

UNOFFICIAL COPY

88013325

CONSTRUCTION MORTGAGE

THIS MORTGAGE is dated as of January 21, 1988 by and between Heritage Bank and Trust Company, formerly known as Heritage County Bank and Trust Company, as Trustee under Trust Agreement dated October 17, 1986 and known as Trust No. 2929, located at 12015 South Western Avenue, Blue Island, Illinois 60406 ("Mortgagor") and Cole Taylor Bank/Drovers located at 1542 West 47th Street, Chicago, Illinois 60609.

WITNESS: Mortgagor has executed a promissory note dated January 21, 1988, ("Note") payable to the order of the Mortgagee in the principal amount of \$360,000.00 with interest at the per annum rate of one percent (1%) in excess of the Prime Rate (defined in the Note) and, after Default (defined in the Note) or maturity, at the per annum rate of four percent (4%) in excess of the Prime Rate. The Note with accrued and unpaid interest is payable on June 30, 1988, unless the Note shall become due earlier whether by acceleration or otherwise. The proceeds of the Note will be advanced in multiple disbursements to Mortgagor by Mortgagee for financing the cost of acquisition of the Premises (defined below) and the construction of certain improvements thereon, all in accordance with the Construction Loan Agreement dated January 21, 1988, made by and between Mortgagor and Mortgagee ("Loan Agreement").

GRANT OF MORTGAGE

1.1. To secure payment of the indebtedness evidenced by the Note, including any future advances thereunder and any renewals or extensions thereof, the Liabilities (defined below) and the performance of the covenants and agreements of Mortgagor hereunder and under the Loan Agreement, Mortgagor does by these presents CONVEY, WARRANT and MORTGAGE unto Mortgagee, all of Mortgagor's estate, right, title and interest in the real estate situated, lying and being in the County of Cook, and State of Illinois, legally described on attached Exhibit A and made part hereof, which is referred to herein as the "Premises", together with all improvements, buildings, tenements, hereditaments, appurtenances, water, gas, oil, minerals, and easements located in, on, over or under the Premises, and all types and kinds of furniture, fixtures, apparatus, machinery and equipment, including without limitation, all of the foregoing used in any construction on the Premises or to supply heat, gas, air conditioning, water, light, power, refrigeration or ventilation (whether single units or centrally controlled) and all screens, window shades, storm doors and windows, floor coverings, awnings, stoves and water heaters, whether now on or in the Premises or hereafter erected, installed or placed on or in the Premises, and whether or not physically attached to the Premises. The foregoing items are and shall be deemed a part of the Premises and a portion of the security for the Liabilities as between the parties hereto and all persons claiming by, through or under them.

511 9716
1115

88013325

UNOFFICIAL COPY

1.2 Further, Mortgagor does hereby pledge, assign, transfer, deliver and grant to Mortgagee all of Mortgagor's right, title and interest in and to all general intangibles relating to the development or use of the Premises, including but not limited to all governmental permits relating to construction on the Premises, all names under or by which the premises or any Improvements on the Premises may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all trademarks and goodwill in any way relating to the Premises.

1.3 Further, Mortgagor does hereby pledge, assign, deliver and grant to Mortgagee all of Mortgagor's right, title and interest in and to all proceeds of the conversion, voluntarily or involuntarily, of the Premises or any part thereof into cash or liquidated claims, including without limitation, proceeds of insurance and condemnation awards.

1.4. Further, Mortgagor does hereby pledge, assign, transfer, deliver and grant to Mortgagee all leases, written or verbal, rents, issues and profits of the Premises, including without limitation, all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing, and all deposits of money as advance rent or for security for damage or default, under any and all present and future leases of the Premises, together with the right, but not the obligation, to collect, receive, demand, sue for and recover the same when due or payable. Mortgagee by acceptance of this Mortgage agrees, as a personal covenant applicable to Mortgagor only and not as a limitation or condition hereof and not available to anyone other than Mortgagor, that until a Default or an event shall occur which under the terms hereof shall give to Mortgagee the right to foreclose this Mortgage, Mortgagor may collect, receive and enjoy such avails.

1.5. Further, Mortgagor does hereby expressly waive and release all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois.

MORTGAGOR COVENANTS and REPRESENTATIONS

While any of the Liabilities remain outstanding, Mortgagor represents, warrants, covenants and agrees as follows:

2.1. Mortgagor shall (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed; (b) keep the Premises in good condition and repair, without waste, and, except for this Mortgage, free from any encumbrances, security interests, liens, mechanics' liens or claims for lien and any other claims or demands against Mortgagor's title to the Premises; (c) pay when due any indebtedness which may be secured by a lien or charge on the Premises and upon request exhibit satisfactory evidence of the discharge of such lien or charge to Mortgagee; (d) complete in a good and workmanlike manner using new materials of first class

UNOFFICIAL COPY

1.1. Further, Mortgagee does hereby agree and warrant to grant to Mortgagee all of the power and authority herein provided to Mortgagee and to all persons acting under the authority of Mortgagee, including but not limited to, the power to execute and record all instruments, including but not limited to, the deed, mortgage, and other instruments, and to take any other action necessary to carry out the purposes of this deed and mortgage, and to execute and record all instruments, including but not limited to, the deed, mortgage, and other instruments, and to take any other action necessary to carry out the purposes of this deed and mortgage.

