

88202717

# UNOFFICIAL COPY

## MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

19.00 7229

1all  
SWTC 2534-88C

THIS MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT ("Mortgage") is made as of March 15, 19 88, by

Initials:

\_\_\_\_\_, not personally, but as Trustee under Trust Agreement dated \_\_\_\_\_, 19 \_\_\_\_\_ and known as Trust No. \_\_\_\_\_

\_\_\_\_\_ and \_\_\_\_\_, a \_\_\_\_\_ corporation,

\_\_\_\_\_ a \_\_\_\_\_ limited partnership,

X Leroy J. Minnich and Ralph M. Potokar

d/b/a The Garden Glade Partnership, an Illinois joint venture general partnership or joint venture.

("Mortgagor") whose mailing address is c/o Tweet Corporation, P.O. Box 517, Long Grove, Illinois in favor of First Illinois Bank of Evanston, N.A. ("Mortgagee"), whose mailing address is 800 Davis, Evanston, Illinois 60204.

Mortgagor or XX is justly indebted to the Mortgagee in the principal sum of One Million Two Hundred Seventeen Thousand Dollars (\$ 1,217,000 ) evidenced by a certain PROMISSORY NOTE of even date herewith ("Note"), made payable to the order of and delivered to the Mortgagee, whereby the obligor promises to pay the Note, late charges, prepayment premiums (if any) and interest at the rate or rates, all as provided in the Note. The final payment of principal and interest, if not sooner paid, shall be due on April 1 19 89. All such payments on account of the indebtedness secured hereby shall be applied first to interest on the unpaid principal balance of the Note, secondly to any other sums due thereunder, thirdly to all other advances and sums secured hereby, and the remainder to principal.

Mortgagor, in order to secure the payment of said principal sum of money and said interest and late charges and prepayment premiums, if any, in accordance with the terms, provisions and limitations of this Mortgage and of the Note, either directly or indirectly as evidenced by a guaranty of payment of performance executed by the Mortgagor or beneficiary of Mortgage and the performance of the covenants and agreements herein contained by the Mortgagor to be performed, and also in consideration of the sum of ONE DOLLAR (\$1.00) in hand paid, the receipt whereof is hereby acknowledged, Mortgagor does by these presents MORTGAGE, GRANT, REMISE, RELEASE, ALIEN AND CONVEY unto the Mortgagee and its successors and assigns, the following described real estate and all of its present and hereafter acquired estate right, title and interest therein, situated, lying and being in the County of Cook and State of Illinois to wit:

### SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A"

Commonly known as Garden Glade Subdivision, Palatine, Illinois which, with the property hereinafter described, is collectively referred to herein as the "Premises."

This Instrument Prepared By: Theresa A. Amador

and Shall be Returned to: First Illinois Bank of Evanston, N.A.  
Attn: Theresa A. Amador  
800 Davis Street  
P.O. Box 712  
Evanston, Illinois 60204-0712

Real Estate Tax I.D. No. 02-15-100-012  
02-15-100-015

Box 424

# UNOFFICIAL COPY

PROPERTY OF COOK COUNTY CLERK'S OFFICE

88202717

1988 MAY 12 PM 1:13

COOK COUNTY CLERK'S OFFICE

*[Signature]*  
day of *March* 19 *88*

GIVEN under my hand and notary seal this

(his/her/their) free and voluntary act, for the uses and purposes and in the capacity (if any) therein set forth, personally known to me to be the same person(s) whose name(s) (is/are) subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that (s)he (they) signed, sealed and delivered the said instrument as

and the said County, in the State aforesaid, do hereby certify that a Notary Public in and for and residing in *North Branch*

STATE OF *Illinois*  
COUNTY OF *Cook*  
SS. *R. M. Hankins*

INDIVIDUALS:

By: \_\_\_\_\_  
its: \_\_\_\_\_

ATTEST: \_\_\_\_\_

By: \_\_\_\_\_  
its: \_\_\_\_\_

a \_\_\_\_\_ (state) corporation

CORPORATION:

By: \_\_\_\_\_  
its: \_\_\_\_\_

ATTEST: \_\_\_\_\_

as Trustee under Agreement dated \_\_\_\_\_, 19\_\_\_\_, and known as Trust No. \_\_\_\_\_, and not personally.

LAND TRUST:

its: \_\_\_\_\_

By: *[Signature]*

a(n) Illinois joint venture

(state) (limited/general) partnership,

a partnership,

(name of partnership or joint venture)

The Garden Glade Partnership

PARTNERSHIP/JOINT VENTURE:

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

88202717

*[Signature]*  
*[Signature]*

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TOGETHER with all improvements, tenements, reversions, remainders, easements, fixtures and appurtenances now or hereafter thereto belonging, and all rents, issues and profits thereof for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily), all tenant security deposits, utility deposits and insurance premium rebates to which Mortgagor may be entitled or which Mortgagor may be holding, and all fixtures, apparatus, equipment and articles (other than inventories held for sale) which relate to the use, occupancy, and enjoyment of the Premises. All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared (to the maximum extent permitted by law) to form part and parcel of the real estate and to be appropriated to the use of the real estate, and shall be, for the purposes of this Mortgage, deemed to be real estate and conveyed and mortgaged hereby TO HAVE AND TO HOLD the Premises unto the Mortgagee and its successors and assigns forever, for the purposes and uses herein set forth

## IT IS FURTHER UNDERSTOOD AND AGREED THAT:

**1. MAINTENANCE, REPAIR AND RESTORATION OF IMPROVEMENTS, PAYMENT OF PRIOR LIENS, ETC.** Mortgagor shall: (a) promptly repair, restore or rebuild any buildings and other improvements now or hereafter on the Premises which may become damaged or destroyed to substantially the same character as prior to such damage or destruction, without regard to the availability or adequacy of any casualty insurance proceeds or eminent domain awards, (b) keep the Premises constantly in good condition and repair, without waste, (c) keep the Premises free from mechanics' liens or other liens or claims for lien not expressly subordinated to the lien hereof (collectively called "Liens"), subject, however, to the rights of the Mortgagor set forth in the next Paragraph below, (d) immediately pay when due any indebtedness which may be secured by a lien or charge on the Premises on a parity with or superior to the lien hereof (no such subsequent lien to be permitted hereunder) and upon request exhibit satisfactory evidence of the discharge of such lien to Mortgagee, (e) complete within a reasonable time any building(s) or other improvement(s) now or at any time in process of erection upon the Premises, (f) comply with all federal, state and local requirements of law, regulations, ordinances, orders and judgments and all covenants, easements and restrictions of record with respect to the Premises and the use thereof, (g) make no alterations in the Premises without Mortgagee's prior written consent, (h) suffer or permit no change in the general nature of the occupancy of the Premises without Mortgagee's prior written consent, (i) observe and comply with all conditions and requirements (if any) necessary to preserve and extend all rights, easements, licenses, permits (including without limitation zoning variations and any rules governing uses and structures), privileges, franchises and concessions applicable to the Premises or contracted for in connection with any present or future use of the Premises, and (j) pay each item of indebtedness secured by this Mortgage when due according to the terms hereof and of the Note. As used in this Paragraph and elsewhere in this Mortgage, the term "indebtedness" means and includes the unpaid principal sum evidenced by the Note, together with all interest, additional interest, late charges and prepayment premiums thereon, (if any) and all other sums at any time secured by this Mortgage.

