

UNOFFICIAL COPY

88087556

MORTGAGE

34.00

THIS MORTGAGE, dated as of February 29, 1988, with respect to the real estate ("Real Estate") described on Exhibit A attached hereto and made a part hereof, is made by E.W. KNEIP COMPANY, an Illinois corporation (herein called the "Mortgagor"), whose address is 32901 N. Highway 21, Libertyville, Illinois 60048, in favor of the MARINE BANK CHICAGO (herein, together with its successors and assigns, including each and every holder from time to time of the Notes hereinafter referred to, called the "Mortgagee"), whose address is 208 South LaSalle Street, Chicago, Illinois 60690.

WITNESSETH:

WHEREAS, the Mortgagor has, concurrently herewith, entered into a Loan Agreement with Mortgagee of even date herewith (the "Loan Agreement") and borrowed Four Million Two Hundred Fifty Thousand Dollars (\$4,250,000) on a revolving credit basis from the Mortgagee and, to evidence such loans, executed and delivered its Promissory Note to Mortgagee in such principal amount, maturing on the earlier of demand made by Mortgagee or August 30, 1988, unless extended or renewed (the "Revolving Note"), a portion of which shall be converted on May 30, 1988, to a term loan evidenced by a Term Note of the Mortgagor payable to Mortgagee, maturing in monthly installments, as provided therein, through February 28, 1992 or as otherwise provided therein, unless extended or renewed (the "Term Note" or, together with the "Revolving Note", as such notes may be extended, renewed, modified or amended and any replacement or substitution notes therefor, collectively hereinafter referred to as the "Note" or the "Notes"), which are to be secured by the Loan Documents referred to therein; and

WHEREAS, the principal amount of the indebtedness evidenced by the Notes, but only up to the aggregate principal amount of Four Million Two Hundred Fifty Thousand Dollars (\$4,250,000), together with and including interest thereon and any extensions and renewals thereof, in whole or in part, and any and all other sums which may be at any time due or owing or required to be paid as provided herein or in the Notes, are collectively herein called the "Indebtedness Hereby Secured".

NOW, THEREFORE, to secure the payment of the Indebtedness Hereby Secured and the performance and observance of all the covenants, provisions and agreements provided herein and in the Loan Agreement, and in consideration of the premises and Ten Dollars (\$10) in hand paid by the Mortgagee to the Mortgagor, and for other good and valuable considerations, the receipt and

88087556

7151047

UNOFFICIAL COPY

3 0 0 3 7 5 5 6

sufficiency of all of which is hereby acknowledged by the Mortgagor, the Mortgagor does hereby, as to its respective parcel of the Real Estate, ASSIGN, GRANT, RELEASE, REMISE, WARRANT, ALIEN, MORTGAGE and CONVEY unto the Mortgagee all and sundry rights, interests and property hereinafter described (all herein together called the "Premises"):

- (a) The Real Estate
- (b) All buildings, structures and other improvements now or at any time hereafter constructed or erected upon or located at the Real Estate, together with and including, but not limited to, all fixtures, equipment, machinery, appliances and other articles and attachments now or hereafter forming part of, attached to or incorporated in any such buildings, structures or improvements (all herein generally called the "Improvements");
- (c) All privileges, reservations, allowances, hereditaments, tenements and appurtenances now or hereafter belonging or pertaining to the Real Estate or Improvements;
- (d) All leasehold estates, right, title and interest of Mortgagor in any and all leases, subleases, arrangements or agreements relating to the use and occupancy of the Real Estate and Improvements or any portion thereof, now or hereafter existing or entered into (all herein generally called "Leases"), together with all cash or security deposits, advance rentals and other deposits or payments of similar nature given in connection with any Leases;
- (e) All rents, issues, profits, royalties, income, avails and other benefits now or hereafter derived from the Real Estate and Improvements, under Leases or otherwise (all herein generally called "Rents"), subject to the right, power and authority given to the Mortgagor in the Assignment of Rents hereinafter referred to, to collect and apply the rents;
- (f) Any interest, estates or other claims, both in law and in equity, which Mortgagor now has or may hereafter acquire in the Real Estate and Improvements or other rights, interests or properties comprising the Premises now owned or hereafter acquired;
- (g) All the estate, interest, right, title or other claim or demand which Mortgagor now has or may hereafter have or acquire with respect to (i) the

99087556

UNOFFICIAL COPY

Property of Cook County Clerk's Office

2011/11/17

UNOFFICIAL COPY

3 5 0 3 7 5 5 6

proceeds of insurance in effect with respect to the Premises and (ii) any and all awards, claims for damages and other compensation made for or consequent upon the taking by condemnation, eminent domain or any like proceeding, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Premises, including, without limitation, any awards and compensation resulting from a change of grade of streets and awards and compensation for severance damages (all herein generally called "Awards"); and

- (h) All right, title and interest of Mortgagor now owned or hereafter acquired in and to (i) any land or vaults lying within the right-of-way of any street or alley, open or proposed, adjoining the Real Estate; (ii) any and all alleys, sidewalks, strips and gores of land adjacent to or used in connection with the Real Estate and Improvements; (iii) any and all rights and interests of every name or nature forming part of or used in connection with the Real Estate and/or the operation and maintenance of the Improvements; (iv) all easements, rights-of-way and rights used in connection with the Real Estate or Improvements or as a means of access thereto, and (v) all water rights.