1.2. Further, Mortgagee does hereby agree and warrant to grant to Mortgagee all of the power and authority herein provided to Mortgagee and to all persons acting under the authority of Mortgagee, including but not limited to, the power to execute and record all instruments, including but not limited to, the deed, mortgage, and other instruments, and to take any other action necessary to carry out the purposes of this deed and mortgage, and to execute and record all instruments, including but not limited to, the deed, mortgage, and other instruments, and to take any other action necessary to carry out the purposes of this deed and mortgage.

1.3. Further, Mortgagee does hereby agree and warrant to grant to Mortgagee all of the power and authority herein provided to Mortgagee and to all persons acting under the authority of Mortgagee, including but not limited to, the power to execute and record all instruments, including but not limited to, the deed, mortgage, and other instruments, and to take any other action necessary to carry out the purposes of this deed and mortgage, and to execute and record all instruments, including but not limited to, the deed, mortgage, and other instruments, and to take any other action necessary to carry out the purposes of this deed and mortgage.

1.4. Further, Mortgagee does hereby agree and warrant to grant to Mortgagee all of the power and authority herein provided to Mortgagee and to all persons acting under the authority of Mortgagee, including but not limited to, the power to execute and record all instruments, including but not limited to, the deed, mortgage, and other instruments, and to take any other action necessary to carry out the purposes of this deed and mortgage, and to execute and record all instruments, including but not limited to, the deed, mortgage, and other instruments, and to take any other action necessary to carry out the purposes of this deed and mortgage.

MORTGAGEE'S WARRANTIES

1.1. While any of the covenants herein are in effect, the Mortgagee shall warrant to the Mortgagee as follows:

1.1.1. The Mortgagee shall promptly repair, replace or reconstruct any building or improvement now or hereafter on the property, which may become damaged or destroyed by fire or other cause, and shall cause such building or improvement to be repaired, replaced or reconstructed in a good condition and repair, and shall cause such building or improvement to be repaired, replaced or reconstructed in a good condition and repair, and shall cause such building or improvement to be repaired, replaced or reconstructed in a good condition and repair.

UNOFFICIAL COPY

quality and within a reasonable time any building or improvement now or at any time in process of construction upon the Premises; (e) comply and cause any tenant of the Premises to comply with all requirements of all laws or municipal ordinances with respect to the construction maintenance or use of the Premises or sales of lots comprising the Premises; (f) make no material alterations in the Premises, except as required by law or municipal ordinance, unless such alterations have been previously approved in writing by Mortgagee; (g) refrain from impairing or diminishing the value of the Premises; (h) use the proceeds of the Note solely for the purposes set forth in the Loan Agreement; (i) perform and comply with all of the terms, provisions and conditions of the Loan Agreement, including without limitation those provisions pertaining to the construction of the Improvements (as defined in the Loan Agreement) upon the Premises; (j) not seek, make or consent to, without Mortgagee's prior written consent, any change in the zoning or conditions of use of the Premises or in the plans for the Improvements thereof or thereon which would impair Mortgagee's ability to construct the Improvements on the Premises pursuant to the Loan Agreement.

2.2. Mortgagor shall pay, when due and before any penalty attaches, all general taxes, special taxes, special assessments, water taxes or charges, drainage taxes or charges, sewer service taxes or charges, and other taxes, assessments or charges against the Premises. Mortgagor shall, upon written request, furnish to Mortgagee duplicate paid receipts for such taxes, assessments and charges. To prevent Default hereunder, Mortgagor shall pay in full under protest, in the manner provided by statute, any tax, assessment or charge which Mortgagor may desire to contest prior to such tax, assessment or charge becoming delinquent.

2.3. Upon the request of Mortgagee, Mortgagor shall deliver to Mortgagee all original leases or contracts of sale of all or any portion of the Premises, together with assignments of such leases or contracts from Mortgagor to Mortgagee, which assignments shall be in form and substance satisfactory to Mortgagee. Mortgagor shall not, without Mortgagee's prior written consent, procure, permit or accept any prepayment, discharge or compromise of any rent or release any tenant from any obligation at any time while the Liabilities secured hereby remains unpaid. Mortgagor shall not, without Mortgagee's prior written consent, accept any amount as liquidated damages or cancel or terminate any contract of sale other than as specifically provided in such contract.

2.4. Any award of damages resulting from condemnation proceedings, exercise of the power of eminent domain, or the taking of the Premises for public use are hereby transferred, assigned and shall be paid to Mortgagee. Such awards or any part thereof may be applied by Mortgagee, after the payment of all of Mortgagee's expenses, including costs and attorneys' and paralegals' fees, to the reduction of the indebtedness secured hereby in such order of application as Mortgagee may elect. Mortgagee is hereby authorized, on behalf and in the name of Mortgagor, to execute and deliver valid acquittances and to appeal from any such award.