Anything in (c) and (d) above to the contrary notwithstanding, Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any lien not expressly subordinated to the lien hereof, and defer payment and discharge thereof during the pendency of such contest, provided: (i) that such contest shall have the effect of preventing the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy such lien; (ii) that, within ten (10) days after Mortgagor has been notified of the assertion of such lien, Mortgagor shall have notified Mortgagee in writing of Mortgagor's intention to contest such lien, and (iii) that Mortgagor shall have deposited with Mortgagee, a sum of money which shall be sufficient in the judgment of Mortgagee to pay in full such lien and all interest which might become due thereon, and shall keep on deposit an amount so sufficient at all times, increasing such amount to cover additional interest when ever, in the judgment of Mortgagee, such increase is advisable. Such deposits are to be held without any allowance of interest. If Mortgagor shall fail to prosecute such contest with reasonable diligence or shall fail to pay the amount of the lien plus any interest, cost and expenses finally determined to be due upon the conclusion of such contest, to the extent such amount exceeds the amount which Mortgagee will pay as provided below or shall fail to maintain sufficient funds on deposit as hereinabove provided, Mortgagee may, at its option, apply the money so deposited in payment of or on account of such lien, or that part thereof then unpaid, together with all interest thereon. If the amount of money so deposited shall be insufficient for the payment in full of such lien, together with all interest thereon, Mortgagor shall forthwith, upon demand, deposit with Mortgagee a sum which, when added to the funds then on deposit, shall be sufficient to make such payment in full. Mortgagee shall, upon the final disposition of such contest, apply the money so deposited in full payment of such lien or that part thereof then unpaid (provided Mortgagor is not then in default hereunder) when so requested in writing by Mortgagor and when furnished by Mortgagor with sufficient funds to make such payment in full and with evidence satisfactory to Mortgagee of the amount of payment to be made.

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

**3. TAX DEPOSITS.** Unless waived from time to time by Mortgagee in writing, Mortgagor shall deposit with the Mortgagee, commencing on the date of disbursement of the proceeds of the loan secured hereby and on the first day of each month following the month in which said disbursement occurs (unless otherwise agreed to by Mortgagee), a sum equal to the amount of all real estate taxes and assessments (general and special) next due upon or for the Premises (the amount of such taxes next due to be based upon the Mortgagee's reasonable estimate as to the amount of taxes and assessments to be levied and assessed) reduced by the amount, if any, then on deposit with the Mortgagee, divided by the number of months to elapse before two months prior to the date when such taxes and assessments will first become due and payable. Such deposits are to be held without any allowance or payment of interest to Mortgagor and are to be used for the payment of taxes and assessments (general and special) on the Premises next due and payable when they become due. If the funds so deposited are insufficient to pay any such taxes or assessments (general or special) when the same become due and payable, the Mortgagor shall, within ten (10) days after receipt of demand therefor from the Mortgagee, deposit such additional funds as may be necessary to pay such taxes and assessments (general and special) in full. If the funds so deposited exceed the amount required to pay such taxes and assessments (general and special) for any year, the excess shall be applied on a subsequent deposit or deposits. Said deposits need not be kept separate and apart from any other funds of the Mortgagee.

Anything in this Paragraph 3 to the contrary notwithstanding, if the funds so deposited are insufficient to pay any such taxes or assessments (general or special) or any installment thereof, Mortgagor will, not later than the thirtieth (30th) day prior to the last day on which the same may be paid without penalty or interest, deposit with the Mortgagee the full amount of any such deficiency.

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

**3a. INSURANCE DEPOSITS.** For the purpose of providing funds with which to pay premiums when due on all policies of fire and other hazard insurance covering the Premises and the Collateral (defined below) and unless waived from time to time by Mortgagee in writing, Mortgagor shall deposit with the Mortgagee, commencing on the date of disbursement of the proceeds of the loan secured hereby and on the first day of each month following the month in which said disbursement occurs (unless otherwise agreed to by Mortgagee), a sum equal to the Mortgagee's estimate of the premiums that will next become due and payable on such policies reduced by the amount, if any, then on deposit with the Mortgagee, divided by the number of months to elapse before two (2) months prior to the date when such premiums become due and payable. No interest shall be allowed or paid to Mortgagor on account of any deposit made hereunder and said deposit need not be kept separate and apart from any other funds of the Mortgagee.

**4. MORTGAGEE'S INTEREST IN AND USE OF TAX AND INSURANCE DEPOSITS; SECURITY INTEREST.** In the event of a default hereunder, the Mortgagee may, at its option but without being required so to do, apply any monies at the time of deposit pursuant to Paragraphs 3 and 3a hereof on any of Mortgagor's obligations contained herein or in the Note, in such order and manner as the Mortgagee may elect. When the indebtedness has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the Premises as the same appear on the records of the Mortgagee. A security interest, within the meaning of the Uniform Commercial Code of the State in which the Premises are located, is hereby granted to the Mortgagee in and to all monies at any time on deposit pursuant to Paragraphs 3 and 3a hereof and such monies and all of Mortgagor's right, title and interest therein are hereby assigned to Mortgagee, all as additional security for the indebtedness hereunder and shall, in the absence of default hereunder, be applied by the Mortgagee for the purposes for which made hereunder and shall be subject to the direction or control of the Mortgagee; provided, however, that Mortgagee shall not be liable for any failure to apply to the payment of taxes or assessments or insurance premiums any amount so deposited unless Mortgagor, while not in default hereunder, shall have furnished Mortgagee with the bills therefor and requested Mortgagee in writing to make application of such funds to the payment of the particular taxes or assessments or insurance premiums for payment of which they were deposited, accompanied by the bills for such taxes or assessments or insurance premiums. Mortgagee shall not be liable for any act or omission taken in good faith, but only for its gross negligence or willful misconduct.

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**5. INSURANCE.** Mortgagor shall keep all buildings and improvements and the Collateral (defined in Paragraph 27 below) now or hereafter situated on said Premises insured against loss or damage by fire on a so-called "All Risks" basis and against such other hazards as may reasonably be required by Mortgagee, including without limitation of the generality of the foregoing: (a) rent loss or business interruption insurance whenever in the opinion of Mortgagee such protection is necessary; and (b) flood insurance whenever same is available and, in the opinion of Mortgagee, such protection is necessary. Mortgageor shall also provide insurance coverages with such limits for personal injury and death and property damage as Mortgagee may require. All policies of insurance to be furnished hereunder shall be in forms, companies and amounts satisfactory to Mortgagee, with waiver of subrogation and replacement cost endorsements and a standard non-contributory mortgagee clause attached to all policies, including a provision requiring that the coverages evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to the Mortgagee. Mortgageor shall deliver all original policies, including additional and renewal policies, to Mortgagee and, in the case of insurance about to expire, shall deliver renewal policies not less than thirty (30) days prior to their respective dates of expiration.

Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon under a standard non-contributory mortgagee clause acceptable to Mortgagee. Mortgageor shall immediately notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee the original policy or policies of such insurance. In the event of a foreclosure of the lien of this Mortgage, or of a transfer of title to the Premises either in lieu of foreclosure or by purchase at the foreclosure sale, all interest in all insurance policies in force shall pass to Mortgagee, transferee or purchaser, as the case may be.

Within ninety (90) days following the end of each fiscal year of Mortgageor, at the request of the Mortgagee, Mortgageor agrees to furnish evidence of replacement cost, without cost to the Mortgagee, such as are regularly and ordinarily made by insurance companies to determine the then replacement cost of the building(s) and other improvements on the Premises.

**6. ADJUSTMENT OF LOSSES WITH INSURER AND APPLICATION OF PROCEEDS OF INSURANCE.** In case of the loss or damage by fire or other casualty, Mortgagee is authorized, (a) to settle and adjust any claim under insurance policies which insure against such risks, or (b) to allow Mortgageor to agree with the insurance company or companies on the amount to be paid in regard to such loss. In either case, Mortgagee is authorized to collect and receipt for any such insurance monies. So long as (a) each lease applicable to the Premises is in full force and effect and each tenant thereunder is not in default and such loss or damage shall not result in the termination or cancellation of any of those leases or give any tenant thereunder the right to terminate or cancel the lease, (b) no insurer denies liability as to any insured or claims any right of participation in any of the Mortgagee's security, and (c) this Mortgage is not in default, then such insurance proceeds, after deducting therefrom any expense incurred by Mortgagee in the collection thereof, shall be made available by the Mortgagee for the repair, rebuilding or restoration of the building(s) and other improvement(s) on the Premises. In all other cases such insurance proceeds may, at the option of the Mortgagee, be: (a) applied in reduction of the indebtedness, whether due or not, or (b) held by the Mortgagee and used to reimburse Mortgageor (or any lessee) for the cost of the repair, rebuilding or restoration of the building(s) and other improvements on the Premises. In any event, the building(s) and other improvement(s) shall be so repaired, restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction. If the insurance proceeds are made available for repair, rebuilding or restoration, such proceeds shall be disbursed upon the "Disbursing Party" (hereinafter defined) being furnished with satisfactory evidence of the cost of completion thereof and with architects' certificates, payers of lien, contractors' and subcontractors' sworn statements, title continuations and other evidence of cost and payments so that the Disbursing Party can verify that the amounts disbursed from time to time are represented by completed and in-place work and that said work is free and clear of mechanics' lien claims. No payment made prior to the final completion of the work shall exceed ninety per cent (90%) of the value of the work performed from time to time, and at all times the undisbursed balance of such proceeds remaining in the hands of the Disbursing Party shall be at least sufficient to pay for the cost of completion of the work free and clear of liens. If the cost of rebuilding, repairing or restoring the buildings and other improvements may reasonably exceed the sum of FIFTY THOUSAND DOLLARS (\$50,000.00), then the Mortgagee must approve plans and specifications of such work before such work shall be commenced. Any surplus which may remain out of said insurance proceeds, after payment of the cost of repair, rebuilding, restoration and the reasonable charges of the Disbursing Party, shall, at the option of the Mortgagee, be applied on account of the indebtedness or paid to any party entitled thereto as the same appear on the records of the Mortgagee. No interest shall be allowed to Mortgageor on any proceeds of insurance held by the Disbursing Party.

As used in this Paragraph 6, the term "Disbursing Party" refers to the Mortgagee and/or to any title insurance company selected by the Mortgagee.

**7. STAMP TAX; EFFECT OF CHANGES IN LAWS REGARDING TAXATION.** If, by the laws of the United States of America or of any state or subdivision thereof having jurisdiction over the Mortgageor, any tax is due or becomes due in respect to the Note or this Mortgage, the Mortgageor covenants and agrees to pay such tax in the manner required by any such law. The Mortgageor further covenants to reimburse the Mortgagee for any sums which Mortgagee may expend by reason of the imposition of any tax on the issuance of the Note.

In the event of the enactment of any law of the state in which the Premises are located imposing upon the Mortgagee the payment of the whole or any part of taxes, assessments or charges on the lien of this Mortgage, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holder thereof, then, and in any such event, the Mortgageor, upon demand by the Mortgagee, shall pay such taxes or assessments or reimburse the Mortgagee therefor, provided, however, that if in the opinion of counsel for the Mortgagee (a) it might be unlawful to require Mortgageor to make such payment, or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in any such event, the Mortgagee may elect, by notice in writing given to the Mortgageor, to declare all of the indebtedness to be and become due and payable sixty (60) days from the giving of such notice.

**8. OBSERVANCE OF LEASE ASSIGNMENT.** As additional security for the payment of the Note and for the faithful performance of the terms and conditions contained herein, Mortgageor and its beneficiary or beneficiaries do hereby assign to the Mortgagee all of their right, title and interest as landlords in and to the present leases and all future leases of the Premises. All leases of the Premises are subject to the approval of the Mortgagee as to form, content and tenant(s).

Mortgagor will not and Mortgageor's beneficiary or beneficiaries will not, without Mortgagee's prior written consent: (i) execute any assignment or pledge of any rents or any leases of the Premises except an assignment or pledge securing the indebtedness in favor of Mortgagee; or (ii) accept any payment of any installment of rent more than thirty (30) days before the due date thereof; or (iii) make any lease of the Premises except for actual occupancy by the tenant thereunder.

Mortgagor shall not and the beneficiary of Mortgageor, if any, shall not enter into or permit to be entered into any management contract, assignment or sublease of any lease, license or concession pertaining to the Premises without the prior written approval of Mortgagee having first been obtained and following such approval shall not amend or modify the same without further written approval of Mortgagee.

Mortgagor at its sole cost and expense will: (i) at all times promptly and faithfully abide by, discharge and perform all of the covenants, conditions and agreements contained in all leases of the Premises, on the part of the landlord thereunder to be kept and performed; (ii) enforce or secure the performance of all of the covenants, conditions, and agreements of such leases on the part of the tenants to be kept and performed, but Mortgageor shall not and Mortgageor's beneficiary or beneficiaries shall not modify, amend, cancel, terminate or accept surrender of any lease without prior written consent of Mortgagee; (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with such leases or the obligations, duties or liabilities of the landlord or of any tenants thereunder; (iv) transfer and assign or cause to be separately transferred and assigned to Mortgagee, upon written request of Mortgagee, any lease or leases of the Premises heretofore or hereafter entered into, and make, execute and deliver to Mortgagee upon demand, any and all instruments required to effectuate said assignment; (v) furnish Mortgagee, within ten (10) days after a request by Mortgagee so to do, a written statement containing the names of all tenants and the terms of all leases of the Premises, including the spaces occupied and the rentals payable thereunder; and (vi) exercise within five (5) days of any demand therefor by Mortgagee any right to request from the tenant under any lease of the Premises a certificate with respect to the status thereof.

