

6970-1/tlk
12-596-091
8/29/88-bb

This document is being recorded to correct signature page.

UNOFFICIAL COPY

88298283 8 8 2 9 8 2 53 13

88376851

41.00

MORTGAGE AND SECURITY AGREEMENT

716 9448 P3 1 of 8

THIS MORTGAGE AND SECURITY AGREEMENT (this "Mortgage") made as of this 1st day of July, 1988, by and between PETROS N. KOGIONES, an individual residing at 1000 N. Lake Shore Drive, Apt. 28C, Chicago, Illinois 60611, and FIRST NATIONAL BANK OF CICERO, not personally, but as Trustee under Trust Agreement dated June 12, 1981 and known as Trust No. 7391 (herein, individually and collectively, jointly and severally, together with the successors and assigns of each of them, are sometimes referenced to as "Mortgagor"), and BANK OF CHICAGO, an Illinois banking corporation ("Mortgagee"), having its principal office at 1050 W. Wilson Avenue, Chicago, Illinois 60640.

WITNESSETH: That, in consideration of a loan including any extensions, renewals, or modifications thereof (the "Loan") in the amount of EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (\$800,000.00) to be paid by Mortgagor to Mortgagee, the receipt and sufficiency of which sum is hereby acknowledged, Mortgagor, jointly and severally, does by these presents GRANT, BARGAIN, SELL, CONVEY and MORTGAGE unto Mortgagee, its successors and assigns, its estate in fee simple, forever, in the real estate situated in the City of Chicago, County of Cook, State of Illinois as more fully described on the attached Exhibit A, which is incorporated herein by this reference commonly referred to as 210-214 S. Halsted Street, Chicago, Illinois (the "Real Estate").

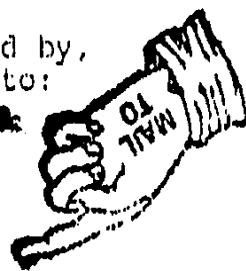
TOGETHER with all the easements, rights-of-way, licenses, privileges, and appurtenances now or hereafter belonging, and all the rents, issues, income, revenues and profits therefrom; and also all the estate, right, title and interest of Mortgagor, either at law or in equity, of, in and to the Real Estate, and every part thereof;

TOGETHER with all right, title and interest, if any, of Mortgagor, in and to the land lying within any street or roadway adjoining the Real Estate; and all right, title and interest, if any, of Mortgagor in and to any strips and gores adjoining the Real Estate;

Common Address: 210-214 S. Halsted Street, Chicago, Illinois

This document was prepared by, and when recorded return to:

Theodore L. Koonig, Esq.
Holleb & Coff
55 East Monroe
Suite 4100
Chicago, Illinois 60603
(312) 807-4600



Permanent Index Number(s):

- 17-17-222-008
- 17-17-222-009
- 17-17-222-017

RECORDED

88298283

BOX 003-11W

TO HAVE AND TO HOLD the Premises with the privileges and appurtenances thereunto belonging, and all rents, issues and profits therefrom, unto Mortgagee, its successors and assigns, forever, hereby expressly waiving and releasing any and all right, benefit, privilege, advantage or exemption under or by virtue of any and all statutes and laws of the State or other jurisdiction in which the Premises is located providing for the exemption of homesteads from sale or an execution or otherwise, and for the uses and purposes herein expressed. Mortgagee covenants to Mortgagee and with the purchaser at any foreclosure sale that at the execution and delivery of this Mortgage, Mortgagee shall seized of the Premises, in fee simple, and has good right and full power to grant, bargain, sell, convey, and mortgage the Premises in the manner and form written; that the Premises are free from all liens and encumbrances whatsoever (and any claim of any other person thereto), excepting only the encumbrances as set forth on the