TO HAVE AND TO HOLD the Premises hereby mortgaged and conveyed or intended so to be, together with the rents, issues and profits thereof, unto the Mortgagee forever, free from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois (which rights and benefits are hereby expressly released and waived), for the uses and purposes herein set forth, together with all right to retain possession of the Premises after any default in the payment of all or any part of the Indebtedness Hereby Secured, or the breach of any covenant or agreement herein contained, or upon the occurrence of any Event of Default as hereinafter defined;

FOR THE PURPOSE OF SECURING:

- (a) Payment of the indebtedness, with interest thereon, evidenced by the Notes and any and all modifications, extensions and renewals thereof, and all other Indebtedness Hereby Secured;
- (b) Performance and observance by Mortgagor of all of the terms, provisions, covenants and agreements on Mortgagor's part to be performed and observed hereunder and under the Assignment of Rents of even date herewith ("the Assignment" or "the Assignment of Rents").

99057556

PROVIDED, NEVERTHELESS, and these presents are upon the express condition that if all of the Indebtedness Hereby Secured shall be duly and punctually paid and all the terms, provisions, conditions and agreements herein contained on the part of the Mortgagor to be performed or observed shall be strictly performed and observed, then this Mortgage and the estate, right and interest of the Mortgagee in the Premises shall cease and become void and of no effect.

AND IT IS FURTHER AGREED THAT;

1. Payment of Indebtedness Hereby Secured. The Mortgagor will duly and promptly pay each and every installment of the principal of and interest and premium, if any, on the Notes, and all other Indebtedness Hereby Secured as the same become due, and will duly perform and observe all of the covenants, agreements and provisions provided herein, in the Loan Agreement, the Assignment of Rents or the Notes.

2. Maintenance, Repair, Restoration and Superior Liens. The Mortgagor will:

- (a) promptly repair, restore or rebuild any Improvements now or hereafter existing on the Premises which may become damaged or be destroyed whether or not proceeds of insurance are available or sufficient for the purpose;
- (b) keep the Premises in good condition and repair, without waste, and free from mechanics', materialmen's or like liens or claims or other liens or claims for lien not expressly subordinated to the lien hereof;
- (c) 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, and upon request exhibit satisfactory evidence of the discharge of such lien to the Mortgagee;
- (d) complete, within a reasonable time, any Improvements now or at any time in the process of erection upon the Premises;
- (e) comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof;
- (f) make no material alterations in the Premises, except as required by law or municipal ordinance;

59057556

UNOFFICIAL COPY

8 8 0 9 7 5 5 6

- (g) suffer or permit no change in the general nature of the occupancy of the Premises without the Mortgagee's prior written consent;
- (h) pay when due all operating costs of the Premises;
- (i) initiate or acquiesce in no zoning reclassification with respect to the Premises, without the Mortgagee's prior written consent; and
- (j) not reduce, build upon, obstruct, redesignate or relocate any, sidewalks, aisles, streets, paved areas or rights-of-way or lease or grant any rights to use the same to any other person except tenants and invitees of tenants of the Premises without the prior written consent of the Mortgagee.

3. Taxes. The Mortgagor will pay when due and before any penalty attaches all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "Taxes"), whether or not assessed against the Mortgagor, if applicable to the Premises or any interest therein, or the Indebtedness Hereby Secured, or any obligation or agreement secured hereby; and Mortgagor will, upon written request, furnish to the Mortgagee duplicate receipts therefor; provided that the Mortgagor may contest the amount or propriety of any Taxes in accordance with the provisions of Section 25 hereof; provided that nothing in this Section contained shall require the Mortgagor to pay any income, franchise or excise tax imposed upon the Mortgagee, excepting only such which may be levied against such income expressly and for a specific substitute for Taxes on the Premises, and then only in an amount computed as if the Mortgagee derived no income from any source other than its interest hereunder.

4. Insurance Coverage. The Mortgagor will insure and keep insured the Premises and each and every part and parcel thereof against such perils and hazards as the Mortgagee may from time to time require, and in any event including;

- (a) Insurance against loss to Improvements caused by fire, lightning and risks covered by the so-called "all perils" endorsement and such other risks as the Mortgagee may reasonably require, in amounts:
 - i) greater than or equal to the aggregate principal amount of the Notes up to the approximate current market value of the Premises as of this date, and
 - ii) sufficient to satisfy any coinsurance limitations imposed by the casualty insurer;