Nothing in this Mortgage or in any other documents relating to the Note secured hereby shall be construed to obligate Mortgagee, expressly or by implication, to perform any of the covenants of the landlord under any of the leases assigned to Mortgagee or to pay any sum of money or damages thereon provided to be paid by the landlord, each and all of which covenants and payments Mortgageor agrees to perform and pay or cause to be performed and paid.

At the option of the Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in eminent domain), to any one or more leases affecting any part of the Premises, upon the execution by Mortgagee and recording or registration thereof, at any time hereafter, in the office wherein this Mortgage was registered or filed for record, of a unilateral declaration to that effect.

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

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

**26.3 Governmental Compliance.** Mortgagee shall not by act or omission permit any lands or improvements not subject to the lien of this Mortgage to include the Premises or any part thereof in fulfillment of any governmental requirement, and Mortgagee hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Premises to be so used. Similarly, no lands or improvements comprising the Premises shall be included with any lands or improvements not subject to the lien of this Mortgage in fulfillment of any governmental requirement, and Mortgagee shall not by act or omission permit any lands or improvements not situated in the mortgage to include the Premises or any part thereof in fulfillment of any governmental requirement. Mortgagee shall not by act or omission impair the integrity of the Premises as a single zoning lot separate and apart from all other premises. Any act or omission by Mortgagee which would result in a violation of any of the provisions of this paragraph shall be void.

**26.4 Escrowed Certificate.** Mortgagee, within fifteen (15) days after mailing of a written request by the Mortgagee, agrees to furnish from time to time a signed statement setting forth the amount of the indebtedness and whether or not any default, offset or defense then is alleged to exist against the indebtedness and if so, specifying the nature thereof.

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

**26.6 Evasion of Property Tax Premium.** If maturity of the indebtedness is accelerated by the Mortgagee because of an event of default, as herein provided, and a tender of payment is made by or on behalf of the Mortgagee in an amount necessary to satisfy the indebtedness at any time prior to judicial confirmation of foreclosure sale, such tender shall constitute an evasion of the property tax premium provided for in the Note, if any, and shall be treated as a payment of the property tax premium. Any such tender must therefore include the property tax premium, if any required under the Note, or if at that time there is no balance of the Note, then such payment will include a prepayment premium of two percent (2%) of the then unpaid principal balance of the Note.

**26.7 Security Agreement and Final Closing Statement.** Mortgagee and Mortgagee agree: (i) that this Mortgage shall constitute a Security Agreement with the Mortgagee pursuant to Paragraphs 6 and 18 hereof, and with respect to any property included in the definition herein of the word "Premises", which property may not be deemed to form a part of the real estate described in EXHIBIT "A", or may not constitute a "fixture" (within the meaning of Section 9-313 of the Code), and all real and personal property, additions to such property, substitutions for such property, books and records relating to the Premises and operation thereof (said property, replacements, substitutions, additions and the proceeds thereof and the proceeds thereof to the Mortgagee), and (ii) that such security interest in and to the Collateral and the Deposits is hereby granted to the Mortgagee, and all of Mortgagee's rights, title and interest therein are hereby assigned to the Mortgagee, all to secure payment of the indebtedness and to secure performance by the Mortgagee of the terms, covenants and provisions hereof.

**27. SECURITY AGREEMENT AND FINAL CLOSING STATEMENT.** Mortgagee and Mortgagee agree: (i) that this Mortgage shall constitute a Security Agreement with the Mortgagee pursuant to Paragraphs 6 and 18 hereof, and with respect to any property included in the definition herein of the word "Premises", which property may not be deemed to form a part of the real estate described in EXHIBIT "A", or may not constitute a "fixture" (within the meaning of Section 9-313 of the Code), and all real and personal property, additions to such property, substitutions for such property, books and records relating to the Premises and operation thereof (said property, replacements, substitutions, additions and the proceeds thereof and the proceeds thereof to the Mortgagee), and (ii) that such security interest in and to the Collateral and the Deposits is hereby granted to the Mortgagee, and all of Mortgagee's rights, title and interest therein are hereby assigned to the Mortgagee, all to secure payment of the indebtedness and to secure performance by the Mortgagee of the terms, covenants and provisions hereof.

**28. LIEN FOR LOAN COMMISSIONS, SERVICE CHARGES AND THE LIKE.** So long as the original Mortgagee named on Page 1 hereof is the owner of the Note, and regardless of whether any proceeds of the loan evidenced by the Note have been disbursed, this Mortgagee also secures the payment of all loan commissions, service charges, fees to its attorneys (including in-house staff), liquidated damages, expenses and advances due to or incurred by the Mortgagee in connection with the loan transaction intended to be secured hereby, all in accordance with the application of, and loan commitment issued to and accepted by, one or more of Mortgagee or Mortgagee's beneficiaries in connection with said loan, if applicable.

**29. DUE ON SALE OR FURTHER ENCUMBRANCE CLAUSE.** In determining whether or not to make the loan secured hereby, Mortgagee examined the creditworthiness of Mortgagee and/or Mortgagee's beneficiary or guarantor (if applicable), found the same to be acceptable and relied and continues to rely upon the same as the means of repayment of the loan. Mortgagee also evaluated the background and experience of Mortgagee and/or its beneficiary or guarantor (if applicable) in owning and operating property such as the Premises, found the same to be acceptable and relied and continues to rely upon the same as the means of maintaining the value of the Premises which is Mortgagee's security for the loan. It is recognized that Mortgagee is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan approved further recognizing that any secondary or junior financing placed upon the Premises, or the beneficial interest of beneficiary (if applicable) in Mortgagee and/or its beneficiary (if applicable), may result in acceleration and foreclosure by any such junior encumbered funds which would otherwise be used to pay the Note secured hereby. (b) This could result in acceleration and foreclosure by any such junior encumbered funds which would otherwise be used to pay the Note secured hereby. (c) Mortgagee to take measures and incur expenses to protect its security. (c) would detract from the value of the Premises should Mortgagee come into possession thereof with the intention of selling same, and (d) impair Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Premises.

**30. DUE ON SALE OR FURTHER ENCUMBRANCE CLAUSE:** In determining whether or not to make the loan secured hereby, Mortgagee examined the creditworthiness of Mortgagee and/or Mortgagee's beneficiary or guarantor (if applicable), found the same to be acceptable and relied and continues to rely upon the same as the means of repayment of the loan. Mortgagee also evaluated the background and experience of Mortgagee and/or its beneficiary or guarantor (if applicable) in owning and operating property such as the Premises, found the same to be acceptable and relied and continues to rely upon the same as the means of maintaining the value of the Premises which is Mortgagee's security for the loan. It is recognized that Mortgagee is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan approved further recognizing that any secondary or junior financing placed upon the Premises, or the beneficial interest of beneficiary (if applicable) in Mortgagee and/or its beneficiary (if applicable), may result in acceleration and foreclosure by any such junior encumbered funds which would otherwise be used to pay the Note secured hereby. (b) This could result in acceleration and foreclosure by any such junior encumbered funds which would otherwise be used to pay the Note secured hereby. (c) Mortgagee to take measures and incur expenses to protect its security. (c) would detract from the value of the Premises should Mortgagee come into possession thereof with the intention of selling same, and (d) impair Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Premises.