TOGETHER with all buildings, structures, replacements, and improvements now or hereafter located or erected thereon; and, also, all fixtures, replacements, and improvements now or hereafter located or erected thereon; or any part thereof, and used or usable in connection with any present or future operation of the Real Estate, and now owned or hereafter acquired by Mortgagee, including, but without limitation of the generality of the foregoing, all heating, lighting, incinerating, refrigerating, ventilating, air-conditioning, air-cooling, lift-ing, fire extinguishing, plumbing, cleaning, communications, power equipment; and all elevators, escalators, switchboards, engines, motors, tanks, pumps, screens, storm doors, storm windows, shades, awnings, floor coverings, carpeting, ranges, stoves, refrigerators, dishwashers, washers, dryers, wall beds, cabinets, partitions, conduits, ducts and compressors; it being understood and agreed that all such fixtures, machinery, apparatus, equipment, and articles of personal property are a part of the Real Estate and are declared to be a portion of the security for the indebtedness secured hereby, whether in single units or centrally controlled, and whether physically attached to the Real Estate or not) (all of the Real Estate, improvements of every kind and nature as hereinabove described, and any other property that is real estate under applicable law, is sometimes referred to collectively herein as the "Premises"; it being the intention of Mortgagee that this Mortgage shall also operate as a security agreement under the Uniform Commercial Code and this mortgage constitutes a financing statement filed as a fixture filing in the Official Records of the County Recorder of the County in which the Premises are located with respect to any and all fixtures included within the term "Premises" as used herein and with respect to any other personal property that may now be or hereafter become such fixtures;

8 8 2 9 3 2 8 3

88298283

15894881

UNOFFICIAL COPY

1 5 3 7 3 3 3

The maximum of all obligations secured by this mortgage is TWENTY MILLION AND NO/100 DOLLARS (\$20,000,000.00). The various obligations secured by this mortgage mature, in accordance with the provisions of the respective agreements, instruments and documents creating, evidencing, securing or otherwise relating to them, not later than twenty (20) years after the date of this mortgage. All obligations secured by this mortgage, including, without limitation, all future advances, shall have the same

(collectively referred to herein as the "Loan Documents"). The same may be amended, modified or supplemented from time to time for the purpose of supplementing or amending this mortgage, as the connection with all obligations of mortgagor to mortgagee or for Note and this mortgage, now or hereafter executed by mortgagor in and/or securing the indebtedness secured hereby, including the all other agreements, assignments and all instruments evidencing 10-27996-09 as mortgagor, and mortgagee as mortgagee, and any and under Trust Agreement dated June 8, 1973 and known as Trust No. Kogiones and Lasalle National Bank, not personally, but as Trustee Agreement dated even date hereof, by and between Petros N. and mortgagee, as assignee, that certain mortgage and Security dated even date hereof, between Petros N. Kogiones, as assignor, Assignments and Collateral Assignments of Interest in Land Trust, Assignor, and mortgagee, as assignee, those certain Security Assignment of Rents, dated even date hereof, between mortgagor as covenants, conditions, and agreements contained in that certain mortgage and the Note; (d) performance of each and every one of the the covenants, conditions, and agreements contained in this mortgage or advanced by mortgagee pursuant to any term or provision of this mortgage; (c) performance of each and every one of the mortgagee as herein provided of all sums expended or advanced by mortgagee pursuant to any term or provision of this mortgage; (b) pay-accordance with the terms of the Note and this mortgage; (a) pay- holder thereof may from time to time appoint in writing. Mortgagee of the mortgagee in Chicago, Illinois, or at such place as the able in lawful money of the United States of America at the office time outstanding; all principal and interest on the Note are payable in lawful money of the United States of America at the office of the mortgagee in Chicago, Illinois, or at such place as the mortgagee at Chicago, Illinois, ON DEMAND as provided in the Note, in the principal sum of EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (\$800,000.00) (the "Loan Amount"). The Note bears interest, as provided in the Note, on the principal amount thereof from time to time outstanding; all principal and interest on the Note are payable in lawful money of the United States of America at the office of the mortgagee in Chicago, Illinois, or at such place as the mortgagee at Chicago, Illinois, ON DEMAND as provided in the Note, in delivered by mortgagee to mortgagee, payable to the order of mortgagee as the "Note", dated July 1, 1988, made and referred to as the "Note", dated July 1, 1988, made and referred to as the "Note", shall be may evidence any of the indebtedness secured hereby, shall be or partial renewal, substitution or extension thereof, or, which thereto, extensions thereof and notes which may be taken in whole such Note, together with any and all amendments or supplements edness evidenced by that certain Demand Promissory Note (herein THIS MORTGAGE IS GIVEN TO SECURE: (a) payment of the indebted-

attached Exhibit B (the "Permitted Exceptions"); and that mortgagor will warrant and defend the Premises, with the privileges and appurtenances thereunto belonging to mortgagee, its successors and assigns, forever, against all claims and demands whatsoever.

