Mortgagor covenants and agrees to pay to Mortgagee after 30 days prior written notice and continuing failure to furnish said statement the sum of Five Hundred Dollars (\$500.00) as administrative expenses and not as penalty.

23.3 If Mortgagor fails to furnish promptly the statement required by Paragraph 23.1, the Mortgagee may elect after notice to Mortgagor (in addition to exercising any other right, remedy and power) to make an audit of all books and records of Mortgagor and its beneficiaries which in any way pertain to the Premises and to prepare the statement which Mortgagor failed to procure and deliver. Such audit shall be made and such statement shall be prepared by an independent Certified Public Accountant to be selected by the Mortgagee. Mortgagor shall pay all expenses of the audit and other services which expenses shall be secured hereby as additional Indebtedness and shall be immediately due and payable with interest thereon at the rate set forth in the Note applicable to a period when a default exists thereunder.

24. Filing and Recording Charges and Taxes. Mortgagor will pay all filing, registration, recording and search and information fees, and all such expenses incident to the execution and acknowledgment of this Mortgage and all other documents securing the Note and all federal, state county and municipal taxes, other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution, delivery, filing, recording or registration of the Note, this Mortgage and all other documents securing the Note and all assignments thereof.

25. Business Purposes; Usury Exemption. Mortgagor has been advised by its beneficiaries that the proceeds of the loan secured by this Mortgage will be used for the purposes specified in Paragraph 6404 of Chapter 17 of the 1981 Illinois Revised Statutes, and that the principal obligation secured hereby constitutes a "business loan" which comes within the purview and operation of said paragraph.

26. Miscellaneous: Binding Nature. This Mortgage and all provisions hereof shall extend to and be binding upon the original Mortgagor named on Page 1 hereof and its successors, grantees, assigns, each subsequent owner or owners of the Premises and all persons claiming under or through Mortgagor; and the word "Mortgagor" when used herein shall include all such persons and all persons primarily and secondarily liable for the payment of the Indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage.

26.1 Release of Previous Holder. The word "Mortgagee" when used herein shall include the successors and assigns of the original Mortgagee named on page 1 hereof, and the holder or holders, from time to time, of the Note. However, whenever the Note is sold, each prior holder shall be automatically freed and relieved, on and after the date of such sale, of all liability with respect to the performance of each covenant and obligation of Mortgagee hereunder thereafter to be performed, provided that any monies in which the Mortgagor has an interest, which monies are then held by the seller of the Note, are turned over to the purchaser of the Note.

26.2 Severability and Applicable Law. In the event one or more of the provisions contained in this Mortgage or in the Note or in any other document given at any time to secure the payment of the Note shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Mortgagee, not affect any other provision of this Mortgage, the Note or other document and this Mortgage, the Note or other document shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein. The validity and interpretation of this Mortgage and the Note it secures are to be construed in accordance with and governed by the laws of the State in which the Premises are situated.

26.3 Governmental Compliance. Mortgagor shall not by act or omission permit any lands or improvements not subject to the lien of this Mortgage to include the Premises or any part thereof in fulfillment of any governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Premises to be so used. Similarly, no lands or improvements comprising the Premises shall be included with any lands or improvements not subject to the lien of this Mortgage in fulfillment of any governmental 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.

883515/5799

26.4 Estoppel Certificate. Mortgagor, within fifteen (15) days after mailing of a written request by the Mortgagee, agrees to furnish from time to time a signed statement setting forth the amount of the Indebtedness to the best of its knowledge in reliance upon Mortgagee's statement thereof and whether or not any default, offset or defense then is alleged to exist against the Indebtedness and, if so, specifying the nature thereof.

26.5 Non-Joinder of Tenant. After an event of default, after expiration of any applicable grace period Mortgagee shall have the right and option to commence a civil action to foreclose the lien of this Mortgage and to obtain an order or judgment of foreclosure and sale subject to the rights of any tenant or tenants of the Premises. The failure to join any tenant or tenants of the Premises as party defendant or defendants in any such civil action or the failure of any such order or judgment to foreclose its rights shall not be asserted by the Mortgagor as a defense in any civil action instituted to collect the Indebtedness secured hereby, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding, subject to the exculpatory provisions hereof.