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

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

**33. Governmental Compliance.** Mortgagee shall not by act or omission permit any lands or improvements not subject to the lien of this Mortgage to include the Premises or any part thereof in fulfillment of any governmental requirement, and Mortgagee hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Premises to be so used. Similarly, no lands or improvements comprising the Premises shall be included with any lands or improvements not subject to the lien of this Mortgage in fulfillment of any governmental requirement. Mortgagee shall not by act or omission permit any lands or improvements not situated in the mortgage to include the Premises or any part thereof in fulfillment of any governmental requirement. Mortgagee shall not by act or omission impair the integrity of the Premises as a single zoning lot separate and apart from all other premises. Any act or omission by Mortgagee which would result in a violation of any of the provisions of this paragraph shall be void.

**34. Escrowed Certificate.** Mortgagee, within fifteen (15) days after mailing of a written request by the Mortgagee, agrees to furnish from time to time a signed statement setting forth the amount of the indebtedness and whether or not any default, offset or defense then is alleged to exist against the indebtedness and if so, specifying the nature thereof.

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

**36. Evasion of Property Tax Premium.** If maturity of the indebtedness is accelerated by the Mortgagee because of an event of default, as herein provided, and a tender of payment is made by or on behalf of the Mortgagee in an amount necessary to satisfy the indebtedness at any time prior to judicial confirmation of foreclosure sale, such tender shall constitute an evasion of the property tax premium provided for in the Note, if any, and shall be treated as a payment of the property tax premium. Any such tender must therefore include the property tax premium, if any required under the Note, or if at that time there is no balance of the Note, then such payment will include a prepayment premium of two percent (2%) of the then unpaid principal balance of the Note.

**37. Security Agreement and Final Closing Statement.** Mortgagee and Mortgagee agree: (i) that this Mortgage shall constitute a Security Agreement with the Mortgagee pursuant to Paragraphs 6 and 18 hereof, and with respect to any property included in the definition herein of the word "Premises", which property may not be deemed to form a part of the real estate described in EXHIBIT "A", or may not constitute a "fixture" (within the meaning of Section 9-313 of the Code), and all real and personal property, additions to such property, substitutions for such property, books and records relating to the Premises and operation thereof (said property, replacements, substitutions, additions and the proceeds thereof and the proceeds thereof to the Mortgagee), and (ii) that such security interest in and to the Collateral and the Deposits is hereby granted to the Mortgagee, and all of Mortgagee's rights, title and interest therein are hereby assigned to the Mortgagee, all to secure payment of the indebtedness and to secure performance by the Mortgagee of the terms, covenants and provisions hereof.

**38. LIEN FOR LOAN COMMISSIONS, SERVICE CHARGES AND THE LIKE.** So long as the original Mortgagee named on Page 1 hereof is the owner of the Note, and regardless of whether any proceeds of the loan evidenced by the Note have been disbursed, this Mortgagee also secures the payment of all loan commissions, service charges, fees to its attorneys (including in-house staff), liquidated damages, expenses and advances due to or incurred by the Mortgagee in connection with the loan transaction intended to be secured hereby, all in accordance with the application of, and loan commitment issued to and accepted by, one or more of Mortgagee or Mortgagee's beneficiaries in connection with said loan, if applicable.

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

**42. Governmental Compliance.** Mortgagee shall not by act or omission permit any lands or improvements not subject to the lien of this Mortgage to include the Premises or any part thereof in fulfillment of any governmental requirement, and Mortgagee hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Premises to be so used. Similarly, no lands or improvements comprising the Premises shall be included with any lands or improvements not subject to the lien of this Mortgage in fulfillment of any governmental requirement. Mortgagee shall not by act or omission permit any lands or improvements not situated in the mortgage to include the Premises or any part thereof in fulfillment of any governmental requirement. Mortgagee shall not by act or omission impair the integrity of the Premises as a single zoning lot separate and apart from all other premises. Any act or omission by Mortgagee which would result in a violation of any of the provisions of this paragraph shall be void.

**43. Escrowed Certificate.** Mortgagee, within fifteen (15) days after mailing of a written request by the Mortgagee, agrees to furnish from time to time a signed statement setting forth the amount of the indebtedness and whether or not any default, offset or defense then is alleged to exist against the indebtedness and if so, specifying the nature thereof.

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

**45. Evasion of Property Tax Premium.** If maturity of the indebtedness is accelerated by the Mortgagee because of an event of default, as herein provided, and a tender of payment is made by or on behalf of the Mortgagee in an amount necessary to satisfy the indebtedness at any time prior to judicial confirmation of foreclosure sale, such tender shall constitute an evasion of the property tax premium provided for in the Note, if any, and shall be treated as a payment of the property tax premium. Any such tender must therefore include the property tax premium, if any required under the Note, or if at that time there is no balance of the Note, then such payment will include a prepayment premium of two percent (2%) of the then unpaid principal balance of the Note.

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In the event of the enforcement by Mortgagee of any remedies provided for by law or by this Mortgage, the tenant under each lease of the Premises shall, at the option of the Mortgagee, attain to any person succeeding to the interest of landlord as a result of such enforcement and shall recognize such successor in interest as landlord under such lease without change in the terms or other provisions thereof, provided, however, that said successor in interest shall not be bound by any payment of rent or additional rent for more than one month in advance or any amendment or modification to any lease made without the consent of Mortgagee or said successor in interest. Each tenant, upon request by said successor in interest, shall execute and deliver an instrument or instruments confirming such attornment.

Mortgagee shall have the option to declare this Mortgage in default because of a material default of landlord in any lease of the Premises, whether or not such default is cured by Mortgagee pursuant to the right granted herein. It is covenanted and agreed that a default under any Assignment of Rents or Leases executed pursuant to this Paragraph 8, or otherwise, shall constitute a default hereunder, on account of which the whole of the indebtedness secured hereby shall at once, at the option of the Mortgagee, become immediately due and payable, without notice to the Mortgagee.

