

88364241

PREPARED BY:
Sarah S. Hirsen, Esq.
Hinshaw, Culbertson, McElmann,
Hoban & Fuller
69 West Washington Street
Chicago, Illinois 60602

\$ 32.00

CONSTRUCTION MORTGAGE AND SECURITY AGREEMENT

THIS CONSTRUCTION MORTGAGE AND SECURITY AGREEMENT made this 12th day of February, 1988, between AETNA BANK, not personally, but solely as Trustee pursuant to Trust Agreement dated January 27, 1988, and known as Trust No. 10-4136 (the "Mortgagor") and AETNA BANK, with its principal place of business located at 2401 North Halsted Street, Chicago, Illinois (the "Mortgagee").

W I T N E S S E T H:

WHEREAS, Mortgagor is indebted to Mortgagee for money borrowed in the principal sum of EIGHT HUNDRED SEVENTY THOUSAND DOLLARS (\$870,000.00) evidenced by an installment note, hereinafter designated as the "Note", of even date herewith, payable to the order of Mortgagee at its principal office aforesaid in the above stated principal sum, duly delivered to Mortgagee and drawing interest on the unpaid balance of principal from date until maturity at the rate set forth in Note, the principal and interest being payable in installments as set forth in Note, with the unpaid principal balance and accrued interest due and payable on March 1, 1989, as will more fully appear by reference to the Note.

GRANTING CLAUSES

NOW, THEREFORE, to secure the payment of the principal and interest payable under the Note, and to secure payment of all other sums which may be at any time due and owing to the Mortgagee or its successors and assigns under this Mortgage (herein referred to collectively as the "Indebtedness"); and to secure the performance and observance of all the covenants, agreements and provisions contained in the Note, this Mortgage, the Construction Loan Agreement of even date herewith between the Mortgagor and the Mortgagee (the "Construction Loan Agreement") and any and all other documents executed and delivered to secure the Indebtedness (collectively the "Other Loan Documents"), and to charge the properties, interests and rights hereinafter

71-51-658-102

88364241

UNOFFICIAL COPY

8 3 3 5 4 2 4 1

described with such payment, performance and observance, and for other valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the Mortgagor has mortgaged, granted, bargained, sold, conveyed, assigned, transferred, pledged, warranted and set over and DOES HEREBY MORTGAGE, GRANT, BARGAIN, SELL, CONVEY, ASSIGN, TRANSFER, PLEDGE, WARRANT AND SET OVER unto the Mortgagee, its successors and assigns forever, the following described properties, rights and interests (herein collectively referred to as the "Mortgaged Property"):

The land located in Cook County, Illinois and legally described in Exhibit "A" attached hereto and made a part hereof (the "Land");

Together with all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to or for any such buildings, structures and improvements and all of the right, title and interest of the Mortgagor now or hereafter acquired in and to any of the foregoing (the "Improvements");

Together with all easements, rights of way, strips and gores of land, streets, ways, alleys, sidewalks, vaults, passages, sewer rights, waters, water courses, water drainage and reservoir rights and powers (whether or not appurtenant), all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, easements, franchises, appurtenances and appurtenances whatsoever, in any way belonging, relating or appertaining to the Land or the Improvements, whether now owned or hereafter acquired by the Mortgagor, and the reversions and remainders thereof (the "Appurtenant Rights");

Together with all machinery, apparatus, equipment, fittings and fixtures of every kind and nature whatsoever, and all furniture, furnishings and other personal property now or hereafter owned by the Mortgagor and forming a part of, or used, usable or obtained for use in connection with the Land or the Improvements or any present or future operation, occupancy, maintenance or leasing thereof; including, but without limitation, any and all heating, ventilating and air conditioning equipment and systems, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, communication systems, coolers, curtains, dehumidifiers, dishwashers, disposals, doors, drapes, drapery rods, dryers, ducts, dynamos, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing and electric equipment, pool equipment, pumps, radiators, ranges, recreational facilities

1111111111

UNOFFICIAL COPY

3 3 3 3 4 2 4 1

and equipment, refrigerators, screens, sprinklers, stokers, stoves, shades, shelving, sinks, security systems, toilets, ventilators, wall coverings, washers, windows, window covering, wiring and all extensions, renewals or replacements thereof or substitutions therefor or additions thereto, whether or not the same are or shall be attached to the Land or the Improvements in any manner (the "Fixtures"); it being agreed that all of said property owned by the Mortgagor and placed on the Land or on or in the Improvements (whether affixed or annexed thereto or not) shall, so far as permitted by law, conclusively be deemed to be real property and conveyed hereby for purposes of this Mortgage;