26.6 Evasion of Prepayment Premium. If maturity of the Indebtedness is accelerated by the Mortgagee because of an event of default after expiration of any applicable grace period, as herein provided, and a tender of payment is made by or on behalf of the Mortgagor in an amount necessary to satisfy the Indebtedness at any time prior to judicial confirmation of foreclosure sale, such tender shall constitute an evasion of the prepayment premium provided for in the Note, if any, and shall be treated as a prepayment thereunder.

Any such tender must therefore include the prepayment premium, if any, required under the Note; notwithstanding that at such time there is no prepayment privilege provided for in the Note, then such payment will include the prepayment premium calculated as set forth in the Note.

26.7 Regulation G Clause. Mortgagor covenants that the proceeds evidenced by the Note secured hereby will not be used for the purchase or carrying of registered equity securities within the purview and operation of Regulation G issued by the Board of Governors of the Federal Reserve System.

26.8 Environmental Matters. Except as set forth in the Final Report: Environmental Site Evaluation Pursuant To Real Estate Refinancing of Environmental Risk Consultants dated December 14, 1988, there will be no Hazardous or Toxic Material (as hereinafter defined) existing on or under the surface of the Premises or in any surface waters or ground waters on or under the Premises and no escape, seepage, spillage, discharge,

UNOFFICIAL COPY

883515/5799L

12/19/88

emission or release of any Hazardous or Toxic Material shall occur on, under, above, or emanate from, the Premises. The Premises will not be used as a sanitary land fill, dump site, industrial disposal area, or storage site for Hazardous or Toxic Material, or for any other similar use, on either a permanent or temporary basis; provided, however, that this provision shall not prohibit the possession or use by Mortgagor or its tenants of materials in such quantities, and used under such conditions, as do not constitute a hazardous condition, or subject the Mortgagor, tenants or the Premises to any applicable lien, violation, law, rule or regulation as a result of such possession or use. The term Hazardous or Toxic Material shall be defined to include: (i) asbestos or any material composed of or containing asbestos in any form and of any type, or (ii) any hazardous, toxic or dangerous waste, substance, material, smoke, gas or particulate matter, as from time to time defined by or for purposes of the Comprehensive Environmental Response Compensation and Liability Act, and any law commonly referred to as of the date hereof as "Superfund" or "Superlien" or any successor to such laws, or any other Federal, State or local environmental, health or safety statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards concerning or in connection with hazardous, toxic or dangerous waste, substance, material, smoke, gas or particulate matter, as now or any time hereafter in effect. Provided Mortgagor is first given notice of and right to cure within a reasonable time, but even in the exercise of all due diligence not longer than ninety (90) days from the effective date of such notice, Mortgagor will indemnify and hold Mortgagee free and harmless from any and all loss, liability, cost or expense (including, without limitation, the reasonable cost of attorneys, consultants, analyses, litigation, clean-up and settlement expenses) which Mortgagee may incur, or to which Mortgagee may be or become subject, as a result of any breach by Mortgagor or its beneficiary of this paragraph, or as the result of the assertion by any person of any facts or circumstances which, if proven correct, could result in any such loss, liability, cost or expense to Mortgagee. The indemnity set forth in this paragraph shall not survive the repayment of the Loan secured hereby, and the release and discharge of this Mortgage.