**9. MORTGAGOR AND LIEN NOT RELEASED.** From time to time Mortgagee may, at Mortgagee's option, without giving notice to or obtaining the consent of Mortgagor, its beneficiary, or Mortgagor's successors or assigns or the consent of any junior lien holder, guarantor or tenant, without liability on Mortgagee's part and notwithstanding Mortgagor's breach of any covenant, agreement or condition: (a) release anyone primarily or secondarily liable on any of the Indebtedness; (b) accept a renewal note or notes of the Note; (c) release from the lien of this Mortgage any part of the Premises; (d) take or release other or additional security for the Indebtedness; (e) consent to any plat, map or plan of the Premises or Declaration of Condominium as to the Premises (in whole or in part); (f) consent to the granting of any easement; (g) join in any extension or subordination agreement; (h) agree in writing with Mortgagor to modify the rate of interest or period of amortization of the Note or change the time of payment or the amount of the installments payable hereunder; and (i) waive or fail to exercise any right, power or remedy granted by law or herein or in any other instrument given at any time to evidence or secure the payment of the Indebtedness.

Any actions taken by Mortgagee pursuant to the terms of this Paragraph 9 shall not impair or affect: (a) the obligation of Mortgagor or Mortgagor's successors or assigns to pay any sums at any time secured by this Mortgage and to observe all of the covenants, agreements and conditions herein contained; (b) the guaranty of any individual or legal entity for payment of the Indebtedness; and (c) the lien or priority of the lien hereof against the Premises.

Mortgagor shall pay to Mortgagee a reasonable service charge and such title insurance premiums and attorneys' fees (including in-house staff) as may be incurred by Mortgagee for any action described in this Paragraph 9 taken at the request of Mortgagor or its beneficiary or beneficiaries.

**10. MORTGAGOR'S PERFORMANCE OF DEFAULTED ACTS.** In case of default herein, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner Mortgagee deems expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances. If any, and purchase, discharge, compromise or settle any tax lien or assessment or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting said Premises or contest any tax or assessment or cure any default of any landlord in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Mortgagee in regard to protecting the Premises or the lien hereof, shall be so much additional Indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon at the rate of interest set forth in the Note applicable to a period when a default exists thereunder. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

**11. MORTGAGOR'S RELIANCE ON TAX BILLS, ETC.** Mortgagee in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any computer or billing service, bill, statement or estimate procured from the appropriate public office or title company without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any other lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

**12. ACCELERATION OF INDEBTEDNESS IN CASE OF DEFAULT.** If (a) default be made in the due and punctual payment of principal or interest on the Note, or any other payment due in accordance with the terms thereof; or (b) the Mortgagor or any beneficiary thereof or any guarantor of the Note shall file (i) a petition for liquidation, reorganization or adjustment of debt under Title 11 of the United States Code (11 U.S.C. §§ 101 et seq.) or any similar law state or federal, whether now or hereafter existing, or (ii) any answer admitting insolvency or inability to pay debts, or (iii) fail to obtain a vacation or stay of involuntary proceedings within ten (10) days, as hereinafter provided; or (c) any order for relief of the Mortgagor or any beneficiary thereof or any guarantor of the Note shall be entered in any case under Title 11 of the United States Code, or a trustee or a receiver shall be appointed for the Mortgagor or for any beneficiary thereof or for any guarantor of the Note, or for all or the major part of the property of Mortgagor or of any beneficiary thereof or of any guarantor of the Note in any voluntary or involuntary proceeding, or any court shall have taken jurisdiction of all or the major part of the property of the Mortgagor or of any beneficiary thereof or of any guarantor of the Note in any voluntary or involuntary proceeding for the reorganization, dissolution, liquidation, adjustment of debt or winding up of the Mortgagor or of any beneficiary thereof or of any guarantor of the Note and such trustee or receiver shall not be discharged or such jurisdiction not be relinquished or vacated or stayed on appeal or otherwise stayed, within ten (10) days; or (d) the Mortgagor or any beneficiary thereof or any guarantor of the Note secured hereby shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent the appointment of a receiver or trustee or liquidator of all or any major part of its property; or (e) default shall be made in the due observance or performance of any other covenant, agreement or condition hereinafter contained and required to be kept or performed or observed by the Mortgagor or its beneficiary; (f) default shall be made in the due observance or performance of any covenant, agreement or condition required to be kept or observed by Mortgagor or its beneficiary or beneficiaries in the Note or any guarantor thereof or in any other instrument given at any time to secure the payment of the Note, then and in any such event, the whole of the Indebtedness shall at once, at the option of the Mortgagee, become immediately due and payable without notice to Mortgagor. If while any insurance proceeds or condemnation awards are held by or for the Mortgagor to reimburse Mortgagor or any lessee for the cost of repair, rebuilding or restoration of building(s) or other improvement(s) on the Premises, as set forth herein, the Mortgagee shall be or become entitled to accelerate the maturity of the Indebtedness, then and in such event, the Mortgagee shall be entitled to apply all such insurance proceeds and condemnation awards then held by or for it in reduction of the Indebtedness, and any excess held by it over the amount of the Indebtedness shall be paid to Mortgagor or any party entitled thereto, without interest, as the same appear on the records of the Mortgagee.

**13. FORECLOSURE; EXPENSE OF LITIGATION.** When the Indebtedness or any part thereof shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof. In any civil action to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the order or judgment for foreclosure and sale all expenditures and expenses, which may be paid or incurred by or on behalf of Mortgagee including, without limitation, expenditures for attorneys' fees, including those of in-house counsel, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of said order or judgment) of procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens' Certificates and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such civil action or to evidence to bidders at any sale which may be had pursuant to such order or judgment the true condition of the title to, or the value of, the Premises. All expenditures and expenses of the nature in this paragraph mentioned and such expenses and fees and expenses as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the fees of any attorneys employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the Premises, including probate, appellate and bankruptcy proceedings, or in preparations for the commencement or defense of any action or proceeding or threatened action or proceeding shall be immediately due and payable by Mortgagor, with interest thereon at the rate set forth in the Note applicable to a period when a default exists thereunder, and shall be secured by this Mortgage.

At all times, the Mortgagor shall appear in and defend any suit, action or proceeding that might in any way in the sole judgment of Mortgagee affect the value of the Premises, the priority of this Mortgage or the rights and powers of Mortgagee hereunder or under any document given at any time to secure the Indebtedness. Mortgagor shall, at all times, indemnify, hold harmless and reimburse Mortgagee on demand for any and all loss, damage, expense or cost, including cost of evidence of title and attorneys' fees, arising out of or incurred in connection with any such suit, action or proceeding, and the sum of such expenditures shall be secured by this Mortgage, and shall bear interest after demand at the rate specified in the Note applicable to a period when an uncured default exists thereunder, and such interest shall be secured hereby and shall be due and payable on demand.

**14. APPLICATION OF PROCEEDS OF FORECLOSURE SALE.** The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order or priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding Paragraph hereof, second, all other items which may under the terms hereof constitute secured Indebtedness additional to that evidenced by the Note, with interest thereon as herein provided, third, all principal and interest remaining unpaid on the Note, and fourth, any excess to any party entitled thereto as their rights may appear.