Together with all existing and future goods and items of personal property located on the Land or in the Improvements which are now or in the future owned by the Mortgagor and used, usable or obtained for use in connection with the Land or the Improvements or any present or future operation, occupancy, maintenance or leasing thereof, or any construction on or at the Land or the Improvements, but which are not effectively made Fixtures; including, but not limited to, building materials, supplies, equipment and inventories located on the Premises or elsewhere and all extensions, renewals or replacements thereof or substitutions therefor or additions thereto (the "Personal Property");

Together with all right, title and interest which the Mortgagor now has or hereafter may acquire in and to all leases and other agreements now or hereafter entered into for the occupancy or use of the Land, the Appurtenant Rights, the Improvements, the Fixtures and the Personal Property (herein collectively referred to as the "Premises") or any portion thereof, whether written or oral (herein collectively referred to as the "Leases") and all right, title and interest which the Mortgagor now has or hereafter may acquire in and to any bank accounts, security deposits, and any and all other amounts held as security under the Leases, reserving to the Mortgagor any statutory rights;

Together with all proceeds of the foregoing, including without limitation any and all Awards and Insurance Proceeds, as hereinafter respectively defined, or proceeds of any sale, option or contract to sell the Premises or any portion thereof (provided that no right, consent or authority to sell the Mortgaged Property or any portion thereof shall be inferred or deemed to exist by reason hereof); and the Mortgagor hereby authorizes, directs and empowers the Mortgagee, at its option, on the Mortgagor's behalf, or on behalf of the successors or assigns of the Mortgagor, to adjust, compromise, claim, collect and receive such proceeds; to give deducting expenses and acquittances therefor; and, after deducting expenses of collection, including

11361221

UNOFFICIAL COPY

3 3 3 3 4 2 4 1

reasonable attorneys' fees, costs and disbursements, to apply the Net Proceeds, as hereinafter defined, to the extent not utilized for the Restoration of the Mortgaged Property as provided in Section 6 hereof, upon the Indebtedness as provided herein, notwithstanding the fact that the same may not then be due and payable or that the Indebtedness is otherwise adequately secured; and the Mortgagor agrees to execute and deliver from time to time such further instruments as may be requested by the Mortgagee to confirm such assignment to the Mortgagee of any such proceeds;

Together with all estate, right, title and interest, homestead or other claim or demand, as well in law as in equity, which the Mortgagor now has or hereafter may acquire of, in and to the Premises, or any part thereof, and any and all other property of every kind and nature from time to time hereafter (by delivery or by writing of any kind) conveyed, pledged, assigned or transferred as and for additional security hereunder by the Mortgagor or by anyone on behalf of the Mortgagor to the Mortgagee;

To have and to hold the Mortgaged Property, unto the Mortgagee, and its successors and assigns, IN FEE SIMPLE forever.

Subject to the covenants and conditions hereinafter set forth.

Provided, nevertheless, that if the Mortgagor shall pay in full when due the Indebtedness and shall duly and timely perform and observe all of the covenants and conditions herein required to be performed and observed by the Mortgagor, then the Mortgagee shall execute and deliver to the Mortgagor such instruments as may be reasonably requested by the Mortgagor which are sufficient to release this Mortgage.

Notwithstanding any provision hereof to the contrary, this Mortgage shall secure all future advances made in connection with the Mortgaged Property within forty (40) years from the date hereof, whether such advances are obligatory or are made at the option of the Mortgagee or otherwise and whether or not such advances are evidenced by the Note, to the same extent as if such advances were made on the date of execution and delivery hereof, with interest on such future advances at the Default Rate set forth in the Note (the "Default Rate"); provided that the aggregate outstanding balance of the Indebtedness Hereby Secured shall at no time exceed ONE MILLION SEVEN HUNDRED FORTY THOUSAND DOLLARS (\$1,740,000.00). All covenants, warranties and agreements contained in this Mortgage shall be equally applicable to future advances.

THE MORTGAGOR FURTHER COVENANTS AND AGREES AS FOLLOWS:

HY361221

UNOFFICIAL COPY

8 3 3 6 4 2 4 1

SECTION 1

Payment of Indebtedness; Performance of Covenants, Maintenance, Repair, Compliance with Law, Use, Etc.

(a) The Mortgagor shall (i) pay the Indebtedness when due; (ii) prior to making payments on any indebtedness owed to Samuel Colletta, Anthony Colletta, It Gold I, D. Gold or SC Construction, the Mortgagor shall pay, including the application of the revenues from the Premises, all operating costs and expenses of the Premises and the Indebtedness; and (iii) duly and punctually perform and observe all of the covenants and conditions to be performed or observed by the Mortgagor as provided in the Note, this Mortgage and the Other Loan Documents.