27. Security Agreement and Financing Statement. Mortgagor and Mortgagee agree: (i) that this Mortgage shall constitute a Security Agreement within the meaning of the Uniform Commercial Code (the "Code") of the State in which the Premises are located with respect to all sums on deposit with the Mortgagee pursuant to Paragraphs 6 and 18 hereof ("Deposits") and with respect to any property included in the definition herein of the word "Premises", which property may not be deemed to form a part of the real estate described in EXHIBIT "A" or may not constitute a "fixture" (within the meaning of Section 9-313 of the Code), and all replacements of such property, substitutions

UNOFFICIAL COPY

883515/5799L
12/19/88

for such property, additions to such property, and the proceeds thereof (said property, replacements, substitutions, additions and the proceeds thereof being sometimes herein collectively referred to as the "Collateral"); and (ii) that a security interest in and to the Collateral and the Deposits is hereby granted to the Mortgagee; and (iii) that the Deposits and all of Mortgagor's right, title and interest therein are hereby assigned to the Mortgagee; all to secure payment of the Indebtedness and to secure performance by the Mortgagor of the terms, covenants and provisions hereof. In the event of a default under this Mortgage, after the expiration of any applicable grace period the Mortgagee, pursuant to the appropriate provisions of the Code, shall have an option to proceed with respect to both the real property and Collateral in accordance with its rights, powers and remedies with respect to the real property, in which event the default provisions of the Code shall not apply. The parties agree that if the Mortgagee shall elect to proceed with respect to the Collateral separately from the real property, five (5) days notice of the sale of the Collateral shall be reasonable notice. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by the Mortgagee shall include, but not be limited to, reasonable attorneys' fees and legal expenses incurred by Mortgagee. The Mortgagor agrees that, without the written consent of the Mortgagee, the Mortgagor will not remove or permit to be removed from the Premises any of the Collateral in excess of \$50,000 in value in the aggregate for all such Collateral removed, except that so long as the Mortgagor is not in default hereunder, Mortgagor shall be permitted to sell or otherwise dispose of the Collateral when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Premises, but only upon replacing the same or substituting for the same other Collateral at least equal in value and utility to the initial value and utility of that disposed of and in such manner that said replacement or substituted Collateral shall be subject to the security interest created hereby and that the security interest of the Mortgagee shall be perfected and first in priority, it being expressly understood and agreed that all replacements, substitutions and additions to the Collateral shall be and become immediately subject to the security interest of this Mortgage and covered hereby. The Mortgagor shall, from time to time, on request of the Mortgagee, deliver to the Mortgagee at the cost of the Mortgagor: (i) such further financing statements and security documents and assurances as Mortgagee may require, to the end that the liens and security interests created hereby shall be and remain perfected and protected in accordance with the requirements of any present or future law; and (ii) not more frequently than annually an inventory of the Collateral in reasonable detail. The Mortgagor covenants and represents that all Collateral now is, and that all replacements thereof, substitutions therefor or additions thereto, unless the Mortgagee otherwise consents, will be free and clear of liens, encumbrances, title retention devices and security interests of

-88-592262

others except those securing Junior Financing, if any. The Mortgagor and Mortgagee agree, to the extent permitted by law, that: (i) all of the goods described within the definition of the word "Premises" herein are or are to become fixtures on the land described in EXHIBIT "A"; (ii) this instrument, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of Section 9-313 and 9-402 of the Code; and (iii) Mortgagor is a record owner of the land described in EXHIBIT "A" If the Collateral is sold in connection with a sale of the Premises, Mortgagor shall notify the Mortgagee prior to such sale and shall require as a condition of such sale that the purchaser take subject to Mortgagor's obligations as to the security interests herein granted and to execute whatever security agreements and filings are deemed necessary by the Mortgagee to maintain Mortgagee's first perfected security interest in the Collateral, Deposits and the deposits described in Paragraph 4 above.

28. Lien for Loan Commissions, Service Charges and the Like. So long as the original Mortgagee named on page 1 hereof is the owner of the Note, and regardless of whether any proceeds of the loan evidenced by the Note have been disbursed, this Mortgage also secures the payment of all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by the Mortgagee in connection with the loan transaction intended to be secured hereby and as provided herein. The loan commitment issued in connection with this Loan shall not survive the initial or any other disbursement of this Loan.