3 8 2 9 0 2 3 3

88298283

88298283

8829288

8829288

3. Funds for taxes and insurance. In order to more fully protect the security of this mortgage, upon request by mortgagee, mortgagee shall pay to mortgagee monthly, in addition to each monthly payment required hereunder, or under the Note, a sum equal to one-twelfth (1/12th) of the amount estimated by mortgagee to be sufficient to enable mortgagee to pay at least ten (10) days before they become delinquent, all taxes, current assessments of assessments, and other similar charges levied against the premises, and all insurance premiums on any policy or policies of insurance required hereunder. Such funds shall be held without any allowance of interest. Said amounts shall be held by mortgagee not in trust and not as agent of mortgagee, and may be commingled with other funds held by mortgagee. Upon demand by mortgagee, mortgagee will deliver and pay over to mortgagee such additional sums as are necessary to make up any deficiency in the amount necessary to enable mortgagee to fully pay any of the items hereinafter mentioned. In the event of any default by mortgagee in the performance of any of the terms, covenants, or conditions

2. Payment of Taxes. Mortgagee shall pay before delinquent, all taxes and assessments, general or special, and any and all levies, claims, charges, expenses and liens, ordinary or extraordinary, governmental or non-governmental, statutory or otherwise, and other similar charges, due or to become due, that may be levied, assessed, made, imposed or charged on or against the premises, and will promptly deliver to mortgagee receipts of the proper officers, showing payment of all such taxes, assessments and charges. In default hereof, mortgagee may, but shall not be obligated to, pay such taxes, assessments, and other similar charges, including, without limitation, any penalties or interest thereon (of which payment, amount and validity thereof, the receipt of the proper officer shall be conclusive evidence) and any amount so paid by mortgagee shall become immediately due and payable by mortgagee with interest at the default rate defined in the Note and payment thereof shall be secured by this mortgage.

1. Payment of Indebtedness. Mortgagee shall pay, timely and in the manner required in the appropriate documents or instruments, the principal of and interest on the Note, and any other indebtedness secured hereby, as evidenced by the mortgage and the other loan documents at the times and in the manner therein provided. All sums payable by mortgagee hereunder shall be paid without demand, counterclaim, offset, deduction or defense. Mortgagee waives all rights now or hereafter conferred by statute or otherwise to any such demand, counterclaim, offset, deduction or defense.

MORTGAGOR HEREBY COVENANTS AND AGREES THAT:

priority, to the same extent as if such obligations secured by this mortgage, including, without limitation, all future advances, were made on the date of this mortgage. This mortgage shall constitute a lien even if there are no outstanding obligations under this mortgage or any other loan documents from time to time.

UNOFFICIAL COPY

1 5 3 9 7 6 3 5 1

In the event of any loss or damage, Mortgagor will give immediate notice thereof to Mortgagee, and Mortgagee may thereupon

in the Note and payment thereof shall be secured by this Mortgage. and payable by Mortgagor with interest at the default rate defined and any amounts so paid by Mortgagee shall become immediately due Insurance required hereunder and pay the premiums due therefor, but shall not be obligated to, in its discretion, effect any to comply with the requirements of this paragraph, Mortgagee may, days prior written notice to Mortgagee. Upon Mortgagee's failure that the same may not be cancelled without at least thirty (30) Issuing company or agent. Said policy or policies shall provide thereof; the said policies and renewals to be marked "paid" by the or policies at least ten (10) days prior to the expiration date(s) hereunder, and shall deliver to Mortgagee renewals of such policy with loss payable to Mortgagee. Mortgagor will promptly pay when gage and shall contain a mortgage clause acceptable to Mortgagee, such form, companies, and amounts as may be acceptable to Mortgagee. All policies of insurance required hereunder shall be in period, business interruption, sprinkler leakage, and boiler including, without limitation, rent loss for a twelve month and commercial insurance industry practices for similar risks, may designate, provided same are consistent with the then prevailing and such other hazards, casualties, and contingencies as Mortgagee the premises against loss or damage by fire, lightning, windstorm, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, buildings and improvements now existing or hereafter erected on and released, a policy or policies of insurance insuring the continuance of this Mortgage and until the same is fully satisfied all times maintain for the benefit of Mortgagee during the con- Insurance. Mortgagor will procure, deliver to and at

and payable after notice to Mortgagor by Mortgagee.