UNOFFICIAL COPY

8 8 0 8 7 5 5 6

- (b) Comprehensive general public liability insurance against bodily injury and property damage in any way arising in connection with the Premises with such limits as the Mortgagee may reasonably require and in any event not less than \$2,000,000 single limit coverage;
- (c) Business interruption insurance in amounts sufficient to pay during any period of up to one (1) year in which the Improvements may be damaged or destroyed: (i) all rents derived from the Premises and (ii) all amounts (including, but not limited to, all taxes, assessments, utility charges and insurance premiums) required herein to be paid by the Mortgagor or by tenants of the Premises;
- (d) Broad form boiler and machinery insurance on all equipment and objects customarily covered by such insurance (if any thereof are located at the Premises), providing for full repair and replacement cost coverage, and other insurance of the types and in amounts as the Mortgagee may reasonably require, but in any event not less than that customarily carried by persons owning or operating like properties;
- (e) During the making of any alterations or improvements to the Premises (i) insurance covering claims based on the owner's contingent liability not covered by the insurance provided in subsection (b) above and (ii) Worker's Compensation insurance covering all persons engaged in making such alterations or improvements.

5. Insurance Policies. All policies of insurance to be maintained and provided as required by Section 4 hereof shall:

- (a) be in form, with companies and in amounts reasonably satisfactory to Mortgagee, and all policies of casualty insurance shall have attached thereto mortgagee clauses or endorsements in favor of and with loss payable to Mortgagee;
- (b) contain endorsements that no act or negligence of the insured or any occupant and no occupancy or use of the Premises for purposes more hazardous than permitted by the terms of the policies will affect the validity or enforceability of such policies as against Mortgagee;
- (c) be written in amounts sufficient to prevent Mortgagor from becoming a co-insurer; and

89087556

UNOFFICIAL COPY

- (d) provide for thirty (30) days prior written notice of cancellation to Mortgagee;

and Mortgagor will deliver its policies, together with the required endorsements, including additional and renewal policies, to Mortgagee, and in case of insurance policies about to expire, the Mortgagor will deliver its renewal policies not less than thirty (30) days prior to the respective dates of expiration.

6. Proceeds of Insurance. The Mortgagor will give the Mortgagee prompt notice of any damage to or destruction of the Premises, and:

- (a) In case of damage to or destruction of the Premises, or any part thereof, covered by policies of insurance (herein called "Insured Casualty"), the Mortgagee (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be) is hereby authorized at its option (i) to settle and adjust any claim under such policies without the consent of the Mortgagor, or (ii) allow the Mortgagor to adjust the loss; provided that, in any case, the Mortgagee shall, and is hereby authorized to, collect and receipt for any such insurance proceeds, and the expenses incurred by the Mortgagee in the adjustment and collection of insurance proceeds shall be so much additional Indebtedness Hereby Secured, and shall be reimbursed to the Mortgagee upon demand;
- (b) In the event of any such Insured Casualty, the Mortgagee may, in its sole discretion, (i) accelerate and declare that portion of the Indebtedness Hereby Secured equal to the resultant proceeds of insurance to be immediately due and payable, or if such Insured Casualty concerns a material or substantial portion of the Premises, declare the entire balance of the Indebtedness Hereby Secured to be immediately due and payable, and apply all such proceeds against such accelerated portion of the Indebtedness Hereby Secured, or may (ii) apply the proceeds of insurance to reimburse the Mortgagor for the cost of restoring, repairing, replacing or rebuilding (herein generally called "Restoring") the Premises or any part thereof subject to Insured Casualty, as provided for in Section 8 hereof;
- (c) Mortgagee may apply the proceeds of insurance consequent upon any Insured Casualty upon the Indebtedness Hereby Secured, in such order or manner

UNOFFICIAL COPY

3 3 0 3 7 5 5 6

as the Mortgagee may elect; provided that no premium or penalty shall be payable in connection with any prepayment of the Indebtedness Hereby Secured made out of insurance proceeds as aforesaid;

(d) In the event that proceeds of insurance, if any, shall be made available to the Mortgagor for the restoring of the Premises, Mortgagor hereby covenants to restore the same to at least equal value and substantially the same character as prior to such damage or destruction; all to be effected in accordance with plans and specifications to be first submitted to and approved by the Mortgagee;

(e) Any portion of the insurance proceeds remaining after payment in full of the Indebtedness Hereby Secured shall be paid to Mortgagor unless otherwise ordered by a court of competent jurisdiction;

(f) No interest shall be payable by Mortgagee on account of any insurance proceeds at any time held by the Mortgagee.

7. Condemnation. The Mortgagor will give Mortgagee prompt notice of any proceedings, instituted or threatened, seeking condemnation or taking by eminent domain or any like process (herein generally called a "Taking"), of all or any part of the Premises, including damages to grade; and:

(a) Mortgagor agrees that it shall not settle, compromise or adjust any claim for an Award without the prior written consent of Mortgagee;

(b) Mortgagor hereby assigns, transfers and sets over unto Mortgagee the entire proceeds of any Award consequent upon any Taking;

(c) Mortgagee may in its sole discretion, (i) declare that portion of the Indebtedness Hereby Secured equal to the Award to be immediately due and payable, or if the Taking concerns a material or substantial portion of the Premises, declare the entire balance of the Indebtedness Hereby Secured to be immediately due and payable, and apply all such Awards to such accelerated portion of the Indebtedness Hereby Secured, or may (ii) apply such funds to reimburse Mortgagor for the cost of restoring the portion of the Premises remaining after such Taking, as provided for in Section 8 hereof;