(b) The Mortgagor shall (i) promptly repair, restore, replace or rebuild any portion of the Premises which may be damaged or destroyed; (ii) keep the Premises in good condition and repair, free from waste; (iii) pay all operating costs and expenses of the Premises when due; and (iv) comply with all legal requirements applicable to all or any portion of the Premises, or the use and occupancy thereof.

(c) Without the prior written consent of the Mortgagee, the Mortgagor shall not cause, suffer or permit (i) any material alteration of the Premises, except as required by any applicable legal requirement; or (ii) any change in the intended use or occupancy of the Premises.

SECTION 2

Liens, Taxes, Contest and Defense of Title

(a) The Mortgagor shall not create or suffer or permit any lien, charge or encumbrance to attach to or be filed against the Mortgaged Property, or any part thereof.

(b) The Mortgagor shall pay or cause to be paid 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 levied or assessed against the Mortgaged Property ("Taxes").

(c) If the lien and security interest of the Mortgagee in or to the Mortgaged Property, or any part thereof, shall be endangered or shall be attacked, directly or indirectly, the Mortgagor shall immediately notify the Mortgagee and shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, or any part thereof, and shall file and prosecute such proceedings and take all actions necessary to preserve and protect such title, lien and security interest in and to the Mortgaged Property.

48364221

SECTION 3
Change in Tax Laws

If, by the laws of the United States of America, or of any state or municipality having jurisdiction over the Mortgagee, the Mortgagor or the Mortgaged Property, any tax is imposed or becomes due in respect of the Note or this Mortgage, or any liens on the Mortgaged Property created thereby, then the Mortgagor shall pay such tax in the manner required by such law.

SECTION 4
Insurance Coverage

(a) The Mortgagor at its sole expense shall continuously maintain in force with respect to the Premises such casualty, liability and other insurance coverages as the Mortgagee may reasonably require.

(b) All Insurance Policies shall be with such companies, for such term, and in such form and content, as may be satisfactory to the Mortgagee. The casualty insurance policies must include a standard non-contributory mortgagee loss payable clause in favor of the Mortgagee, as its interest may appear. Any liability insurance policy shall name the Mortgagee as an "additional insured". All insurance policies shall contain a provision that the Mortgagee shall receive not less than thirty (30) days prior written notice before any expiration, cancellation or modification of, or material reduction in coverage under, such policies shall become effective and shall provide that no claims shall be paid thereunder without at least ten (10) days prior written notice to the Mortgagee. In all cases the Mortgagor shall immediately give notice to the Mortgagee of any notice received by the Mortgagor of any expiration, cancellation or modification of, or material reduction in coverage under, any such policy.

(c) All insurance premiums shall be paid in full in advance prior to the due date and duplicate originals of all Insurance Policies with premiums prepaid (accompanied by paid premium receipts) shall be delivered to the Mortgagee prior to the initial disbursement of the loan proceeds and thereafter, in the case of Insurance Policies about to expire, not less than thirty (30) days prior to such expiration date.

SECTION 5
Deposits for Taxes and Insurance Premiums

(a) To assure the payment of Taxes and of all premiums for Insurance Policies required to be maintained hereunder ("Premiums"), as and when the same shall become due and payable, the Mortgagor shall deposit with the Mortgagee (or such other depository as the Mortgagee shall direct) on each monthly payment

UNOFFICIAL COPY

3 3 3 3 4 2 4 1

date under the Note an amount equal to one-twelfth (1/12) of the Taxes and Premiums to become due upon or with respect to the Premises; provided that for the first such deposit, the Mortgagor shall deposit an amount which, when added to the aggregate amount of monthly deposits to be made hereunder will provide (without interest) a sufficient fund to pay such Taxes and Premiums one month prior to the date when they are due and payable. The amounts of such deposits (herein generally called "Tax and Insurance Deposits") shall be based upon the Mortgagee's estimate as to the amount of Taxes and Premiums to become due. All Tax and Insurance Deposits shall be held in a non-interest bearing account.

(b) If the total Tax and Insurance Deposits on hand shall not be sufficient to pay all of the Taxes and Premiums when the same shall become due, then the Mortgagor shall pay to the Mortgagee, on demand, the amount necessary to make up the deficiency.

SECTION 6

Casualty Loss; Proceeds of Insurance

(a) The Mortgagor will give the Mortgagee prompt written notice of any loss or damage to the Premises, or any part thereof, by fire or other casualty.