4. Other Taxes. In the event of the passage, after the date of this Mortgage, of any statute or ordinance deducting from the value of real property for purposes of taxation, any lien thereon, or changing in any way the laws now in force for the taxation of mortgages or debts secured thereby, for state or local purposes, or the manner of the collection of any such taxes, so as to affect this Mortgage or the interest of Mortgagee hereunder, Mortgagor shall pay such tax or other sums due as a result thereof; provided that if such statute or ordinance expressly prohibits Mortgagor from making such payment, the whole of the principal sum secured by this Mortgage, with interest and charges, if any, thereon, at the option of Mortgagee shall become immediately due

its obligations as set out in Paragraph 2. hereby, in such a manner as Mortgagee may determine. Mortgagor's making payments and deposits required by the provisions of this paragraph shall not relieve Mortgagor of, or diminish in any way

8 8 2 9 8 2 8 3

15036284

88286288

UNOFFICIAL COPY

93 3 3 7 6 3 5 1

88298283

88298283

In addition to the above, but in compliance with the terms of the foregoing, Mortgagee covenants and agrees that during the continuation of this mortgage and until the same is fully satisfied and released, Mortgagee will procure and maintain a policy or policies of comprehensive public liability insurance in such form, companies and amounts as may be acceptable to Mortgagee. Upon request of Mortgagee, Mortgagee shall furnish Mortgagee with evidence of such coverage as is acceptable to Mortgagee. During construction, remodeling, or land development said liability insurance shall include, but not be limited to, owner's protective liability coverage.

Notwithstanding anything to the contrary contained herein, if the zoning, building or other land use ordinances then in effect governing the premises do not permit the rebuilding or restoration of all of the premises which has been damaged or destroyed, then Mortgagee hereby agrees that any loss paid under any insurance policy insuring the premises shall be applied to the payment or prepayment of any indebtedness secured hereby in such order as Mortgagee may determine in its sole discretion.

make proof of such loss or damage, if the same is not promptly made by Mortgagee. All proceeds of insurance, in the event of such loss or damage, shall be payable to Mortgagee, and any payment thereof directly to Mortgagee. Such proceeds shall be held by Mortgagee in accordance with the terms hereof. Mortgagee is authorized and empowered to settle, adjust, or compromise any claims for loss, damage, or destruction under any policy or policies of insurance if Mortgagee is in default hereunder, under the Note, or any other loan documents. Mortgagee may, at its option, either retain and apply, in whole or in part, all such proceeds to and in reduction of any indebtedness secured hereby (whether or not then due and payable) in such order as Mortgagee may determine, or all such proceeds may, at Mortgagee's option be applied in whole to the restoration, repair, or replacement, or rebuilding of the premises, provided that such restoration, repair, or replacement is deemed by Mortgagee, in Mortgagee's sole discretion, to be economically feasible, that all such insurance proceeds shall be disbursed as required by Mortgagee, in Mortgagee's sole discretion, and any excess proceeds shall be applied as a credit upon any portion, as selected by Mortgagee, of the indebtedness secured hereby. The delivery to Mortgagee of any policy or policies of insurance hereunder, or renewals thereof, shall constitute an assignment to Mortgagee of all unearned premiums with respect to the premises, as further security for the payment of the indebtedness secured hereby. In the event of any foreclosure action or other transfer of title to the premises in extinguishment of the indebtedness secured hereby, all right, title, interest of Mortgagee in and to any policy or policies of insurance with respect to the premises then in force shall pass to the purchaser or grantee.

8 8 2 9 8 2 8 3

88296283

4 88296283

6. Maintenance and Repair; Governmental Requirements; Access by Mortgagee; Utilities. Mortgagee will maintain the Premises in good condition and repair and will not commit or suffer any waste thereof, reasonable wear and tear excepted. Mortgagee will at all times fully comply with, or cause to be complied with, all statutes, ordinances, regulations, requirements, rules, orders and decrees of any kind whatsoever of any governmental authority relating to the Premises or Mortgagee, and will promptly repair, restore, replace, or rebuild any part of the Premises now or hereafter subject to the lien of this Mortgage that may be damaged or destroyed by any casualty or as the result of any condemnation proceeding or exercise of the right of eminent domain, or by an alteration of the grade of any street affecting the Premises. None of the buildings, structures, or improvements now or hereafter erected or located on the Premises shall be removed, demolished, or altered in any respect without the prior written consent of Mortgagee. Mortgagee, and any person authorized by Mortgagee, shall have the right to enter upon and inspect the Premises at all reasonable times. Mortgagee will pay, or cause its tenants to pay, promptly when due, all charges for utilities, supplies or services, including but not limited to, electricity, gas, sewer and water, and upon failure so to pay, Mortgagee may, at its option but without obligation to, after notice to Mortgagee, make such payment or payments, and any amounts so paid by Mortgagee shall become immediately due and payable and shall be secured by the lien of this Mortgage with interest at the default rate specified in the Note.