2001-133325

UNOFFICIAL COPY

...and within a reasonable time any building or structure...
...of any time in process of construction upon or...
...and cause any tenant of the Premises to comply with the...
...of all laws or municipal ordinances and regulations...
...the construction maintenance or use of the Premises...
...loss comprising the Premises; (ii) cause or permit...
...the Premises, except as required by law or...
...unless such alterations have been previously approved...
...Mortgagee; (p) retain from liability or...
...the Premises; (h) use the proceeds of the...
...purpose set forth in the loan agreement; (i)...
...with all of the terms, provisions and...
...agreement, including without limitation...
...pertaining to the construction of the...
...the loan agreement; (j) and...
...consent to, without Mortgagee's prior...
...in the zoning or conditions of use of the...
...for the improvements thereof or...
...Mortgagee's ability to construct the...
...pursuant to the loan agreement.

2.2. Mortgagee shall pay, when due and...
...attached, all general taxes, special...
...water taxes or charges, drainage...
...rates or charges, and other taxes...
...the Premises. Mortgagee shall...
...Mortgagee's obligation for such...
...changes. To prevent default...
...under protest, in the manner...
...ment or charge which Mortgagee...
...tax, assessment or charge becoming...

2.3. Upon the request of Mortgagee, Mortgagee shall...
...Mortgagee all original leases or...
...portion of the Premises, together...
...or contracts for Mortgagee's...
...be in form and substance...
...not, without Mortgagee's prior...
...accept any payment, discharge...
...release any tenant from any...
...Lienholder secured hereby...
...without Mortgagee's prior...
...liquidated damages or...
...other than as specifically provided...

2.4. Any award of damages resulting from...
...exercise of the power of eminent...
...the Premises for public use are...
...shall be paid to Mortgagee. Such...
...applied by Mortgagee, after the...
...expenses, including costs and...
...the reduction of the indebtedness...
...application as Mortgagee may...
...authorized, on behalf and in the...
...deliver valid acquittances and to...

UNOFFICIAL COPY

2.5. Mortgagor shall keep the Premises and all buildings and improvements now or hereafter situated on the Premises insured against loss or damage by fire, lightning, windstorm, vandalism and malicious damage and such other hazards as may from time to time be designated by Mortgagee. Mortgagor shall keep all buildings and improvements now or hereafter situated on the Premises insured against loss or damage by flood, if the Premises are located in a flood hazard zone. Each insurance policy shall be for an amount sufficient to pay in full the cost of replacing or repairing the buildings and improvements on the Premises and, in no event, less than the principal amount of the Note. Mortgagor shall obtain liability insurance with respect to the Premises in an amount which is acceptable to Mortgagee. All policies shall be issued by companies satisfactory to Mortgagee. Each insurance policy shall be payable, in case of loss or damage, to Mortgagee. Each insurance policy shall contain a lender's loss payable clause or endorsement in form and substance satisfactory to Mortgagee. In the event of any loss, Mortgagor shall give immediate notice thereof to Mortgagee and any appropriate insurers. The Mortgagee may make any proof of loss to any insurer, if the Mortgagor fails to make a proof of loss immediately to any such insurer. Mortgagor shall deliver all insurance policies, including additional and renewal policies, to Mortgagee. In case of insurance about to expire, Mortgagor shall deliver to Mortgagee renewal policies not less than ten days prior to the respective dates of expiration. Each insurance policy shall not be cancellable by the insurance company without at least 30 days' prior written notice to Mortgagee.

2.6. Notwithstanding any other provisions of this Mortgage, no sale, lease, mortgage, trust deed, or grant by Mortgagor of an encumbrance of any kind, conveyance, transfer of occupancy or possession, contract to sell, or transfer of the Premises or any part thereof or sale or transfer of ownership of any beneficial interest or power of direction in a land trust which holds title to the Premises shall be made without the prior written consent of Mortgagee.

2.7. Mortgagor agrees to pay all annual general and special real taxes and assessments with respect to the Premises promptly when due. Mortgagor further agrees to pay all insurance premiums on insurance policies required hereunder or under the Loan Agreement promptly when due. Mortgagor shall provide Mortgagee, upon Mortgagee's request, with evidence of the prompt payment of such taxes, assessments and insurance premiums.

2.8. No release of any petroleum, oil, or chemical liquids or solids, liquid or gaseous products or hazardous waste (a "Release of Hazardous Materials") has occurred or is existing on any portion of the Premises, or any other real property in the state in which the Premises is located now or previously owned by Mortgagor. Mortgagor has not received any notice from any governmental agency or from any tenant under a lease or from any other party with respect to any such Release.