**15. APPOINTMENT OF RECEIVER OR MORTGAGEE IN POSSESSION.** Upon, or at any time after, the commencement of an action to foreclose this

Mortgage, the court in which such action was commenced may, upon request of the Mortgagee, appoint a receiver of the Premises either before or after foreclosure sale, without notice and without regard to the priority of the Mortgagee or whether the same shall be then occupied as a homestead or not, and the Mortgagee or any holder of the Note may be appointed as such receiver or as Mortgagee in possession. Such receiver or Mortgagee in possession shall have power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure action and, in case of a sale and a deficiency, during the full statutory period of redemption of the Premises during the pendency of such foreclosure action and, as well as during any further time (if any) when the Mortgagee, except for the intervention of such receiver or Mortgagee in possession, would be entitled to collect such rents, issues and profits, and all other powers which the necessary or are usual in such cases for the production, possession, control, management and operation of the Premises during the whole or in part of the period. The court from time to time may, by any order or judgment for closing the lien of this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien of the Mortgagee or Mortgagee in possession to apply the net income in its hands in payment in whole or in part of: (a) the indebtedness secured hereby or by any order or judgment for closing the lien of this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien of the Mortgagee or Mortgagee in possession; and (b) the deficiency in case of a sale and a deficiency.

**16. RIGHTS CUMULATIVE.** Each right, power and remedy conferred upon the Mortgagee by this Mortgage and by all other documents evidencing or securing the indebtedness and conferred by law and in equity is cumulative and in addition to every other right, power and remedy, express or implied, or in law or by operation of law, and each and every right, power and remedy herein or therein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagee, and the exercise of the beginning of the exercise of any 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 failure to exercise any right, power or remedy shall constitute a waiver of any right, power or remedy accruing hereunder or arising otherwise shall impair any right, power or remedy of the Mortgagee or be construed to be a waiver of any right, power or remedy accruing hereunder or arising otherwise.

**17. MORTGAGEE'S RIGHT OF INSPECTION.** Mortgagee, its representatives, agents or participants shall have the right to inspect the Premises at all reasonable times and access thereto for that purpose.

**18. EMINENT DOMAIN AND/OR CONDEMNATION.** Mortgagee hereby assigns, transfers and sets over unto the Mortgagee the entire proceeds of any claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation. So long as (a) any applicable lease, easement and other interest in the Premises is not in default and such taking shall not result in the termination or cancellation of any of those leases, easements and other interests in the Premises, and (b) the Premises require repair, rebuilding or restoration, and (c) this Mortgage is not in default, then any award, after deducting therefrom any expenses incurred in the collection thereof, shall be made available by the Mortgagee for the repair, rebuilding or restoration of the Premises in accordance with plans and specifications to be submitted to and approved by the Mortgagee.

In all other cases, the Mortgagee may elect to apply the proceeds of the award upon or in reduction of the indebtedness, whether due or not, or make the proceeds available for repair, restoration or rebuilding of the Premises in accordance with plans and specifications to be submitted to and approved by the Mortgagee.

**19. RELEASE UPON PAYMENT AND DISCHARGE OF MORTGAGOR'S OBLIGATIONS.** Mortgagee shall release in whole or partially this Mortgage and the lien (in whole or partially) by promissory instrument upon payment and discharge of all indebtedness (or applicable agreed portion) secured hereby including any prepayment charges and late charges provided for herein or in the Note) and upon payment of a reasonable fee to Mortgagee for the preparation and execution of such proper instrument. This shall be determined by Mortgagee in its absolute discretion.

**20. GIVING OF NOTICE.** Any notice which either party elects to give to the other party shall be in writing and the mailing thereof, by certified mail addressed to the Mortgagee or to the Mortgagee, as the case may be, at the respective addresses set forth on the first page hereof or at such other place as any party hereto may by notice in writing designate as a place for service of notice, shall constitute service of notice hereunder and shall be deemed to have been given to the Mortgagee or to the Mortgagee, as the case may be, at the time of mailing.

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

**22. WAIVER OF STATUTORY RIGHTS.** Mortgagee shall not and will not, for shall any beneficiary of Mortgagee apply for or avail itself of any appraisal, redemption, extension of redemption laws or any so-called "Mortgagor in Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement of the lien of this Mortgage, but hereby waives the benefit of such laws. Mortgagee, for itself and all who may claim through or under it, including its beneficiary, waives any and all right to have the property foreclosed upon when an order of foreclosure is entered upon any foreclosure of the Premises and agrees that any court having jurisdiction to foreclose upon the Premises shall have the authority to enter an order of foreclosure and all rights of redemption from sale under any order or judgment of foreclosure of the lien of this Mortgage on behalf of the Mortgagee, the trustee and all persons beneficially interested therein and each and every person, except judgment creditors of the Mortgagee in its representative capacity and of the trust estate, acquiring any interest in or title to the Premises succeeded to by the Mortgagee on the date of this Mortgage.

**23. FURNISHING OF FINANCIAL STATEMENTS TO MORTGAGEE.** Mortgagee covenants and agrees that it will keep and maintain, or cause its beneficiary or beneficiaries from time to time to keep and maintain, books and records of account, in which full, true and correct entries shall be made of all dealings and transactions relative to the Premises, which books and records of account shall, at reasonable times and on reasonable notice, be open to the inspection of the Mortgagee and its accountants and other duly authorized representatives. Such books of record and account shall be kept and maintained in accordance with generally accepted accounting principles consistently applied.

**24. FILING AND RECORDING CHARGES AND TAXES.** Mortgagee will pay all filing, registration, recording and search and information fees, and all expenses incident to the execution and acknowledgment of this Mortgage and all other documents securing the Note and all federal, state, county and municipal taxes, other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution, delivery, filing, recording or registration of the Note, this Mortgage and all other documents securing the Note and all assignments thereof.

**25. BUSINESS PURPOSE: USURY EXEMPTION.** Mortgagee hereby represents, or if applicable Mortgagee has been advised by its beneficiaries, that the proceeds of the loan secured by this Mortgage will be used for the purposes specified in Paragraph 6 of Chapter 17 of the 1981 Illinois Revised Statutes, and that the principal obligation secured hereby constitutes a "business loan," which comes with the purchase and operation of said paragraph.

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

**27. MORTGAGEE'S RIGHT OF INSPECTION.** Mortgagee, its representatives, agents or participants shall have the right to inspect the Premises at all reasonable times and access thereto for that purpose.

**16. RIGHTS CUMULATIVE.** Each right, power and remedy conferred upon the Mortgagee by this Mortgage and by all other documents evidencing or securing the indebtedness and conferred by law and in equity is cumulative and in addition to every other right, power and remedy, express or implied, or in law or by operation of law, and each and every right, power and remedy herein or therein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagee, and the exercise of the beginning of the exercise of any 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 failure to exercise any right, power or remedy shall constitute a waiver of any right, power or remedy accruing hereunder or arising otherwise shall impair any right, power or remedy of the Mortgagee or be construed to be a waiver of any right, power or remedy accruing hereunder or arising otherwise.

**17. MORTGAGEE'S RIGHT OF INSPECTION.** Mortgagee, its representatives, agents or participants shall have the right to inspect the Premises at all reasonable times and access thereto for that purpose.