29. Due on Sale or Further Encumbrance Clause. In determining whether or not to make the Loan secured hereby, Mortgagee examined the credit-worthiness of Mortgagor's beneficiary, found it acceptable and relied and continues to rely upon same as the means of repayment of the Loan. Mortgagee also evaluated the background and experience of beneficiary in owning and operating property such as the Premises, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Premises which is Mortgagee's security for the Loan. Beneficiary is a business person or entity well-experienced in borrowing money and owning and operating property such as the Premises, was ably represented by a licensed attorney at law in the negotiation and documentation of the Loan secured hereby and bargained at arm's length and without duress of any kind for all of the terms and conditions of the Loan, including this provision. Beneficiary recognizes that Mortgagee is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than the original beneficiary or Mortgagor. Beneficiary further recognizes that any secondary or junior financing placed upon the Premises, or on the beneficial

-88-592262

UNOFFICIAL COPY

883515/5799L
12/19/88

interest of beneficiary in Mortgagor (a) may divert funds which would otherwise be used to pay the Note secured hereby; (b) could result in acceleration and foreclosure by any such junior encumbrancer which would force Mortgagee to take measures and incur expenses to protect its security; (c) would detract from the value of the Premises should Mortgagee come into possession thereof with the intention of selling same; and (d) impair Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Premises. In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security, both of repayment by beneficiary and of the value of the Premises; (ii) giving Mortgagee the full benefit of its bargain and contract with beneficiary and Mortgagor; (iii) allowing Mortgagee to raise the interest rate and/or collect assumption fees; and (iv) keeping the Premises and the beneficial interest free of subordinate financing liens, beneficiary and Mortgagor agree that if this Paragraph be deemed a restraint on alienation, that it is a reasonable one and that any sale, conveyance, assignment, further encumbrance or other transfer of title to the Premises or any interest therein, except as hereinafter set forth, (whether voluntary or by operation of law) without the Mortgagee's prior written consent shall be an event of default hereunder. For the purpose of, and without limiting the generality of, the preceding sentence, the occurrence at any time of any of the following events shall be deemed to be an unpermitted transfer of title to the Premises and therefore an event of default hereunder: (a) any sale, conveyance, assignment or other transfer of, or the grant of a security interest in, all or any part of the title to the Premises, exclusive of space leases of the Premises permitted hereby, or the beneficial interest or power of direction under the trust agreement with the Mortgagor; (b) any sale, conveyance, assignment, or other transfer of, or the grant of a security interest in, any share of stock of any corporation (herein called a "Beneficiary Corporation") which is the beneficiary or one of the beneficiaries under the trust agreement with the Mortgagor, or of any corporation directly or indirectly controlling such Beneficiary Corporation; (c) any sale, conveyance, assignment or other transfer of, or the grant of a security interest in, any general partnership interest in any limited partnership or general partnership (herein called the "Partnership") which is the beneficiary or one of the beneficiaries under the trust agreement with the Mortgagor; (d) any sale, conveyance, assignment or other transfer of, or the grant of a security interest in, any share of stock of any corporation directly or indirectly controlling any such Partnership.

Any consent by the Mortgagee, or any waiver of an event of default, under this Paragraph shall not constitute a consent to, or waiver of any right, remedy or power of the Mortgagee upon a subsequent event of default under this Paragraph.

UNOFFICIAL COPY

883515/5799L
12/19/88

Anything hereinabove contained to the contrary notwithstanding, Mortgagor (and/or either of them) or a beneficiary of either Mortgagor may (i) once transfer, sell or assign the Premises or part thereof in whole lot(s) so long as the transfer does not materially adversely affect the use and enjoyment of the Premises as a whole, or the beneficial interest in Mortgagor (and/or either of them) to (a) a transferee of credit worthiness reasonably acceptable to Mortgagee as determined in accordance with Mortgagee's then current underwriting standards for similar mortgage loans, and (b) management capability reasonably satisfactory to Mortgagee, upon payment of a fee equal to 1% of the then outstanding principal balance of the Note; and (ii) transfer the Premises or part thereof in whole lot(s) so long as the transfer does not materially adversely affect the use and enjoyment of the Premises as a whole, or the beneficial interest therein any number of times to an entity owned or controlled by Richard Fanslow or a trust established for the benefit of Richard Fanslow or his family, without the payment of any fee; and (iii) grant junior financing secured by the Premises, Collateral, the leases and rents thereof and/or the beneficial interests in Mortgagor (herein "Junior Financing") if any only if (a) the documentation evidencing and securing Junior Financing is by its terms junior, inferior and subordinate to the liens and interests of Mortgagee and (b) the debt service coverage ratio (net operating income divided by debt service) taking into account the required payments on the Note and the required payments under Junior Financing, does not fall below 1.05, treating any and all accrued interest as being paid currently.