UNOFFICIAL COPY

2.5. Mortgagor shall keep the Premises and all buildings and improvements now or hereafter situated on the Premises insured against loss or damage by fire, lightning, windstorm, water, and such other hazards as may from time to time be designated by Mortgagor. Mortgagor shall keep all buildings and improvements now or hereafter situated on the Premises insured against loss or damage by flood, if the Premises are located in a flood hazard zone. Each insurance policy shall be for an amount sufficient to pay in full the cost of replacing or repairing the buildings and improvements on the Premises and, in no event, less than the original amount of the cost. Mortgagor shall obtain liability insurance with respect to the Premises in an amount which is acceptable to Mortgagor. All policies shall be issued by companies satisfactory to Mortgagor. Each insurance policy shall be payable, in case of loss or damage, to Mortgagor, and insurance policy shall contain a lender's loss waiver clause and endorsement in form and substance satisfactory to Mortgagor. The event of any loss, Mortgagor shall file immediately a claim therefor to Mortgagor and any appropriate insurance. The Mortgagor shall make any proof of loss to any insurer, and the Mortgagor shall make a proof of loss immediately to any such insurer. Mortgagor shall deliver all insurance policies, including additional and renewal policies, to Mortgagor. In case of insurance policy expiration, Mortgagor shall deliver to Mortgagor a copy of the policy at least ten days prior to the respective date of expiration. Each insurance policy shall not be cancellable by the insurance company without at least 30 days' prior written notice to Mortgagor.

2.6. Notwithstanding any other provisions of this Mortgage, no sale, lease, mortgage, trust deed, or grant by Mortgagor of an encumbrance of any kind, conveyance, transfer of ownership or possession, contract to sell, or transfer of the Premises, or any part thereof or sale or transfer of ownership of any part thereof, interest or power of direction in a trust which holds title to the Premises shall be made without the prior written consent of Mortgagor.

2.7. Mortgagor agrees to pay all annual general and special real estate taxes and assessments with respect to the Premises and improvements thereon. Mortgagor further agrees to pay all insurance premiums on insurance policies required hereunder or under the Loan Agreement promptly when due. Mortgagor shall provide Mortgagor, upon Mortgagor's request, with evidence of the prompt payment of such taxes, assessments and insurance premiums.

2.8. No release of any petroleum, oil, or chemical or any other solid, liquid or gaseous products or hazardous waste or materials of hazardous materials) has occurred or is existing on any portion of the Premises, or any other real property in the state in which the Premises is located now or previously owned by Mortgagor. Mortgagor has not received any notice from any governmental agency or from any tenant under a lease or from any other party with respect to any such release.

10-1-1991

UNOFFICIAL COPY

2.9. Mortgagor shall not cause or permit to exist any Release of Hazardous Materials on any portion of the Premises or any other real property in the state in which the Premises is located, owned by Mortgagor or by any person having a legal and beneficial interest in Mortgagor (if Mortgagor is a corporation, trust or other entity). Mortgagor shall immediately notify Mortgagee of any notice or threatened action from any governmental agency or from any tenant under a lease of any portion of the Premises or from any other party with respect to any such Release.

2.10. Mortgagor is the sole owner of the Premises free from any lien, encumbrance or claim, except this Mortgage.

MORTGAGEE RIGHTS

3.1. No remedy or right of Mortgagee hereunder shall be exclusive. Each right or remedy of Mortgagee with respect to the Liabilities, this Mortgage or the Premises shall be in addition to every other remedy or right now or hereafter existing at law or in equity. No delay by Mortgagee in exercising or omitting to exercise any remedy or right accruing on Default shall impair any such remedy or right, or shall be construed to be a waiver of any such Default, or acquiescence therein, or shall affect any subsequent Default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently and when and as often as may be deemed expedient by Mortgagee.

3.2. If Mortgagee makes any payment authorized by this Mortgage relating to taxes, assessments, charges, liens, security interests, encumbrances or insurance, Mortgagee may do so according to any bill, statement or estimate received from the appropriate party claiming such funds without inquiry into the accuracy or validity of such bill, statement or estimate or into the validity of the lien, encumbrance, security interest, tax, assessment, sale, forfeiture, tax lien or title or claim thereof.

3.3. Mortgagee shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

DEFAULT AND RIGHTS ON DEFAULT

4.1. Upon Default, at the sole option of Mortgagee, the Note or any other Liabilities shall become immediately due and payable, and Mortgagor shall pay all expenses of Mortgagee, including attorneys' and paralegals' fees, incurred in connection with this Mortgage and all expenses incurred in the enforcement of Mortgagee's rights in the Premises and other costs incurred in connection with the disposition of the Premises. The term "Default" when used in this Mortgage means any one or more of the events, conditions or acts defined as a "Default" in the Note or the Loan Agreement or the failure of Mortgagor to pay and perform the Note, the Loan Agreement or Liabilities in accordance with their terms, or failure of Mortgagor to comply with or to perform

8801433325

UNOFFICIAL COPY

3.9. Mortgagor shall not cause or permit to exist any Release of Hazardous Materials on any portion of the Premises or any other real property in the state in which the Premises is located, owned by Mortgagor or by any person having a legal and beneficial interest in Mortgagor (if Mortgagor is a corporation, trust or other entity). Mortgagor shall immediately notify Mortgagee of any notice or threatened action from any governmental agency or from any tenant under a lease of any portion of the Premises or from any other party with respect to any such Release.