7. Sales; Liens. Mortgagee will not create, permit or suffer to be created any charge, lien, encumbrance, mortgage, claim, security interest, charge or other right or claim of any kind whatsoever upon the Premises, or any part thereof, excepting the lien hereof, the lien of general and special taxes duly levied and assessed and shall not sell, assign, transfer or convey, or permit to be transferred or conveyed, the Premises, or any interest or estate therein or part thereof, nor shall Mortgagee acknowledge or execute or permit to be acknowledged or executed any assignment or attempted assignment of all or any part of the beneficial interest (including the power of direction) in Mortgagee, without in each and every case the prior written consent of Mortgagee. The creation of any such charge, lien or encumbrance or transfer, whether voluntary (including any attempted sale, transfer or conveyance by means of an installment sales contract or articles of agreement for deed), involuntary or by operation of law, or in the event Mortgagee acknowledges or executes any assignment or attempted assignment, without the prior written consent of Mortgagee, shall, at Mortgagee's option, constitute a default under the terms of this Mortgage, with full right to accelerate the maturity of the indebtedness secured hereby, unless the creation of any such charge, lien, encumbrance or lease or transfer or assignment, is not a permissible event of default under Federal law. Mortgagee may, upon notice to Mortgagee, deal with any successor owner in the same manner as with Mortgagee, without in any way discharging the liability of Mortgagee here-

88298283

88298283

10. No Assignment. Mortgagee will not assign, in whole or in part, the rents, income, or profits arising from the premises, or any lease thereof, without the prior written consent of Mortgagee, or in any other manner that impairs the security of this mortgage for the payment of the indebtedness secured hereby.

9. Expenses. Mortgagee agrees to indemnify Mortgagee, if Mortgagee shall incur or expend any sums or suffer any loss, damage or expenses, including without limitation attorney's fees, whether in connection with any action or proceeding or not, by reason of this mortgage or to protect or enforce any of Mortgagee's rights hereunder, or to recover any indebtedness hereby secured, and all such sums shall become immediately due and payable by Mortgagee with interest thereon at the default rate defined in the Note. All such sums, with interest, shall be secured by this mortgage and be a lien on the premises prior to any right, title, interest, or claim, in, to, or upon the premises attaching or accruing subsequent to the lien of this mortgage. Notwithstanding the foregoing, the non-default rate of interest under the Note shall be applicable to such sums with respect to expenditures that are not occasioned by Mortgagee's default hereunder, under the Note, or any other loan documents.

8. Eminent Domain. If all or any part of the premises, or any interest therein, is damaged, taken, or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, or by the alteration of the grade of any street affecting the premises, the amount of any award or other payment for such taking or damages made in consideration thereof may, at Mortgagee's option, be retained and applied, in whole or in part, to and in reduction of any indebtedness secured hereby (whether or not then due and payable) in such order as Mortgagee may determine, or, at Mortgagee's option, such proceeds may be used for the purpose of altering, restoring, or rebuilding any part of the premises that may have been altered, damaged, or destroyed as the result of such taking, alteration, or proceeding, but Mortgagee shall not be obligated to see to the application of any amounts so released and any unused proceeds shall be applied in part payment of the indebtedness secured hereby in such order as Mortgagee may determine. Mortgagee hereby empowers Mortgagee, in Mortgagee's absolute discretion, to settle, compromise and adjust any and all claims or rights arising under any condemnation or eminent domain proceeding relating to the premises or any portion thereof.

under or upon the debt hereby secured. Mortgagee shall reimburse attorneys' fees, incurred by Mortgagee in connection with its review of Mortgagee's request for Mortgagee's consent to a sale or other transfer or further encumbrance of all or part of the premises, or any interest therein, pursuant to this Paragraph 7.