In the event less than all of the Premises or the beneficial interests in Mortgagor are properly transferred under the terms of this paragraph, Mortgagee shall be entitled to deal and communicate only with Mortgagor who will be deemed for all purposes hereunder to be the agent of its co-owners or its beneficiary or beneficiaries' transferee(s). All of Mortgagee's customary and reasonable expenses incurred in approving and documenting any transfers pursuant to this paragraph 29 shall be reimbursed by Mortgagor upon demand.

30. Management of Premises. Mortgagor shall manage the Premises through its own personnel or a third party approved by Mortgagee, and Mortgagor shall not contract with any other third party for property management services without the prior written approval by Mortgagee of such party and the terms of its contract for management services, which approval shall not be unreasonably withheld. It is agreed that Mortgagee hereby approves Richard Fanslow or his nominee as the management agent for the Premises.

31. Exculpatory. This Mortgage is executed by the Mortgagor, not personally, but as Trustee as aforesaid in the

UNOFFICIAL COPY

exercise of the power and authority conferred upon and vested in it as such Trustee (and HARRIS TRUST AND SAVINGS BANK hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing contained herein or in the Note shall be construed as creating any liability on the Mortgagor personally or on HARRIS TRUST AND SAVINGS BANK personally to pay the Note or any interest, late charge or premium that may accrue thereon, or any Indebtedness secured by this Mortgage, or to perform any covenant, either express or implied herein contained, all such liability, if any, being expressly waived by Mortgagee and by every person now or hereafter claiming any right or security hereunder, and that so far as Mortgagor and HARRIS TRUST AND SAVINGS BANK personally are concerned, the legal holder or holders of the Note and the owner or owners of any Indebtedness secured hereby shall look solely to the Premises and Collateral hereby mortgaged, conveyed and assigned and to any other security given at any time to secure the payment thereof.

This Mortgage is executed by each Beneficiary, but it is expressly understood and agreed that nothing contained herein, except as set forth in the last sentence of this paragraph, or in the Note or in any document or instrument executed or delivered in connection herewith or therewith shall be construed as creating any liability on any Beneficiary personally or on its trustee and beneficiary(ies), officers, directors or shareholders, if any, personally to pay the Note or any interest, late charges or premium that may accrue thereon, or any Indebtedness secured by this Mortgage or any such document or instrument, or to perform any covenant, either express or implied herein or therein contained, all such liability, if any, being expressly waived by Mortgagee and by every person now or hereafter claiming any right or security hereunder or thereunder and that so far as beneficiary personally is concerned, the legal holder or holders of the Note and the owner or owners of any Indebtedness secured hereby or thereby shall look solely to the Premises and Collateral hereby mortgaged, conveyed and assigned and to any other security given at any time to secure the payment thereof. Each beneficiary of Mortgagor, notwithstanding the foregoing exculpatory clause, shall have personal liability for 100% of any misapplication, after an event of default, and expiration of any applicable grace period of (i) any proceeds paid to Mortgagor or beneficiary prior to any foreclosure of the Premises under any insurance policy by reason of damage, loss or destruction to any portion of the Premises (but only to the extent of such proceeds); (ii) any proceeds or awards received by Mortgagor or beneficiary from the condemnation, prior to any foreclosure, of all or any part of the Premises (but only to the extent of such proceeds or awards); or (iii) gross receipts received by Mortgagor or beneficiary from rental of the Premises, prior to any foreclosure thereof (but only to the extent of such receipts); in each case, however, only to the extent not applied to debt service or to the operation or

-88-582262

883515/57991
12/19/88

UNOFFICIAL COPY

maintenance of the Premises; provided, however, that in no event whatsoever shall the Mortgagor, or if the beneficiary of the Mortgagor is a trust or a corporation, any trustee or beneficiary, officers, directors or shareholders, if any of such beneficiary trust or a corporation, have any personal liability whatsoever with respect to the Loan, the proceeds referred to in clauses (i), (ii) or (iii) hereof, or any other matter whatsoever.