(b) In case of loss or damage covered by any one of the Insurance Policies, the Mortgagee is hereby authorized to settle and adjust any claim under such Insurance Policies (and after the entry of a decree of foreclosure, or a sale or transfer pursuant thereto or in lieu thereof, the decree creditor or such purchaser or transferee, as the case may be are hereby authorized to settle and adjust any claim under such Insurance Policies) without the consent of the Mortgagor; and the Mortgagee shall, and is hereby authorized to, collect and receipt for any and all proceeds payable under such Insurance Policies ("Insurance Proceeds"). All costs and expenses incurred by the Mortgagee in the adjustment and collection of any such Insurance Proceeds (including without limitation reasonable attorneys' fees and expenses) shall be so much additional indebtedness, and shall be reimbursed to the Mortgagee upon demand or may be paid and deducted by the Mortgagee from such Insurance Proceeds prior to any other application thereof. Each insurance company which has issued an Insurance Policy covering any loss or damage to the Premises (including without limitation loss of rents or business interruption coverage) is hereby authorized and directed to make payment for all losses covered by an Insurance Policy to the Mortgagee alone, and not to the Mortgagee and the Mortgagor jointly.

(c) All Insurance Proceeds shall at the option of the Mortgagee be applied to the prepayment of the Indebtedness whether or

NY 36-12211

UNOFFICIAL COPY

3 3 3 5 4 2 4 1

not then due, or to the restoration, repair, replacement or rebuilding of the Premises ("Restoration") as provided herein.

(d) So long as any Indebtedness shall be outstanding and unpaid, and whether or not Insurance Proceeds are sufficient or available therefor, the Mortgagor shall promptly commence and complete with all reasonable diligence the Restoration of the Premises as nearly as possible to the same value, condition and character which existed immediately prior to such loss or damage in accordance with plans and specifications approved by the Mortgagee for any Restoration involving costs in excess of \$25,000.00 ("Restoration Plans") and in compliance with all legal requirements.

SECTION 7

Condemnation and Eminent Domain

(a) Any and all awards (the "Awards") heretofore or hereafter made or to be made to the Mortgagor (or any subsequent owner of the Premises, or any part thereof), by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Premises (including any award from the United States government at any time after the allowance of a claim therefor, the ascertainment of the amount thereto, and the issuance of a warrant for payment thereof), are hereby assigned by the Mortgagor to the Mortgagee, which Awards the Mortgagee is hereby authorized to collect and receive from the condemnation authorities, and the Mortgagee is hereby authorized to appear in and prosecute in its own name or in the name of the Mortgagor any action or proceeding to enforce any such cause of action and to make any compromise or settlement in connection therewith and to give appropriate receipts and acquittances therefor in the name and in behalf of the Mortgagor. The Mortgagor shall give the Mortgagee immediate notice of the actual or threatened commencement of any condemnation or eminent domain proceedings affecting all or any part of the Premises and shall deliver to the Mortgagee copies of any and all papers served in connection with any such proceedings. All costs and expenses incurred by the Mortgagee in the adjustment and collection of any such Awards (including without limitation reasonable attorneys' fees and expenses) shall be so much additional Indebtedness, and shall be reimbursed to the Mortgagee upon demand or may be paid and deducted by the Mortgagee from any Award prior to any other application thereof. The Mortgagor further agrees to make, execute and deliver to the Mortgagee, at any time upon request, free, clear, and discharged of any encumbrance of any kind whatsoever (other than Permitted Encumbrances), any and all further assignments and other instruments deemed necessary by the Mortgagee for the purpose of validly and sufficiently assigning all Awards and other compensation heretofore and hereafter made to the Mortgagor for any taking, either permanent or temporary, under any such proceeding.

15361221

(b) The proceeds of any such Awards shall at the option of the Mortgagee be applied to the prepayment of the Indebtedness whether or not then due or to the Restoration of the Premises as provided in Section 6.

(c) So long as any Indebtedness shall be outstanding and unpaid, and whether or not Awards are sufficient or available therefor, the Mortgagor shall promptly commence and complete with all reasonable diligence the Restoration of the portion of the Premises not so taken as nearly as possible to the same value, condition and character, which existed immediately prior to such taking in compliance with all legal requirements. Any Restoration of the Premises involving costs in excess of \$25,000.00 shall be effected in accordance with Restoration Plans to be first submitted to and approved by the Mortgagee.

SECTION 8
Mortgagee's Performance of
Mortgagor's Obligations

(a) In case of any Event of Default hereunder, the Mortgagee may, but without any obligation to do so, make any payment or perform any act which the Mortgagor is required to make or perform hereunder in any form and lawful manner deemed expedient to the Mortgagee. The Mortgagee, in addition to any rights or powers granted or conferred hereunder but without any obligation to do so, may rent, operate, and manage the Premises, so that the Premises shall be operational and useable for their intended purposes. All monies paid, and all expenses paid or incurred in connection therewith, including but not limited to costs of surveys, evidence of title, court costs and attorneys' fees and expenses and other monies advanced by the Mortgagee to protect the Premises and the lien hereof, to rent, operate and manage the Premises or to pay any such operating costs and expenses thereof or to keep the Premises operational and useable for their intended purposes shall be so much additional Indebtedness, and shall become immediately due and payable on demand, and with interest thereon at the Default Rate specified herein.