12. Financial and Operating Statements. With respect to the premises and the operations thereof and the business operations conducted thereon, Mortgagee will cause to be kept proper books of record and account in accordance with generally accepted (or cash basis) accounting principles consistently applied. Mortgagee shall have the right to examine said books of record and account at such reasonable times and intervals as Mortgagee may elect. Mortgagee will cause to be furnished to Mortgagee, within ninety (90) days after the end of each fiscal year (or calendar year, if appropriate), a statement of income and surplus of such persons

11. Leases. Mortgagee will observe and perform all covenants, conditions, and agreements contained in any lease or leases now or hereafter affecting the premises, or any portion thereof, on the part of Mortgagee to be observed and performed. If Mortgagee shall default in the performance of any of the terms, covenants, conditions, or obligations imposed upon Mortgagee by any such lease or leases, which default results in the termination or cancellation of the said lease or leases, Mortgagee shall give Mortgagee notice thereof and promptly use its best efforts to secure a replacement tenant on comparable terms. In the event Mortgagee determines in its sole discretion that such termination or cancellation of lease results in the material diminution of the security of this mortgage, and the same is not restored or a comparable replacement tenant obtained within thirty (30) days from said termination or cancellation of lease, then at the option of Mortgagee, the whole of the indebtedness secured by this mortgage, including all advances and payments by Mortgagee hereunder, shall become immediately due, payable and collectible by Mortgagee, or otherwise, with or without notice and demand to Mortgagee. Mortgagee will not accept any prepayment of rent or installments of rent for more than one (1) month in advance, without the prior written consent of Mortgagee. Mortgagee, upon request, from time to time, will furnish to Mortgagee a statement in such detail as Mortgagee may reasonably request, certified by Mortgagee, of all leases relating to the premises; and, on demand, Mortgagee will furnish to Mortgagee executed counterparts of any and all such leases. Each lease hereafter affecting the premises, or any portion thereof, shall contain provisions (a) requiring the lessee to deliver estoppel certificates in such form and content and at such times as may be required by landlord (b) requiring the lessee in the event of a default by landlord under the lease, to provide the holders of any mortgages on the premises notice and a thirty (30) day opportunity to cure such default prior to the exercise of lessee's remedies therefor, (c) agree that tenant will atorn to the purchaser at a foreclosure sale, or to a grantee in a voluntary conveyance, and will recognize such entity as landlord for the balance of the term of the lease, (d) agree that the entire award in any condemnation or eminent domain proceedings shall be the sole property of Mortgagee, (e) agree that the lease shall terminate in the event of condemnation or eminent domain proceedings, and shall be subordinate to this mortgage, and (f) agree that the rights of the lessee in the premises and title thereto shall in all events be subordinated to the rights of Mortgagee.

88296283

15014188

15. No Mechanics' Liens. Mortgagor will not do or permit to be done any act or thing, and no person shall have any right or power to do any act or thing, whereby any mechanics' or other construction lien under the laws of the State where the Premises are located can arise against or attach to the Premises or any

14. Use, Alterations, Liens; Continuing Priority. Mortgagor will not make, suffer, or permit, without the written consent of Mortgagor first had and obtained, (a) any use of the Premises for any purpose other than that for which the same are now used or intended to be used; (b) any alterations of the buildings, improvements, fixtures, apparatus, machinery, and equipment owned by Mortgagor now or hereafter erected or located upon the Premises; or (c) any purchase or conditional sale, lease or agreement under which title is reserved in the vendor of any such fixtures, apparatus, machinery, equipment, or personal property to be placed in or upon any of the buildings or improvements on the Premises. Mortgagor will execute and deliver, from time to time, such further instruments as may be requested by Mortgagee to confirm the lien of this Mortgage on any fixtures, property, machinery, apparatus and equipment described herein.

13. No Release. In the event that Mortgagee (a) grants any extension of time for forbearance with respect to the payment of any indebtedness secured by this Mortgage; (b) takes other or additional security for the payment thereof; (c) waives or fails to exercise any right granted herein or under any note secured hereby; (d) grants any release, with or without consideration, of the whole or any part of the security held for the payment of the indebtedness secured hereby or the release of any person liable for payment of said indebtedness; (e) amends or modifies in any respect with the consent of Mortgagor any of the terms and provisions hereof or of the Note (including substitution of another note); then and in any such event, such act or omission to act shall not release Mortgagor, or any co-makers, sureties, or guarantors of this Mortgage or of the Note, under any covenant of this Mortgage from exercising any right, power, or privilege herein granted or intended to be granted in the event of any other default then made or any subsequent default and without in any way impairing or affecting the lien or priority of this Mortgage.