3.10. Mortgagor is the sole owner of the Premises free from any lien, encumbrance or claim, except this Mortgage.

MORTGAGEE RIGHTS

3.1. No remedy or right of Mortgagee hereunder shall be exclusive. Each right or remedy of Mortgagee with respect to the Premises shall be in addition to every other remedy or right now or hereafter existing at law or in equity. No delay by Mortgagee in exercising or obtaining or exercising any remedy or right accruing or Default shall constitute such remedy or right, or shall be construed to be a waiver of any such Default, or acquiescence therein, or shall affect any subsequent Default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently and when and as often as may be deemed expedient by Mortgagee.

3.2. If Mortgagee makes any payment authorized by this Mortgage relating to taxes, assessments, charges, fees, security interests, encumbrances or insurance, Mortgagee may do so according to any bill, statement or estimate received from the appropriate party claiming such funds without inquiry into the accuracy or validity of such bill, statement or estimate or into the validity of the lien, encumbrance, security interest, tax, assessment, charge, fee, or claim thereof.

3.3. Mortgagee shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

DEFAULT AND RIGHTS ON DEFAULT

4.1. Upon Default, at the sole option of Mortgagee, the Note or any other obligations shall become immediately due and payable, and Mortgagee shall pay all expenses of Mortgagee, including attorney's fees and paralegal fees, incurred in connection with this Mortgage and all expenses incurred in the enforcement of Mortgagee's rights in the Premises and other costs incurred in connection with the disposition of the Premises. The term "Default" when used in this Mortgage means any one or more of the events, conditions or acts defined as a "Default" in the Note or the Loan Agreement or the failure of Mortgagee to pay and perform their terms, or failure of Mortgagee to comply with or to perform

UNOFFICIAL COPY

in accordance with any representation, warranty, term, provision, condition, covenant or agreement contained in this Mortgage or any instrument, agreement or writing securing any Liabilities to which the Mortgagor and Mortgagee are parties. Any Default under the Note shall be Default under this Mortgage.

4.2. Upon any Default hereunder, Mortgagee may, but need not, make any payment or perform any act required of Mortgagor hereunder or under the Loan Agreement in any form and manner deemed expedient by Mortgagee. Mortgagee may, but need not, complete construction of the Improvements (as defined in and pursuant to the Loan Agreement) and enter into the necessary contracts therefor. Mortgagee may, but need not, make full or partial payments of principal or interest on any encumbrances, liens or security interests affecting the Premises, and Mortgagee may purchase, discharge, compromise or settle any tax lien or other lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or contest any tax or assessment. All moneys paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' and paralegals' fees, and any other funds advanced by Mortgagee to protect the Premises or the lien hereof, plus reasonable compensation to Mortgagee for each matter concerning which action herein authorized may be taken, shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon at a per annum rate equivalent to the post maturity rate set forth in the Note. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to Mortgagee on account of any Default hereunder.

4.3. When the indebtedness secured hereby shall become due whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien of this Mortgage. In any suit to foreclose the lien of this Mortgage, there shall be allowed and included as additional indebtedness in the judgment of foreclosure all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' and paralegals' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs of procuring all abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, tax and lien searches, and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute the foreclosure suit or to evidence to bidders at any foreclosure sale. All of the foregoing items, which may be expended after entry of the foreclosure judgment, may be estimated by Mortgagee. All expenditures and expenses mentioned in this paragraph, when incurred or paid by Mortgagee shall become additional indebtedness secured hereby and shall be immediately due and payable, with interest thereon at a rate equivalent to the post maturity interest rate set forth in the Note. This paragraph shall also apply to any expenditures or expenses incurred or paid by Mortgagee or on behalf of Mortgagee in connection with (a) any proceeding, including without limitation, probate and bankruptcy proceedings, to which

261143325

UNOFFICIAL COPY

in accordance with any representation, warranty, term, condition, covenant or agreement contained in this Mortgage or any instrument or agreement or writing securing any liability to which the Mortgagee and Mortgagee are parties. Any Default under this Note shall be Default under this Mortgage.

4.2. Upon any Default hereunder, Mortgagee may, but need not, make any payment or perform any act required of Mortgagee hereunder or under the Loan Agreement in any form and manner deemed expedient by Mortgagee. Mortgagee may, but need not, complete construction of the improvements (as defined in and pursuant to the Loan Agreement) and enter into the necessary contracts therefor. Mortgagee may, but need not, make full or partial payments of principal or interest on any encumbrances, liens or security interests attached to the Premises, and Mortgagee may purchase, discharge or otherwise satisfy any tax lien or other lien or title or other claim against them from any tax sale or forfeiture affecting the Premises or contest any tax or assessment. All moneys paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorney's and paralegal fees, and any other funds advanced by Mortgagee to protect the Premises or the lien hereof, give reasonable compensation to Mortgagee for each matter concerning which action herein authorized may be taken, shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon at a per annum rate equivalent to the best readily available rate set forth in the Note. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to Mortgagee or account of any Default hereunder.