(b) Nothing contained herein shall be construed to require the Mortgagee to advance or expend monies for any purpose mentioned herein, or for any other purpose.

SECTION 9
Construction Mortgage; Security Agreement

(a) This Mortgage is granted to secure the future disbursements of the Indebtedness by Mortgagee to Mortgagor as provided

44364241

UNOFFICIAL COPY

3 3 3 3 4 2 4 1

in the Construction Loan Agreement, and all costs and expenses incurred in enforcing Mortgagor's obligations pursuant hereto and pursuant to the Note, the Construction Loan Agreement and the Other Loan Documents, to pay for the cost of construction of the Improvements, as provided in the Construction Loan Agreement, and constitutes a "construction loan" within the meaning of Section 9-313(1)(c) of the Illinois Uniform Commercial Code.

All disbursements required by the Construction Loan Agreement are obligatory disbursements up to the full amount of the principal of the Indebtedness and shall, to the extent permitted by law, have priority over mechanic's liens, if any, arising after the recording of this Mortgage.

Notwithstanding anything contained herein to the contrary, until Mortgagor and Mortgagee shall have performed all of the terms, covenants, conditions and agreements required of each of them pursuant to the Construction Loan Agreement (the "Final Performance Date"):

(i) the Note shall be subject to the terms and conditions of the Construction Loan Agreement and any amendments thereto;

(ii) any default by Mortgagor pursuant to the Construction Loan Agreement, which is not cured within the applicable grace period, shall constitute a default pursuant hereto, in which event, at the option of the holder hereof, the Indebtedness, without further notice, shall become immediately due and payable; and

(iii) in the event of a conflict between any of the terms and provisions hereof and any comparable terms and provisions of the Construction Loan Agreement, the Mortgagee shall, at its sole discretion, determine which of such terms and provisions shall prevail.

From and after the Final Performance Date: (y) the terms, provisions and conditions set forth in (i) through (iii), both inclusive, immediately above shall be of no further force and effect; and (z) no provisions of the Construction Loan Agreement shall operate to modify, limit, impair or prejudice any right or remedy hereunder, which may be had or exercised by Mortgagee.

(b) This Mortgage is also a security agreement and financing statement under the Uniform Commercial Code of Illinois (the "Uniform Commercial Code") with respect to the Mortgaged Premises (except for the Land, the Improvements and Fixtures which cannot be severed from the Premises without causing structural damage) (the "Collateral"), including without

limitation any Personal Property, which Personal Property may not be deemed to be affixed to the Land or Improvements or may not constitute a "fixture", within the meaning of Section 9-313 of the Uniform Commercial Code and all replacements, substitutions for and additions to such Personal Property, and the proceeds thereof, and that a security interest in and to the Collateral is hereby granted to the Mortgagee, as collateral security for the payment of the Indebtedness. All of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Mortgagee Property; and the following provisions of this Section shall not limit the applicability of any other provisions of this Mortgage but shall be in addition thereto.

This Mortgage also constitutes a fixture filing under the Uniform Commercial Code.

(c) The names and addresses of the Mortgagor, as debtor and of the Mortgagee as secured party for the purposes of the Uniform Commercial Code, are set forth in Section 24 hereof.

(d) The Mortgagor is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof and Permitted Encumbrances.

(e) The Collateral will be kept at the Land, will be used by the Mortgagor solely for business purposes, and, except for Collateral which has become obsolete (the "Obsolete Collateral"), will not be removed therefrom without the consent of the Mortgagee. The Personal Property constituting the Collateral may be affixed to the Land or the Improvements but will not be affixed to any other real estate.

(f) No financing statement covering any of the Collateral or any proceeds thereof is on file in any public office. The Mortgagor will at its own cost and expense, upon demand, furnish to the Mortgagee such further information and will execute and deliver to the Mortgagee such financing statements, continuation statements and other documents in a form satisfactory to the Mortgagee and will do all such acts and things as the Mortgagee may at any time or from time to time request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness, and the Mortgagor will pay any fee, tax, charge or other cost of filing or recording such financing statements, continuation statements or other documents, in all public offices wherever filing or recording is deemed by the Mortgagee to be necessary or desirable.