For such year, in reasonable detail and stating in comparative form the figures as of the end of and for the previous year, and also statements of income and expense relating to operations of the Premises and the business conducted on the Premises, certified by Petros N. Kogiones. Mortgagor will also cause to be furnished to Mortgagee annually operating statements and rent rolls for the operation of the Premises, both certified by Petros N. Kogiones in such form as may be acceptable to Mortgagee. In addition, Mortgagor will cause to be furnished to Mortgagee such interim financial statements, certified by Petros N. Kogiones in such form as may be acceptable to Mortgagee, but not more frequently than monthly.

68286288

43074038

UNOFFICIAL COPY

0 3 7 6 3 5 1
-11-

16. Right to Contest. Notwithstanding any of the foregoing covenants or agreements of Mortgagee to the contrary, Mortgagee may contest or object to the legal validity or amount of any taxes or charges for labor or materials for any construction, repairs or improvements with respect to the premises and may institute appropriate proceedings as Mortgagee considers necessary with respect thereto, provided that any such contest or objection is in good faith and Mortgagee gives Mortgagee written notice hereof. Except where Mortgagee is objecting to or contesting taxes prior to the taxing authority's delinquency date and has given written notice of such objection or contest to Mortgagee as aforesaid, Mortgagee shall not carry on or maintain any contest or objection to any tax or charge for labor or materials unless Mortgagee: (1) in the case of taxes, gives written notice to Mortgagee of such contest or objection at least thirty (30) days before the delinquency date of such taxes; (11) either (a) shall have duly paid the full amount of the tax or charge(s) for labor or materials under protest; (b) posts with Mortgagee cash or a bond in an amount equal to not less than one and one-half (1-1/2) times the

part thereof, including without limitation, any and all rights successors and assigns and all parties claiming by, through or under said property manager, its subcontractors, successors and assigns and all parties claiming by, through or under said property manager ("property manager"), to a mechanic's lien, its and shall be subject and subordinate to this mortgage, and to all renewals, modifications, consolidations, replacements and extensions thereof. In confirmation of such subordination of any existing management agreement to this mortgage, Mortgagee shall promptly secure and deliver to Mortgagee any certificate or instrument evidencing such subordination that Mortgagee may request. Any renewal, modification, consolidation, replacement or extension of any existing management agreement after the date of this mortgage, or any management agreement heretofore in existence, shall be in form and substance reasonably satisfactory to Mortgagee and shall include without limitation, (a) a "no lien" provision, (b) a provision whereby the property manager subordinates any lien rights to the lien of this mortgage, and (c) the agreement of the property manager to furnish upon request all contractor's affidavits and lien waivers required under Illinois Revised Statutes, Ch. 82, §1 (1985). In addition, it is further expressly made a covenant and condition hereof that the lien of this mortgage shall extend to any and all improvements and fixtures now or hereafter on the premises, prior to any other lien thereon that may be claimed by any person, so that subordination of this mortgage shall be junior to this mortgage, and subordinate to this mortgage. All contractors, subcontractors, property managers, and other parties dealing with the premises, or with any parties interested therein, are hereby required to take notice of the above provisions.

88296283

88296283

8 8 2 9 8 2 8 3

18. Mortgagor's performance. If Mortgagor fails to pay or perform any of its obligations herein contained (including without limitation payment of expenses of foreclosure and court costs), Mortgagor may (but need not), as agent or attorney-in-fact of Mortgagor, make any payment or perform (or cause to be performed) any obligation of Mortgagor hereunder, in any form and manner deemed expedient by Mortgagor, and any amount so paid or expended (plus reasonable compensation to Mortgagor for its out-of-pocket and other expenses for each matter for which it acts under this Mortgage), with interest thereon at the default rate defined in the Note, shall be added to the principal debt hereby secured and shall be repaid to Mortgagor upon demand. By way of illustration and not in limitation of the foregoing, Mortgagor may (but need not) do all or any of the following: make payments of principal or interest or other amounts on any lien, encumbrance or charge on any of the collateral secured hereby; complete construction; make repairs; collect rents; prosecute collection of the collateral secured hereby or proceeds thereof; purchase, discharge, compromise or settle any tax lien or any other lien, encumbrance, suit, proceeding, title or claim thereof; contest any tax or assessment; and redeem from any tax sale or forfeiture affecting the premises. In making any payment or securing any performance relating to any

17. Notify Mortgagor of Default. Mortgagor shall notify Mortgagor in writing within five (5) days of the occurrence of any default or other event which upon the giving of notice or the passage of time or both, would constitute a default, other than the failure by Mortgagor to make any payment of principal or interest upon the Note as and when the same becomes due and payable in accordance with the terms thereof.