4.3. When the indebtedness secured hereby shall become due whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien of this Mortgage. In any case where close the lien of this Mortgage, there shall be allowed and included an additional indebtedness in the judgment of foreclosure all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' and paralegals' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs of preparing all abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, tax and lien searches, and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute the foreclosure suit or to evidence to bidders at any foreclosure sale. All of the foregoing items, which may be expended after entry of the foreclosure judgment, may be estimated by Mortgagee. All expenditures and expenses mentioned in this paragraph, when incurred or paid by Mortgagee shall become additional indebtedness secured hereby and shall be immediately due and payable with interest thereon at a rate equivalent to the best readily available rate set forth in the Note. This paragraph shall also apply to any expenditures or expenses incurred or paid by Mortgagee or on behalf of Mortgagee in connection with (a) any proceeding, including without limitation, probate and bankruptcy proceedings, in which

UNOFFICIAL COPY

UNOFFICIAL COPY

Mortgagee shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any indebtedness secured hereby, or (b) any preparation for the commencement of any suit for the foreclosure of this Mortgage after accrual of the right to foreclose whether or not actually commenced or preparation for the commencement of any suit to collect upon or enforce the provisions of the Note or any instrument which secures the Note after Default, whether or not actually commenced, or (c) any preparation for the defense of any threatened suit or proceeding which might affect the Premises or the security hereof, whether or not actually commenced.

4.4. The proceeds of any foreclosure sale 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 the items that are mentioned in the immediately preceding paragraph; second, all other items which under the terms of this Mortgage constitute indebtedness secured by this Mortgage additional to that evidenced by the Note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the Note and the Liabilities (first to interest and then to principal); fourth, any surplus to Mortgagor or Mortgagor's heirs, legal representatives, successors or assigns, as their rights may appear.

4.5. Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such suit is filed may appoint a receiver of the Premises. The receiver's appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for the receiver and without regard to the then value of the Premises or whether the Premises shall be then occupied as a homestead or not. Mortgagee may be appointed as the receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises during the pendency of the foreclosure suit 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 when Mortgagor, except for the intervention of the receiver, would be entitled to collect the rents, issues and profits. Such receiver shall also have all other powers which may be necessary or are usual for the protection, possession, control, management and operation of the Premises. The court in which the foreclosure suit is filed may from time to time authorize the receiver to apply the net income in the receiver's hands in payment in whole or in part of the indebtedness secured hereby, or secured by any judgment foreclosing this Mortgage, or any tax, special assessment or other lien or encumbrance which may be or become superior to the lien hereof or of the judgment, and the deficiency judgment against Mortgagor or any guarantor of the Note in case of a foreclosure sale and deficiency.

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

2881123225

UNOFFICIAL COPY

Mortgagee shall be a party, either as plaintiff, defendant, or defendant, by reason of this Mortgage or any instrument executed hereunder, or (b) any preparation for the commencement of any suit for the foreclosure of this Mortgage after accrual of the right to foreclose whether or not actually commenced or preparation for the commencement of any suit to collect upon or enforce the provisions of the Note or any instrument which secured the Note after default, whether or not actually commenced, or (c) any preparation for the defense of any threatened suit or proceeding which might affect the premises or the security hereof, whether or not actually commenced.

4.4. The proceeds of any foreclosure sale shall be distributed and applied in the following order of priority: first, to secure of all costs and expenses incident to the foreclosure proceedings, including all the items that are mentioned in the immediately preceding paragraph; second, all other items which under the terms of this Mortgage constitute indebtedness secured by this mortgage additional to that evidenced by the Note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the Note and the Disbilities (first to interest and then to principal); fourth, any surplus to Mortgagee or Mortgagee's legal representatives, successors or assigns, as their rights may appear.

4.2. Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the Court in which such suit is filed may appoint a receiver of the premises. The receiver's appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagee at the time of application for the receiver and without regard to the value of the premises or whether the premises shall be then occupied as a residence or not. Mortgagee may be appointed as the receiver, and receiver shall have power to collect the rents, issues and profits of the premises during the pendency of the foreclosure suit 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 during any further time when Mortgagee, except for the receiver's portion of the receiver, would be entitled to collect the rents, issues and profits. Such receiver shall also have the right to exercise which may be necessary or convenient for the receiver to control, management and operation of the premises. The receiver, which the foreclosure suit is filed may from time to time sue in the receiver to apply the net income in the receiver's hands in payment in whole or in part of the indebtedness secured hereunder, secured by any judgment foreclosing this Mortgage, or in satisfaction of any judgment against Mortgagee or any guarantor of the debt in case of a foreclosure sale and deficiency.

4.5. No action for the enforcement of the lien of this mortgage shall be subject to any defense which would not be good and available to the party incumbering the premises in an action at law upon the Note.