UNOFFICIAL COPY

89087556

- (d) Mortgagee may apply any Award (including the amount not applied for Restoration effected in accordance with Subsection (c) above) upon the Indebtedness Hereby Secured in such order or manner as Mortgagee may elect; provided that no premium or penalty shall be payable in connection with any prepayment of the Indebtedness Hereby Secured made out of any Award as aforesaid;
- (e) In the event that any Award shall be made available to the Mortgagor for restoring the portion of the Premises remaining after a Taking, Mortgagor hereby covenants to restore the remaining portion of the Premises to at least equal value and substantially the same character as prior to such Taking, all to be effected in accordance with plans and specifications to be first submitted to and approved by Mortgagee;
- (f) Any portion of any Award remaining after payment in full of the Indebtedness Hereby Secured shall be paid to Mortgagor unless otherwise ordered by a court of competent jurisdiction;
- (g) No interest shall be payable by Mortgagee on account of any Award at any time held by Mortgagee.

8. Disbursement of Insurance Proceeds and Condemnation Awards. In the event the Mortgagor receives reimbursement out of insurance proceeds or any Award held by the Mortgagee such proceeds shall be disbursed from time to time upon the Mortgagee being furnished with satisfactory evidence of the estimated cost of completion of the Restoring, with funds (or assurances satisfactory to the Mortgagee that such funds are available) sufficient in addition to the proceeds of insurance or Award, to complete the proposed Restoring, and with such architect's certificates, waivers of lien, contractor's sworn statements and such other evidences of cost and of payment as the Mortgagee may reasonably require and approve; and the Mortgagee may, in any event, require that all plans and specifications for such Restoring be submitted to and approved by the Mortgagee prior to commencement of work. No payment made prior to the final completion of the Restoring shall exceed ninety percent (90%) of the value of the work performed from time to time; funds other than proceeds of insurance or the Award shall be disbursed prior to disbursement of such proceeds; and at all times the undisbursed balance of such proceeds remaining in the hands of the Mortgagee, together with funds deposited for the purpose or irrevocably committed to the satisfaction of the Mortgagee by or on behalf of the Mortgagor for the purpose, shall be at least sufficient in the reasonable judgment of the Mortgagee to pay

UNOFFICIAL COPY

9 9 0 3 7 5 5 6

for the cost of completion of the Restoring, free and clear of all liens or claims for lien.

9. Stamp Tax. If, by the laws of the United States of America, or of any state having jurisdiction over the Mortgagor, any tax is due or becomes due in respect of the issuance of the Notes, the Mortgagor shall pay such tax on the Notes in the manner required by such law.

10. Prepayment Privilege. At such time as the Mortgagor is not in default under the terms of the Notes, Assignment of Rents or Mortgage, the Mortgagor shall have the privilege of making prepayments on the principal of the Notes (in addition to the required payments thereunder) in accordance with the terms and conditions set forth in the Notes, but not otherwise.

11. Effect of Extensions of Time, Amendments on Junior Liens and Others. To the payment of the Indebtedness Hereby Secured, or any part thereof, be extended or varied, or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability, if any, and the lien, and all provisions hereof, shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding any such extension, variation or release. Any person, firm or corporation taking a junior mortgage or other lien upon the Premises or any interest therein, shall take the said lien subject to the rights of the Mortgagee herein to amend, modify and supplement this Mortgage, the Notes and the Assignment of Rents, and to vary the rate of interest and the method of computing the same, and to impose additional fees and other charges, and to extend the maturity of the Indebtedness Hereby Secured, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien. Nothing in this Section contained shall be construed as waiving any provision of Section 15 hereof which provides, inter alia, that it shall constitute an Event of Default if the Premises be sold, conveyed or encumbered.

12. Effect of Changes in Tax Laws. In the event of the enactment after the date hereof by any legislative authority having jurisdiction of the Premises of any law deducting from the value of land for the purposes 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 the 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 method of collecting taxes, so as to affect

UNOFFICIAL COPY

0 3 0 4 7 5 5 6

this Mortgage or the Indebtedness Hereby Secured, or the holder thereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments or reimburse the Mortgagee therefor; provided that if in the opinion of counsel for the Mortgagee the payment by Mortgagor of any such taxes or assessments shall be unlawful, then the Mortgagee may, by notice to the Mortgagor, declare the entire principal balance of the Indebtedness Hereby Secured to be due and payable on a date specified in such notice not less than 45 days after the date of such notice, and the Indebtedness Hereby Secured shall then be due and payable without premium or penalty on the date so specified in such notice.