NY 36122A1

UNOFFICIAL COPY

3 3 3 3 4 2 4 1

(g) The Mortgagee shall have all the rights and remedies of a secured party under the Uniform Commercial Code upon the occurrence of an Event of Default hereunder, including without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof to the extent and in the manner permitted by applicable law.

SECTION 10 Restrictions on Transfer

For the purpose of protecting Mortgagee's security, and keeping the Premises free from subordinate financing liens, Mortgagor agrees that it will not:

(a) sell, transfer or convey title to the Premises, or the beneficial interest in any trust holding title to the Premises, or the partnership interests of any partnership or the stock in any corporation holding title to the Premises or owning the beneficial interest in any trust holding title to the Premises; or

(b) obtain any financing, all or a part of which, will be secured by the Premises or by an assignment of the beneficial interest in any trust holding title to the Premises, or the partnership interests of any partnership or the stock in any corporation holding title to the Premises or owning the beneficial interest in any trust holding title to the Premises; without the Mortgagee's prior written consent, and upon the happening of any such event without the written consent of the Mortgagee shall be an event of default hereunder.

Nothing herein contained shall require Mortgagee to consent to any transfer of the above interests but Mortgagee may require that the entire unpaid principal balance of the debt, with accrued interest thereon, evidenced by Note and secured by this Mortgage to be paid in full.

SECTION 11 Events of Default, Remedies

(a) Any one or more of the following events shall constitute an Event of Default under this Mortgage:

(i) If any payment on the Note or deposit of monies required under this Mortgage is not made within fifteen (15) days after the due date; or

(ii) If the Mortgagor shall fail to maintain the insurance coverages in effect as required in Section 4 hereof and such failure shall continue for two (2) business

44361211

UNOFFICIAL COPY

3 3 3 3 4 2 4 1

days after written notice of such failure has been received by the Mortgagor from the Mortgagee; or

(iii) If a Prohibited Transfer shall occur as set forth in Section 10 hereof; or

(iv) If any representation or warranty made by the Mortgagor pursuant to or in connection with this Mortgage shall prove to be untrue or incorrect in any material respect; or

(v) If a final judgment or judgments for the payment of money (which payment has not been insured against) aggregating in excess of \$25,000.00 is or are outstanding against the Mortgagor or any guarantor of the Note (the "Guarantors") or against any of the properties or assets of the Mortgagor or the Guarantors and any one of such judgments has remained unpaid, unvacated, unbonded or unstayed by appeal or otherwise for a period of thirty (30) days from the date of its entry; or

(vi) If a proceeding is instituted seeking a decree or order for relief in respect of the Mortgagor or any of the Guarantors in any voluntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or State bankruptcy, insolvency or other similar law now or hereafter in effect, or for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Mortgagor or of any of the Guarantors, or for any substantial part of the property of the Mortgagor or any of the Guarantors, or for the winding-up or liquidation of the business or affairs of the Mortgagor or any of the Guarantors and such proceeding shall remain undismissed or unstayed and in effect for a period of sixty (60) consecutive days, or a decree or order shall be entered granting the relief sought in such proceeding; or

(vii) If the Mortgagor or any of the Guarantors shall generally fail to pay, or admit an inability to pay its debts as they become due or shall voluntarily commence proceedings under the Federal bankruptcy laws, as now or hereafter constituted, or any bankruptcy, insolvency or other similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Mortgagor or any of the Guarantors or shall take any action in furtherance of any of the foregoing; or

111361241

UNOFFICIAL COPY

3 3 3 3 4 2 4 1

(viii) If any default shall occur in the due and punctual performance of, or compliance with any of the terms, covenants, conditions or agreements contained herein [other than as described in the preceding clauses (i) through (vii) of this paragraph (a) of Section 11] and the continuance of such default for thirty (30) days after notice thereof shall be given to the Mortgagor by the Mortgagee, provided that if any default referred to in this paragraph (viii) cannot be cured with diligence within said thirty (30) day period, the Mortgagor shall have such additional time [but not in excess of ninety (90) additional days] as may be required to cure such default so long as the Mortgagor commences and diligently pursues all actions necessary to effect such cure.

(b) Upon the occurrence of any Event of Default hereunder 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 other right of the Mortgagee hereunder to do any or all of the following without notice to or demand upon the Mortgagor or any party liable for the obligations secured hereby or having an interest in the Mortgaged Property:

(i) To declare, without further notice, all Indebtedness to be immediately due and payable with interest thereon at the Default Rate;

(ii) To commence a judicial action to foreclose this Mortgage;

(iii) To exercise any right, power or remedy provided by this Mortgage or the Note or by law or in equity or by any other document or instrument regulating, evidencing, securing or guarantying any of the Indebtedness.