WITNESSETH

UNOFFICIAL COPY

DEFINITIONS

5.1. "Liabilities" means any and all liabilities, obligations and indebtedness of Mortgagor to Mortgagee under the Note, the Loan Agreement, and this Mortgage and for any other liabilities, obligations and indebtedness of Mortgagor to Mortgagee whether heretofore, now or hereafter owing or arising, due or payable, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, primary or secondary, joint or several, whether existing or arising, through discount, overdraft, purchase, direct loan, by operation of law or otherwise. "Liabilities" also includes all costs of collection, legal expenses, and attorneys' and paralegals' fees incurred or paid by Mortgagee in attempting to enforce Mortgagee's rights, remedies and security interests hereunder, including advising the Mortgagee or drafting any documents for the Mortgagee at any time, or to enforce or collect the Note, Loan Agreement, any guaranty of the Note, or any other indebtedness of Mortgagor or any guarantor of the Note to Mortgagee, or in the repossession, custody, sale, lease, assembly or other disposition of any collateral for the Note. "Liabilities" also includes all of the indebtedness or contractual duties of partnerships to Mortgagee created or arising while Mortgagor or any guarantor of the Note may be or may have been a member of those partnerships.

5.2. This Mortgage and all provisions hereof shall extend to and be binding upon Mortgagor and all persons or parties claiming by, under or through Mortgagor. The word "Mortgagor" when used herein shall also include all persons or parties liable for the Liabilities secured hereby or any part thereof, whether or not such persons or parties shall have executed the Note, the Loan Agreement or this Mortgage, including their respective heirs, estates, personal representative, successors and assigns. Each Mortgagor shall be jointly and severally obligated hereunder. The singular shall include the plural, the plural shall mean the singular and the use of any gender shall be applicable to all genders. The word "Mortgagee" includes the successors and assigns of Mortgagee.

MISCELLANEOUS

6.1. Mortgagee shall release this Mortgage by a proper release after payment and satisfaction in full of the Note and all Liabilities. Mortgagee shall release a specific lot constituting a portion of the Premises from this Mortgage by proper release after payment of the release price for such lot in accordance with the Loan Agreement.

6.2. This Mortgage has been made, executed and delivered to Mortgagee in Cook County, Illinois and shall be construed in accordance with the laws of the State of Illinois. Wherever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law. If any provisions of this Mortgage are prohibited by or determined to be invalid under applicable law, such provisions shall be ineffective to the extent of such prohibitions or invalidity,

RECORDED

UNOFFICIAL COPY

DEFINITIONS

2.1. "Liabilities" means any and all liabilities, obligations and indebtedness of Mortgagor to Mortgagee under the Note, the Loan Agreement, and this Mortgage and for any other liabilities, obligations and indebtedness of Mortgagor to Mortgagee whether heretofore, now or hereafter owing or arising, due or payable, absolute or contingent, primary or secondary, joint or several, whether existing or arising, through discount, overdraft, purchase, direct loan, by operation of law or otherwise. "Liabilities" also includes all costs of collection, legal expenses, and attorneys' fees incurred or paid by Mortgagee in enforcing its rights to enforce Mortgagor's rights, remedies and security interests under, including advising the Mortgagee or drafting any documents for the Mortgagee at any time, or to enforce or collect the Note, Loan Agreement, any guaranty of the Note, or any other indebtedness of Mortgagor or any guarantor of the Note to Mortgagee, or in the repossession, custody, sale, lease, assembly or other disposition of any collateral for the Note. "Liabilities" also includes all of the indebtedness or contractual duties of Mortgagor to Mortgagee created or arising while Mortgagor or any guarantor of the Note has been or may have been a member of those partnerships.

2.2. This Mortgage and all provisions hereof shall extend to and be binding upon Mortgagor and all persons or parties claiming by, under or through Mortgagor. The word "Mortgagor" when used herein shall also include all persons or parties liable for the liabilities secured hereby or any part thereof, whether or not such persons or parties shall have executed the Note, the Loan Agreement or this Mortgage, including their respective heirs, assigns, successors and assigns. Each Mortgagor shall be jointly and severally obligated hereunder. The singular shall include the plural, the plural shall mean the singular and the use of any gender shall be applicable to all genders. The word "Mortgagee" includes the successors and assigns of Mortgagee.

MISCELLANEOUS

2.1. Mortgagee shall release this Mortgage by a proper release after payment and satisfaction in full of the Note and all liabilities. Mortgagee shall release a specific lot constituting a portion of the Premises from this Mortgage by proper release after payment of the release price for such lot in accordance with the Loan Agreement.

2.2. This Mortgage has been made, executed and delivered in accordance with the laws of the State of Illinois. However, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law. If any provisions of this Mortgage are prohibited by or determined to be invalid under applicable law, such provisions shall be ineffective to the extent of such prohibitions or invalidity.

2025 RELEASE UNDER E.O. 14176

UNOFFICIAL COPY

without invalidating the remainder of such provisions or the remaining provisions of this Mortgage.

6.3. This Mortgage is subject to the terms, provisions and conditions of the Loan Agreement. In the event of any inconsistency or conflict between the terms, provisions or conditions of this Mortgage and the Loan Agreement, the Loan Agreement shall control in all instances.

WITNESS the hand _____ and seal _____ of Mortgagor the day and year set forth above.