13. Mortgagee's Performance of Mortgagor's Obligations. In case of default therein, the Mortgagee either before or after acceleration of the Indebtedness Hereby Secured or the foreclosure of the lien hereof and during the period of redemption, if any, may, but shall not be required to, make any payment or perform any act herein or hereinafter referred to, which is required of the Mortgagor in any form and manner deemed expedient to the Mortgagee; and the Mortgagee may, but shall not be required to, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises, or contest any tax or assessment, and may, but shall not be required to, complete construction, furnishing and equipping of the Improvements upon the Premises and rent, operate and manage the Premises and such Improvements and pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Premises and Improvements shall be operational and usable for their intended purposes. All monies paid for any of the purposes herein authorized, and all expenses paid or incurred in connection therewith, including reasonable attorney's fees and any other monies advanced by the Mortgagee to protect the Premises and the lien hereof, or to complete construction, furnishing and equipping or to rent, operate and manage the Premises and such Improvements or to pay any such operating costs and expenses thereof or to keep the Premises and Improvements operational and usable for their intended purposes, shall be so much additional Indebtedness Hereby Secured, whether or not they exceed the aggregate principal amount of the Notes, and shall become immediately due and payable without notice, and with interest thereon at the highest default rate specified in the Notes (herein called the "Default Rate"). Inaction of the Mortgagee shall never be considered a waiver of any right accruing to it on account of any default on the part of the Mortgagor. The Mortgagee, in making any payment hereby authorized (a) relating to taxes and assessments, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax

UNOFFICIAL COPY

3 3 0 3 7 5 5 6

lien or title or claim thereof; (b) for the purchase, 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; or (c) in connection with the completion of construction, furnishing or equipping of the Improvements or the Premises or the rental, or operation or management of the Premises or the payment of operating costs and expenses thereof, Mortgagee may do so in such amounts and to such persons as Mortgagee may deem appropriate and may enter into such contracts therefor as Mortgagee may deem appropriate or may perform the same itself.

14. Inspection of Premises. The Mortgagee shall have the right to inspect the Premises at all reasonable times, and access thereto shall be permitted for that purpose upon reasonable notice to the Mortgagor and provided such inspection does not unreasonably interfere with the operation of the Mortgagor's business.

15. Restrictions on Transfer. It shall be an immediate Event of Default and default hereunder if, without the prior written consent of the Mortgagee, Mortgagor shall create, effect, contract for, commit to or consent to or shall suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of the Premises or any part thereof, or interest therein, whether any such above conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided that the foregoing provisions of this Section 15 shall not apply (i) to liens securing the Indebtedness Hereby Secured, (ii) to the lien of current taxes and assessments not in default, or (iii) the mortgage lien in favor of Swift-Eckrich, Inc. to the extent it secures the Seller Note referred to in the Loan Agreement and any other Subordinated Debt (as defined in the Loan Agreement) owing thereto. Mortgagee may condition its consent upon such increase in rate of interest payable upon the Indebtedness Hereby Secured, change in monthly payments thereon, change in maturity thereof and/or the payment of a fee, all as Mortgagee may in its sole discretion require. The provisions of this Section 15 shall be operative with respect to and shall be binding upon, any persons who, in accordance with the terms hereof or otherwise, shall subsequently acquire any part of or interest in or encumbrance upon the Premises, or any beneficial interest therein.

16. Events of Default. If one or more of the following events (herein called "Events of Default") shall occur:

- (a) If default is made in the due and punctual payment of the Notes or any installment thereof, either

UNOFFICIAL COPY

principal or interest, as and when the same is due and payable and such default continues uncured for a period of ten (10) days thereafter; or

- (b) If an Event of Default shall occur under the Loan Agreement, Notes, or any other Loan Documents or the Assignment of Rents and be continuing without cure or waiver by the Mortgagee; or
- (c) If an Event of Default pursuant to Sections 15 or 34 hereof shall occur and be continuing without notice or period of grace of any kind; or
- (d) If default is made in the maintenance and delivery to Mortgagee of insurance required to be maintained and delivered hereunder, without notice or grace of any kind; or
- (e) If default shall continue for fifteen (15) days after notice thereof by the Mortgagee to the Mortgagor in the due and punctual performance or observance of any agreement or condition herein provided (other than those set forth above); or
- (f) If the Premises shall be abandoned;

then the Mortgagee is hereby authorized and empowered at its option, and without affecting the lien hereby created or the priority of said lien or any right of the Mortgagee hereunder, to declare, without further notice all Indebtedness Hereby Secured to be immediately due and payable, whether or not such default is thereafter remedied by the Mortgagor, and the Mortgagee may immediately proceed to foreclose this Mortgage and/or exercise any right, power or remedy provided by this Mortgage, the Notes, the Assignment of Rents or any other Loan Documents or by law or in equity conferred.

17. Foreclosure. When the Indebtedness Hereby Secured, or any part thereof, shall become due, whether by acceleration or otherwise, the Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof. In any suit or proceeding to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale, all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for attorneys' fees, appraisers' 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 of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title, as the Mortgagee may deem reasonably necessary either to prosecute such suit or to

UNOFFICIAL COPY

3 9 0 8 7 5 5 6

evidence to bidders at sales which may be had pursuant to such decree, the true conditions of the title to or the value of the Premises. All expenditures and expenses of the nature in this Section mentioned, and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by the Mortgagee in any litigation or proceedings affecting this Mortgage, the Notes or the Premises, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by the Mortgagor, with interest thereon at the Default Rate.