SECTION 12 Foreclosure

(a) In any proceeding for the foreclosure of the lien hereof, there shall be allowed and included as additional Indebtedness, all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for attorneys' fees, fees of other professionals, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all title searches and title insurance policies. All expenditures and expenses of the nature mentioned herein, and such other expenses and fees as may be incurred in the protection of the Mortgaged Property, shall be so much additional Indebtedness and shall be immediately due and payable

RR364241

UNOFFICIAL COPY

3 3 3 3-4 2 4 1

by the Mortgagor, with interest thereon at the Default Rate until paid.

(b) The foreclosure of this Mortgage on less than the whole of the Mortgaged Property shall not exhaust the right to foreclose hereunder and the lien and security interests herein granted, and the Mortgagee is specifically empowered to institute successive foreclosures hereunder until the whole of the Mortgaged Property shall be sold. If the proceeds of any such sale of less than the whole of the Mortgaged Property shall be less than the aggregate of the indebtedness and the expenses of such proceedings, this Mortgage and the lien and security interests hereof shall remain in full force and effect as to the unsold portion of the Mortgaged Property just as though no sale had been made. The Mortgagor shall never have any right to require the sale or sales of less than the whole of the Mortgaged Property, or to require the marshalling thereof. The Mortgagee shall have the right, at its sole election, to sell less than the whole of the Mortgaged Property.

SECTION 13 Receiver

The Mortgagee shall have the right, with the irrevocable consent of the Mortgagor hereby given and evidenced by the execution of this Mortgage, to obtain appointment of a receiver for the Mortgaged Property. Such appointment may be made at any time after the occurrence of any Event of Default and before or after foreclosure sale, without notice, and the Mortgagee hereunder or any employee or agent thereof may be appointed as such receiver.

75361221

SECTION 14 Proceeds of Sale

The proceeds of any foreclosure of the Mortgaged Property, or any portion thereof, shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure or other proceedings for the recovery thereof, including all such items as are mentioned in Section 15 hereof; Second, to the payment and performance of any other obligations of the Mortgagor secured hereby, including without limitation all other items which, under the terms hereof, constitute Indebtedness in addition to that evidenced by the Note with interest thereon at the Default Rate in such order and manner as the Mortgagee shall determine; Third, to the interest remaining unpaid upon the Note; Fourth, to the principal remaining unpaid upon the Note; and Fifth, any balance remaining to the Mortgagor.

SECTION 15
Waiver of Right to Redemption
and Other Rights

To the fullest extent permitted by law, 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, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under the Mortgagor and on behalf of each and every person acquiring any interest in or title to the Premises 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 fullest extent permitted by applicable law. To the fullest extent permitted by law, the Mortgagor, for itself and all who may at any time claim through or under it, hereby waives any and all right to have the assets subject to the lien of this Mortgage marshalled upon any foreclosure or sale. The Mortgagor hereby fully and absolutely waives and releases all rights and claims the Mortgagor may have in and to the Premises as a homestead exemption or other exemption under and by virtue of any act of Illinois now existing or which may hereafter be passed in relation thereto.

SECTION 16
Rights Cumulative

(a) 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, now or hereafter provided by 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.

(b) No waiver or modification of any of the terms of this Mortgage shall be binding on the Mortgagee unless set forth in writing signed by the Mortgagee and any such waiver by the Mortgagee of any default by the Mortgagor under this Mortgage shall not constitute a waiver of any other default under the same or any other provision hereof.

SECTION 17
Successors and Assigns

(a) This Mortgage and each and every provision hereof shall be binding upon the Mortgagor and its successors and assigns (including, without limitation, each and every record owner from time to time of the Mortgaged Property or any other person having an interest therein), and shall inure to the benefit of the

75361211

UNOFFICIAL COPY

3 3 3 5 4 2 4 1

Mortgagee and its respective successors and assigns.

(b) All of the covenants of this Mortgage shall run with the Land and be binding on any successor owners of the Land. In the event that the ownership of the Premises or any portion thereof becomes vested in a person or persons other than the Mortgagor, the Mortgagee may, without notice to the Mortgagor, deal with such successor or successors in interest of the Mortgagor with reference to this Mortgage and the Indebtedness in the same manner as with the Mortgagor without in any way releasing or discharging the Mortgagor from its obligations hereunder.

(c) No successor to the rights, titles, interests, duties, discretions and options of the Mortgagee hereunder have any liability for any acts or omissions of any prior Mortgagee.

SECTION 18 Execution of Separate Security Agreements, Financing Statements, Etc.

The Mortgagor will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, conveyances, notes, mortgages, security agreements, financing statements and assurances as the Mortgagee shall require for the better assuring, conveying, mortgaging, assigning and confirming unto the Mortgagee all property mortgaged hereby or property intended so to be, whether now owned by the Mortgagor or hereafter acquired.