**18. EMINENT DOMAIN AND/OR CONDEMNATION.** Mortgagee hereby assigns, transfers and sets over unto the Mortgagee the entire proceeds of any claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation. So long as (a) any applicable lease, easement and other interest in the Premises is not in default and such taking shall not result in the termination or cancellation of any of those leases, easements and other interests in the Premises, and (b) the Premises require repair, rebuilding or restoration, and (c) this Mortgage is not in default, then any award, after deducting therefrom any expenses incurred in the collection thereof, shall be made available by the Mortgagee for the repair, rebuilding or restoration of the Premises in accordance with plans and specifications to be submitted to and approved by the Mortgagee.

In all other cases, the Mortgagee may elect to apply the proceeds of the award upon or in reduction of the indebtedness, whether due or not, or make the proceeds available for repair, restoration or rebuilding of the Premises in accordance with plans and specifications to be submitted to and approved by the Mortgagee.

**19. RELEASE UPON PAYMENT AND DISCHARGE OF MORTGAGOR'S OBLIGATIONS.** Mortgagee shall release in whole or partially this Mortgage and the lien (in whole or partially) by promissory instrument upon payment and discharge of all indebtedness (or applicable agreed portion) secured hereby including any prepayment charges and late charges provided for herein or in the Note) and upon payment of a reasonable fee to Mortgagee for the preparation and execution of such proper instrument. This shall be determined by Mortgagee in its absolute discretion.

**20. GIVING OF NOTICE.** Any notice which either party elects to give to the other party shall be in writing and the mailing thereof, by certified mail addressed to the Mortgagee or to the Mortgagee, as the case may be, at the respective addresses set forth on the first page hereof or at such other place as any party hereto may by notice in writing designate as a place for service of notice, shall constitute service of notice hereunder and shall be deemed to have been given to the Mortgagee or to the Mortgagee, as the case may be, at the time of mailing.

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

**22. WAIVER OF STATUTORY RIGHTS.** Mortgagee shall not and will not, for shall any beneficiary of Mortgagee apply for or avail itself of any appraisal, redemption, extension of redemption laws or any so-called "Mortgagor in Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement of the lien of this Mortgage, but hereby waives the benefit of such laws. Mortgagee, for itself and all who may claim through or under it, including its beneficiary, waives any and all right to have the property foreclosed upon when an order of foreclosure is entered upon any foreclosure of the Premises and agrees that any court having jurisdiction to foreclose upon the Premises shall have the authority to enter an order of foreclosure and all rights of redemption from sale under any order or judgment of foreclosure of the lien of this Mortgage on behalf of the Mortgagee, the trustee and all persons beneficially interested therein and each and every person, except judgment creditors of the Mortgagee in its representative capacity and of the trust estate, acquiring any interest in or title to the Premises succeeded to by the Mortgagee on the date of this Mortgage.

**23. FURNISHING OF FINANCIAL STATEMENTS TO MORTGAGEE.** Mortgagee covenants and agrees that it will keep and maintain, or cause its beneficiary or beneficiaries from time to time to keep and maintain, books and records of account, in which full, true and correct entries shall be made of all dealings and transactions relative to the Premises, which books and records of account shall, at reasonable times and on reasonable notice, be open to the inspection of the Mortgagee and its accountants and other duly authorized representatives. Such books of record and account shall be kept and maintained in accordance with generally accepted accounting principles consistently applied.

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**25. BUSINESS PURPOSE: USURY EXEMPTION.** Mortgagee hereby represents, or if applicable Mortgagee has been advised by its beneficiaries, that the proceeds of the loan secured by this Mortgage will be used for the purposes specified in Paragraph 6 of Chapter 17 of the 1981 Illinois Revised Statutes, and that the principal obligation secured hereby constitutes a "business loan," which comes with the purchase and operation of said paragraph.

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

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PARCEL A:

# UNOFFICIAL COPY

(PARCEL 1):

THAT PART OF THE NORTH WEST 1/4 OF SECTION 15, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS DESCRIBED AS FOLLOWS: COMMENCING AT A POINT IN THE NORTH LINE OF SAID NORTH WEST 1/4 WHICH IS 200 FEET EAST OF THE NORTH WEST CORNER OF SAID NORTH WEST 1/4, THENCE EAST ALONG THE NORTH LINE OF SAID NORTH WEST 1/4, 169.60 FEET, THENCE SOUTH PARALLEL WITH THE WEST LINE OF SAID SECTION 528.0 FEET, THENCE EAST PARALLEL WITH THE NORTH LINE OF SAID SECTION 250.8 FEET; THENCE SOUTH PARALLEL WITH THE WEST LINE OF SAID SECTION 405.50 FEET; THENCE WEST PARALLEL WITH THE NORTH LINE OF SAID SECTION 420.40 FEET; THENCE NORTH PARALLEL WITH THE WEST LINE OF SAID SECTION 933.5 FEET TO THE POINT OF BEGINNING (EXCEPT THE NORTH 528.0 FEET (AS MEASURED ON THE WEST LINE) OF THE EAST 169.60 FEET OF THE WEST 369.60 FEET (AS MEASURED ON THE NORTH LINE)) OF THE NORTH WEST 1/4 OF SECTION 15, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

(PARCEL 2):

EASEMENT APPURTENANT TO AND FOR THE BENEFIT OF PARCEL 1 AS CREATED BY GRANT OF EASEMENT DATED JANUARY 4, 1982 AND RECORDED FEBRUARY 16, 1982 AS DOCUMENT 26144710 MADE BY FIRST NATIONAL BANK OF NILES AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 21, 1981 AND KNOWN AS TRUST NUMBER 123 TO EXCHANGE NATIONAL BANK AS TRUSTEE UNDER TRUST AGREEMENT DATED MAY 28, 1971 AND KNOWN AS TRUST NUMBER 25237 FOR INGRESS AND EGRESS AND FOR THE INSTALLATION, MAINTENANCE AND USE OF SANITARY SEWER, STORM SEWER AND WATER MAIN FACILITIES OVER THE FOLLOWING DESCRIBED LAND: ALL THAT CERTAIN TRACT OF LAND LOCATED OVER THE SOUTH 50 FEET OF THE SOUTH 405.50 FEET OF THE NORTH 933.50 FEET OF THE WEST 620.40 FEET (EXCEPT THE EAST 420.40 FEET AND EXCEPT THAT PART TAKEN FOR QUENTIN ROAD AND TAKEN FOR WIDENING (BEING THE EAST 17 FEET OF THE WEST 50 FEET OF THE TRACT DESCRIBED ABOVE) OF QUENTIN ROAD, ALL AS MEASURED ALONG LINES PARALLEL TO THE NORTH AND WEST LINES OF THE SECTION) OF THE NORTH WEST 1/4 OF SECTION 15, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL B:

LOT 2 IN NIKAS SUBDIVISION OF PART OF THE NORTH 933.50 FEET OF THE NORTH WEST 1/4 OF SECTION 15, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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