18. 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 Section 17 hereof; Second, all other items which, under the terms hereof, constitute Indebtedness Hereby Secured additional to that evidenced by the Notes, with interest on such items as herein provided; Third, to interest remaining unpaid upon the Notes; Fourth, to the principal remaining unpaid upon the Notes; and lastly, any surplus to the Mortgagor, and its successors or assigns, as their rights may appear.

19. Receiver. Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises. Such appointment may be made either before or after sale, without notice, without regard to solvency or insolvency of the 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 hereunder or any holder of the Notes may be appointed as such receiver. Such receiver shall have the power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when the Mortgagor, except for the intervention of such receiver, would be entitled to collection of 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 may, from time to time, authorize the receiver to apply the net income from the Premises in his hands in payment in whole or in part of;

- (a) The Indebtedness Hereby Secured or the indebtedness secured by any decree foreclosing this Mortgage or any tax, special assessment or other lien which may

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00000000

UNOFFICIAL COPY

be or become superior to the lien hereof or of such decree, provided such application is made prior to the foreclosure sale; or

(b) The deficiency in case of a sale and deficiency.

20. Insurance Upon Foreclosure. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in Restoring the Improvements, as aforesaid, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct. In the case of foreclosure of this Mortgage, the court, in its decree, may provide that the Mortgagee's clause attached to each of the casualty insurance policies may be canceled and that the decree creditor may cause a new loss clause to be attached to each of said casualty insurance policies making the loss thereunder payable to said decree creditors; and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statutes in each such case made and provided, then in every such case, each and every successive redeemer may cause the preceding loss clause attached to each casualty insurance policy to be canceled and a new loss clause to be attached thereto, making the loss thereunder payable to such redeemer. In the event of foreclosure sale, the Mortgagee is hereby authorized, without the consent of the Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as the Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies.

21. Waiver. The Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner whatever claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor claim, take or insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or after such sale or sales claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. The Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, excepting only decree or judgment creditors of the Mortgagor acquiring any interest or title to the Premises or beneficial interest in Mortgagor subsequent to

the date hereof, it being the intent hereof that any and all such rights of redemption of the Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Chapter 110, Para. 12-124 and Para. 12-125 of the Illinois Statutes or other applicable law or replacement statutes of the State of Illinois. The Mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power or remedy herein or otherwise granted or delegated to the Mortgagee, but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted. Any Mortgagor which is a trustee represents that the provisions of this Section (including the waiver of redemption rights) were made at the express direction of Mortgagor's beneficiary and the persons having the power of direction over Mortgagor and are made on behalf of the trust estate of Mortgagor and the beneficiary of Mortgagor, as well as all other persons mentioned above.

22. Assignment. As further security for the Indebtedness Hereby Secured, the Mortgagor has, concurrently herewith, executed and delivered to the Mortgagee a separate Assignment of Rents dated as of the date hereof, wherein and whereby, among other things, the Mortgagor has assigned to the Mortgagee all of the rents, issues and profits and/or any and all leases and/or the rights of management of the Premises and/or of equipment used at the Premises all as therein more specifically set forth, which said Assignment of Rents is hereby incorporated herein by reference as fully and with the same effect as if set forth herein at length. The Mortgagor agrees that it will duly perform and observe all of the terms and provisions on its part to be performed and observed under the Assignment of Rents. The Mortgagor further agrees that it will duly perform and observe all the terms and provisions on lessor's part to be performed and observed under any and all Leases of the Premises to the end that no default on the part of lessor shall exist thereunder. Nothing herein contained shall be deemed to obligate the Mortgagee to perform or discharge any obligation, duty or liability of lessor under any such Lease of the Premises, and the Mortgagor shall and does hereby indemnify and hold the Mortgagee harmless from any and all liability, loss or damage which the Mortgagee may or might incur under any Lease of the Premises or by reason of the Assignment of Rents (except for losses resulting from Mortgagee's gross negligence or wilful misconduct); and any and all such liability, loss or damage incurred by the Mortgagee, together with the costs and expenses, including reasonable attorneys' fees, incurred by the Mortgagee in the defense of any claims or demands (whether successful or not), shall be so much additional Indebtedness Hereby Secured, and the Mortgagor shall reimburse the Mortgagee therefor on demand, together with interest at the Default Rate from the date of demand to the date of payment.