SECTION 19 Governing Law; Invalidity of Certain Provisions

(a) This Mortgage shall be construed and enforced according to the laws of Illinois, without reference to the conflicts of law principles of that State.

(b) The whole or partial invalidity, illegality or unenforceability of any provision hereof at any time, whether under the terms of then applicable law or otherwise, shall not affect (i) in the case of partial invalidity, illegality or unenforceability, the validity, legality or enforceability of such provision at such time except to the extent of such partial invalidity, illegality or unenforceability; or (ii) the validity, legality or enforceability of such provision at any other time or of any other provision hereof at that or any other time.

UNOFFICIAL COPY

3 3 3 3 4 2 4 1

SECTION 20 Loan Legal

The Mortgagee declares, represents, warrants, certifies and agrees that the proceeds of the Note will be used solely for business purposes and that the loan is exempt from interest limitations pursuant to the provisions of Illinois Revised Statutes, Chapter 17, Section 6404 and is an exempted transaction under the Truth in Lending Act, 15 U.S.C. Section 1601 et. seq.

All rights, remedies and powers provided by this Mortgage may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law, and all the provisions of this Mortgage are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Mortgage invalid or unenforceable under the provisions of any applicable law.

SECTION 21 Inspection of Premises and Records

The Mortgagee and its representatives and agents shall have the right to inspect the Premises and all books, records and documents relating thereto at all reasonable times, and access thereto, subject to the rights of tenants pursuant to leases, the form of which have been approved by the Mortgagee, shall be permitted for that purpose. The Mortgagor shall keep and maintain full and correct books and records showing in detail the income and expenses of the Premises and, within twenty (20) days after demand therefor by the Mortgagee to permit the Mortgagee or its agents to examine such books and records and all supporting vouchers and data at any time and from time to time on request at its offices at the address hereinafter identified or at such other location as may be mutually agreed upon.

SECTION 22 Time is of the Essence

Time is of the essence of this Mortgage and the Note.

SECTION 23 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 shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely

UNOFFICIAL COPY

3 3 3 5 4 2 4 1

interchangeable.

SECTION 24 Notices

Any notice, demand or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given if and when personally delivered, or, if sent by private courier service or sent by overnight mail service, shall be deemed to have been given if and when received (unless addressee refuses to accept delivery, in which case it shall be deemed to have been given when first presented to the addressee for acceptance) or on the third (3rd) Business Day after being deposited in United States registered or certified mail, postage prepaid. Any such notice, demand or other communication shall be addressed to a party at its address set forth below or to such other address the party to receive such notice may have designated to all other parties by notice in accordance herewith:

If to the Mortgagee: Aetna Bank
2401 North Halsted Street
Chicago, Illinois 60614

If to the Mortgagor: Aetna Bank, as Trustee of
Trust No. 10-4136
2401 North Halsted Street
Chicago, Illinois 60614
and
Samuel Colletta
Anthony Colletta
4850 West Pratt Avenue
Lincolnwood, Illinois 60646

08364241

SECTION 25 Performance of Obligations Under Commitment

Prior to the execution of this Mortgage, Mortgagee has heretofore issued its Loan Commitment dated January 21, 1988, pertaining to the Premises, which has been accepted by the party named therein. Mortgagor hereby covenants and agrees to comply with all of the terms and conditions of said Commitment, and any non-compliance thereof shall be and constitutes a default under this Mortgage and the Note.

SECTION 26 Exculpatory Clause

This Mortgage is executed by AETNA BANK, not personally, but as Trustee pursuant to Trust Agreement dated January 27, 1988, and known as Trust Number 10-4136 in the exercise of the power

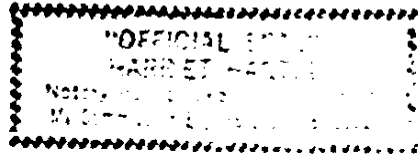
UNOFFICIAL COPY

GIVEN under my hand and Notarial Seal this 12th day of February, 1988.

[Signature]
Notary Public

My Commission Expires:

9-18-1990



44364241

Property of Cook County Clerk's Office

44364241

UNOFFICIAL COPY

8 3 3 5 4 2 4 1

EXHIBIT "A"

LEGAL DESCRIPTION OF LAND

Lots 1 and 2 in Block 19 in Canal Trustees' subdivision of lots in fractional Section 15 addition to Chicago in the West 1/2 of the South West 1/4 of Section 15, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois

Commonly known as: 1021 South State Street
Chicago, Illinois

Permanent Index No.: 17-15-306-032-0000

88364241

Property of Cook County Clerk's Office