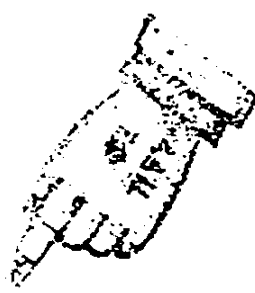
HERITAGE BANK AND TRUST COMPANY,
formerly known as Heritage County
Bank and Trust Company, not indi-
vidually but solely as Trustee under
Trust Agreement dated October 17,
1986 and known as Trust No. 2929

By [Signature]
Its Trust Officer

Attest [Signature]
Its Asst. Secretary

Property of Cook County Clerk's Office

RECORDED
INDEXED
SERIALIZED
FILED



This instrument was prepared by:

Rogene V. Tubman, Esq.
DeHaan & Richter, P.C.
55 W. Monroe - Suite 1000
Chicago, Illinois 60603
(312) 726-2660

-88-043325

RECORDED

TAX Numbers^o

LOT 1
28-01-204 -002
28-01-204 -012
-9- LOT 1

TRP ABO

2/TAIL

UNOFFICIAL COPY

without invalidating the remainder of such provisions or the remaining provisions of this Mortgage.

6.3. This Mortgage is subject to the terms, provisions and conditions of the loan agreement. In the event of any inconsistency or conflict between the terms, provisions or conditions of this Mortgage and the loan agreement, the loan agreement shall control in all instances.

WITNESS the hand and seal of Mortgagor the day and year set forth above.

HERITAGE BANK AND TRUST COMPANY
formerly known as Heritage County
Bank and Trust Company, not indi-
vidually but solely as Trustee under
Trust Agreement dated October 17,
1988 and known as Trust No. 8888

By _____
Its _____
Attest: _____
Trustee

This instrument was prepared by:

Rogene V. Tushman, Esq.
Gellan & Richter, P.C.
55 W. Monroe - Suite 1000
Chicago, Illinois 60603
(312) 728-2860

88-043325

RECORDED

88-01-201-100
88-01-201-019

Numbered X AT

UNOFFICIAL COPY

STATE OF ILLINOIS

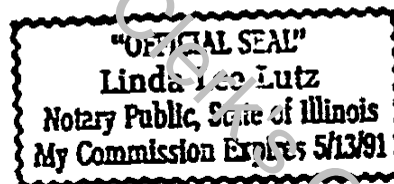
COUNTY OF Cook

I, Linda Lee Lutz, a Notary Public in and for the County and State aforesaid, do hereby certify that Joyce V. Cunningham and Audrey Tancos, personally known to me to be the same persons whose names are subscribed as Trust Officer and Asst. Secretary, respectively, of HERITAGE BANK AND TRUST COMPANY, an ILLINOIS corporation, to the foregoing instrument, appeared before me this day in person and acknowledged to me that they, being thereunto duly authorized, signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 27th day of January, 1988.

Linda Lee Lutz
NOTARY PUBLIC

My Commission Expires: 5-13-91



88043325

UNOFFICIAL COPY

STATE OF ILLINOIS

COUNTY OF COOK

I, Linda Lee Latta, Clerk of Cook County, Illinois, do hereby certify that the following instrument, appearing before me on the 15th day of August, 1951, and acknowledged as being duly executed by the parties thereto, has been duly filed and delivered into the office of the Clerk of Cook County, Illinois, and that the same is a true and correct copy of the original thereof as the same appears thereon and appears in my files and records.

WITNESS my hand and the seal of Cook County, Illinois, this 15th day of August, 1951.

Property of Cook County Clerk's Office

Notary Public in and for the State of Illinois

NO NOTARY PUBLIC

"OFFICIAL SEAL"
 Linda Lee Latta
 Clerk of Cook County, Illinois
 My Commission Expires 8/15/51

8801152

UNOFFICIAL COPY

EXHIBIT A

Legal Description

PARCEL 1: LOT 1 (EXCEPT THE EAST 308.2 FEET THEREOF) IN OWNERS SUBDIVISION OF LOT 4 OF PETER ENGELLAND'S SUBDIVISION OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 1, TOWNSHIP 36 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2: LOT 1 (EXCEPT THE WEST 167 FEET THEREOF; ALSO EXCEPT THE EAST 199.1 FEET THEREOF AND EXCEPT THE SOUTH 154 FEET OF THAT PART OF SAID LOT 1 LYING EAST OF THE WEST 197 FEET AND WEST OF THE EAST 147.1 FEET THEREOF) IN OWNER'S SUBDIVISION OF LOT 4 IN PETER ENGELLAND'S SUBDIVISION OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 1, TOWNSHIP 36 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as: Vacant property near 139th and Harrison, Blue Island, Illinois

880-43325

UNOFFICIAL COPY

EXHIBIT A

Legal Description

PARCEL 1: LOT 1 (EXCEPT THE WEST 1/4) BEING THE WEST 1/4 OF SECTION 14 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2: LOT 1 (EXCEPT THE WEST 1/4) BEING THE WEST 1/4 OF SECTION 14 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

County known as: Cook County, Illinois

88073352