23. Mortgagee in Possession. Nothing herein contained shall be construed as constituting the Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises by the Mortgagee. In any case in which under the provisions of this Mortgage the Mortgagee has a right to institute foreclosure proceedings, whether before or after any Indebtedness Hereby Secured is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, forthwith, upon demand of Mortgagee, Mortgagor shall surrender to Mortgagee and Mortgagee shall be entitled to take actual possession of the Premises or any part thereof personally, or by its agents or attorneys, as for condition broken, and Mortgagee in its discretion may, with or without force and with or without process of law, enter upon and take and maintain possession of all or any part of said Premises, together with all documents, records, papers and accounts of the Mortgagor or then owner of the Premises relating thereto, and may exclude the Mortgagor, its agents or servants, wholly therefrom and may as attorney in fact or agent of the Mortgagor, or in its own name as Mortgagee and under the powers herein granted, hold, operate, manage and control the Premises and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the rents, issues, and profits of the Premises, including, without limitation, actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to the Mortgagor, and with full power to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same, to elect to disaffirm any lease or sublease made subsequent to this Mortgage or subordinated to the lien hereof, to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Premises as to it may seem judicious to Mortgagee, to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof and to receive all of such rents, issues and profits. Should the Mortgagee incur any costs, expenses, liability, loss or damage, under or by reason of the foregoing, or in the defense of any claims or demands with respect thereto, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall constitute so much additional Indebtedness Hereby Secured and the Mortgagor shall reimburse the Mortgagee therefor immediately upon demand, together with interest thereon at the Default Rate from the date of demand to the date of payment. The Mortgagee in the exercise of the rights and powers hereinabove conferred upon it by

UNOFFICIAL COPY

Paragraph 22 and Paragraph 23 hereof shall have full power to use and apply the avails, rents, issues and profits of the Premises to the payment of or on account of any Indebtedness Hereby Secured, in such order of application as the Mortgagee may from time to time elect, or any deficiency which may result from any foreclosure sale.

24. Usury Exception. It is understood and agreed that the loans evidenced by the Notes and secured hereby are loans secured by a mortgage and a business loan within the purview of Section 6404 of Chapter 17 of Illinois Revised Statutes (or any applicable substitute, amended, or replacement statutes under the laws of the State of Illinois) transacted solely for the purpose of carrying on or acquiring the business of the Mortgagor as contemplated by said Section.

25. Contests. Notwithstanding anything to the contrary herein contained, Mortgagor shall have the right to contest, by appropriate legal proceedings diligently prosecuted, any Taxes imposed or assessed upon the Premises or which may be or become a lien thereon and any mechanics', materialmen's or other liens or claims for lien upon the Premises (all herein called "Contested Liens"), and no Contested Lien shall constitute an Event of Default hereunder, if, but only if:

- (a) Mortgagor shall forthwith give notice of any Contested Lien to Mortgagee at the time the same shall be asserted;
- (b) Mortgagor shall deposit with Mortgagee the full amount (herein called the "Lien Amount") of such Contested Lien or which may be secured thereby, together with such amount as Mortgagee may reasonably estimate as interest or penalties which might arise during the period of contest; provided that in lieu of such payment Mortgagor may furnish to Mortgagee a bond or title indemnity in such amount and form, and issued by a bond or title insuring company, as may be satisfactory to Mortgagee;
- (c) Mortgagor shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Premises, and shall permit Mortgagee to be represented in any such contest and shall pay all expenses incurred by Mortgagee in so doing, including fees and expenses of Mortgagee's counsel (all of which shall constitute so much additional Indebtedness Hereby Secured bearing interest at the Default Rate until paid, and payable by the Mortgagor upon demand);

UNOFFICIAL COPY

3 0 0 7 5 5 6

(d) The Mortgagor shall pay such Contested Lien and all Lien Amounts together with interest and penalties thereon (i) if and to the extent that any such Contested Lien shall be determined adverse to such Mortgagor, or (ii) forthwith upon demand by Mortgagee if, in the opinion of Mortgagee, and notwithstanding any such contest, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed; provided that if the such Mortgagor shall fail so to do, Mortgagee may, but shall not be required to, pay all such Contested Liens and Lien Amounts and interest and penalties thereon and such other sums as may be necessary in the judgment of the Mortgagee to obtain the release and discharge of such liens; and any amount expended by Mortgagee in so doing shall be so much additional Indebtedness hereby Secured and payable by Company bearing interest at the Default Rate until paid; and provided further that Mortgagee may in such case use and apply for the purpose monies deposited as provided in Subsection 25(b) above and may demand payment upon any bond or title indemnity furnished as aforesaid.

26. Rights Cumulative. Each right, power and remedy herein conferred upon the Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, at law or in equity, and each and every right, power and remedy herein 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 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.

27. Successor and Assigns. This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon the Mortgagor and its successors and assigns (including, without limitation, each and every record owner of the Premises or any other person having an interest therein from time to time) and shall inure to the benefit of the Mortgagee and its successors and assigns. Wherever herein the Mortgagee is referred to, such reference shall be deemed to include the holder from time to time of the Notes, whether so expressed or not; and each such holder of the Notes shall have and enjoy all of the rights, privileges, powers, options, benefits and security afforded hereby and hereunder, and may enforce every and all of the terms and provisions hereof, as fully and to the

89087556

UNOFFICIAL COPY

3 3 0 3 7 5 5 6

same extent and with the same effect as if such from time to time holder was herein by name specifically granted such rights, privileges, powers, options, benefits and security and was herein by name designated the Mortgagee.

28. Choice of Law and Severability. This Mortgage has been executed, delivered and accepted and shall be interpreted and construed in accordance with the laws of the State of Illinois. The unenforceability or invalidity of any provision or provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid.