Property of Cook County Clerk's Office

-88-592282

UNOFFICIAL COPY

883515/5799L
12/19/88

IN WITNESS WHEREOF, the Mortgagor has executed this instrument as of the day and year first above written.

HARRIS TRUST AND SAVINGS BANK,
not personally, but as Trustee
of Trust No. 94347, as aforesaid

ATTEST:

By: [Signature]
Title Assistant Secretary

By: [Signature]
Title Vice President

and

VIRICK LIMITED, an Illinois
corporation, Beneficiary

By: _____
Secretary

By: [Signature]
President

joining herein for the sole
purpose of granting and
perfecting the security
interests provided in
Paragraphs 4 and 27 hereof.

and

HARRIS TRUST AND SAVINGS BANK,
not personally, but as Trustee
of Trust No. 94306, as aforesaid

ATTEST:

By: [Signature]
Title ASSISTANT SECRETARY

By: [Signature]
Title Vice President

and

RICHARD G. FANLOW, Beneficiary

[Signature]
joining herein for the sole
purpose of granting and
perfecting the security
interests provided in
Paragraphs 4 and 27 hereof.

ABM/erc
5799L

-88-592262

SCHEDULE OF LEASES

attached to and made a part of that certain
MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT
by and between
HARRIS TRUST & SAVINGS BANK TRUST #94306
and
THE MIDLAND MUTUAL LIFE INSURANCE COMPANY

<u>Tenant</u>	<u>Space</u>	<u>Term</u>	<u>Comments</u>
Web Finishers Bindery	12,400 sq.ft	6/30/91	701 Gullo
Web Finishers Bindery	6,250 sq.ft	6/30/91	147 Stanley
Web Finishers Bindery	6,200 sq.ft	6/30/91	151 Stanley
Nu-Way Electronics	6,200 sq.ft	10/31/92	187 Stanley
Press Show America	6,200 sq.ft	7/31/90	191 Stanley
Cincinnati Tool	6,200 sq.ft	2/28/89	201 Stanley
Chicago Caster	6,200 sq.ft	8/31/92	205 Stanley
Cupps of Chicago, Inc.	6,200 sq.ft	4/30/89	221 Stanley
Hamai Machines Tools of America, Inc.	6,250 sq.ft	10/31/89	225 Stanley

UNOFFICIAL COPY

LOT 1 IN R AND S RESUBDIVISION, BEING A RESUBDIVISION OF LOTS 1 AND 2 IN GULLO INTERNATIONAL RESUBDIVISION IN THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 22, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, TOGETHER WITH LOTS 3, 4 AND 5 IN GULLO INTERNATIONAL RESUBDIVISION AFORESAID, ALL IN COOK COUNTY, ILLINOIS

Address: 147-225 Stanley and 701 Gullo Roads
Elk Grove Village, Illinois

P.I.N.: 08-22-302-014
08-22-302-015
08-22-302-016
08-22-302-017
08-22-302-018-0000

Property of Cook County Clerk's Office

-88-592262

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

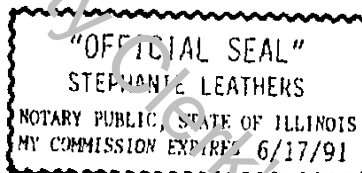
I, STEPHANIE LEATHERS, a notary public in and for the County and State aforesaid, DO HEREBY CERTIFY THAT Richard G. Fanslow personally known to me as being the same person whose name is subscribed to the foregoing instrument, appeared before me in this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 20th day of December, 1988,

Stephanie Leathers
Notary Public

My Commission Expires:

June 17, 1991



SEP 21 1988 145.50
14:30:00
88592262
1988 1008 1600

88592262 -88-592262

45⁰⁰
Mail