29. Waiver of Defense. No action for the enforcement of the lien or any provision hereof 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 Notes.

30. Captions and Pronouns. The captions and headings of the various sections of this Mortgage are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular number shall include the plural, the plural shall include the singular and the masculine, feminine and neuter genders shall be freely interchangeable.

31. Address and Notices. Any notice which any party hereto may desire or may be required to give to any other party under this Mortgage shall be in writing, and the personal delivery thereof or the passage of three days after the mailing thereof by registered or certified mail, return receipt requested to the addresses initially specified in the introductory paragraph hereof, or to such other place or places as any party may by notice in writing designate, shall constitute service of notice hereunder. A copy of all notices directed to Mortgagee shall be sent to:

Gregg R. Mecherle
Lord, Bissell & Brook
115 South La Salle Street
Suite 3500
Chicago, Illinois 60603

32. Estoppel Affidavits. Mortgagor, upon ten (10) days prior written notice shall furnish Mortgagee a written statement setting forth the unpaid principal balance and accrued interest on its respective indebtedness, stating whether or not any defenses exist to enforcement of the Notes, the Mortgage, of the Assignment of Rents and, if such defenses exist, stating in detail the specific facts relating to each such defense.

89057556

UNOFFICIAL COPY

9 9 0 3 7 5 5 6

33. Future Advances. The lien of this Mortgage is intended to secure all advances from Mortgagee to the Mortgagor pursuant to the Notes, whether made upon delivery thereof, or in the future, without regard to whether such advances are obligatory or optional. All future advances are to be treated as though made on the date of the first disbursement under the Notes, it being the intent of the parties that all advances are to be secured by a lien of equal priority. The Revolving Note evidences a "revolving credit" obligation from Mortgagor to Mortgagee. Notwithstanding the foregoing, the total principal amount secured hereby does not exceed Four Million Two Hundred Fifty Thousand (\$4,250,000) Dollars, exclusive of penalties, interest, fees, costs, charges or any expenses of Mortgagee permitted hereunder.

34. Hazardous and Toxic Waste Environmental Liability. The Mortgagor represents and warrants that, to the best of its knowledge after reasonable investigation, no toxic or hazardous wastes or other materials requiring special handling in collection, storage, treatment or disposal under any governmental requirement, regulation or agreement relating to the environment have been or are currently present, stored or located on the Premises and that no suit, proceeding or investigation by any state or federal court, tribunal or agency concerning any environmental liability of the Mortgagor or with respect to the Premises has been threatened or is pending. The Mortgagor covenants and agrees that no hazardous or toxic wastes or such other materials will be present, stored or located on the Premises and that the Mortgagor will immediately notify Mortgagee of the initiation or threatened prosecution of any suit, proceeding or investigation by any state or federal court, tribunal or agency concerning any environmental liability of the Mortgagor or with respect to the Premises. Notwithstanding anything herein to the contrary, a breach of the foregoing covenant and agreement or the initiation of any such suit, proceeding or investigation shall constitute an Event of Default hereunder, without any notice being required or grace period whatsoever, and any and all Indebtedness Hereby Secured shall be and become immediately due and payable and the Mortgagor shall have all other rights and remedies available to it as for any other Event of Default. The Mortgagor agrees to indemnify and hold the Mortgagee harmless from any and all such environmental liability (including without limitation, liability under the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 codified at 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 and any and all other and further amendments thereto) incurred at any time, whether any Indebtedness Hereby Secured remains outstanding or this Mortgage has been released, such indemnification and hold harmless surviving payment of the Notes and release or foreclosure of this Mortgage.

99087556

UNOFFICIAL COPY

0 0 0 8 7 5 5 6

IN WITNESS WHEREOF, the Mortgagor, hereby sets its hand and seal, as of the date first written above.

E.W. Kneip Company

By: Robert Graves
Its: Chairman of Board

ATTEST:

By: Maude Rie
Its: Secretary

This document has been prepared by and after recording should be returned to:

Gregg R. Mecherle
Lord, Bissell & Brook
115 S. LaSalle Ste 3500
Chicago, IL 60603

BOX 222-00

D4

Property of Cook County Clerk's Office

COOK COUNTY, ILLINOIS
FILED FOR RECORD

1988 MAR - 1 PM 2:28

88087556

88087556

UNOFFICIAL COPY

9 8 8 8 7 5 5 6

EXHIBIT A
(Legal Description)

The real property located the premises commonly known as 550 West 14th Place, Chicago, Cook County, Illinois 60607 and legally described as follows:

LOT "A" OF E. MEYER AND COMPANY, INCORPORATED CONSOLIDATION OF CERTAIN LOTS, VACATED ALLEYS AND VACATED STREET IN BLOCK 59 IN CANAL TRUSTEES NEW SUBDIVISION OF BLOCKS IN THE NORTH WEST 1/4 OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT BLOCKS 57 AND 58) ACCORDING TO THE PLAT RECORDED AS DOCUMENT 19520016, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

98087556

P.I.N.: 17-21-122-020-0000 *D.L.Z.*
Volume 600 *DM*