Full amount of the tax or charge(s) for labor or materials under contest plus all interest, costs, expenses and penalties, from a surety company qualified to do business in Illinois, securing payment of said tax or charge(s), said company and the form, contents, and amount of the bond to be subject to the written approval of Mortgagor, which approval shall not be unreasonably withheld; or (c) at Mortgagor's expense obtains title insurance in favor of Mortgagor insuring over any lien which may arise by reason of non-payment of such taxes or charge(s) for labor or materials; and (iii) procures and maintains a stay of all proceedings to enforce any judgment for collection of the tax or charge(s) for labor or materials or any lien which may arise by reason of such tax or charge(s). If Mortgagor seeks a reduction of the taxes or contests such taxes or charges for labor or materials, the failure on Mortgagor's part to pay the taxes before delinquency or to suffer or permit any mechanics' or other construction lien to arise against or attach to the premises shall not constitute a default so long as Mortgagor complies with the provisions of this paragraph. Mortgagor, promptly after the final determination of such proceeding or contest, shall pay or discharge any decision or judgment rendered, together with all costs, charges, interest and penalties incurred or imposed or assessed in connection with such proceeding or contest.

082866288

150976851

obligation of Mortgagor hereunder, Mortgagor shall (as long as it acts in good faith) be the sole judge of the legality, validity and amount of any lien or encumbrance and of all other matters necessary to be determined in satisfaction thereof. No such action of Mortgagor shall ever be considered as a waiver of any right accruing to it on account of the occurrence of any matter which constitutes a default.

19. Subrogation. To the extent that Mortgagor, on or after the date hereof, pays any sum under any provision of law or any instrument or document creating any lien or other interest prior or superior to the lien of this mortgage, or Mortgagor or any other person pays any such sum with the proceeds of the loan secured hereby, Mortgagor shall have and be entitled to a lien or other interest on the collateral secured hereby equal in priority to the lien of the other interest discharged and Mortgagor shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such lien, which shall remain in existence and benefit Mortgagor in securing the indebtedness secured hereby.

20. Power and Authority. Mortgagor hereby represents and warrants that Mortgagor, and if Mortgagor is more than one party, each party constituting Mortgagor (and, if Mortgagor or any constituent party of Mortgagor is a partnership, each of Mortgagor's and any constituent party's general partners) is duly organized and validly existing (and if Mortgagor is a corporation, qualified to do business and in good standing in the state in which the premises are located, and in good standing in the state of its incorporation) and has full power and due authority to execute, deliver and perform this mortgage, the Note, and the other loan documents in accordance with their terms. Such execution, delivery and performance has been duly authorized by all necessary corporate or partnership action and approved by each required governmental authority or other party, and the obligations of Mortgagor and every other party thereto under each are the legal, valid and binding obligations of each, enforceable by Mortgagor in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws applicable to the enforcement of creditors' rights generally.

21. No Default or Violations. Mortgagor hereby represents and warrants that no default or event which, with notice or passage of time or both, would constitute a default ("unmatured Event of Default") has occurred and is continuing under this mortgage, the Note, or any of the other loan documents. Neither Mortgagor, nor any party constituting Mortgagor, nor any general partner in any such party, is in violation of any governmental requirement (including, without limitation, any applicable securities law) or in default under any agreement to which it is bound, or which affects it or any of its property, and the execution, delivery and performance of this mortgage, the Note, or any of the other loan documents in accordance with their terms and the use and occupancy of the premises will not violate any governmental

88296283

88376054

UNOFFICIAL COPY

14- 3 7 3 3 5 1

88298283

88276954

25. Other statements to Mortgagee, Mortgagee hereby represents and warrants that neither this mortgage, the Note, any other Loan documents, nor any document, agreement, report, schedule, notice or other writing furnished to Mortgagee by or on behalf of

writing by Mortgagee.

24. Financial and Operating Statements. Mortgagee hereby represents and warrants that all financial and operating statements submitted to Mortgagee in connection with the loan are true and correct in all respects, have been prepared in accordance with generally accepted accounting principals (applied, in the case of any unaudited statement, on a basis consistent with that of the preceding fiscal year) and fairly present the respective financial conditions of the subjects thereof and the results of their operations as of the respective dates shown thereon. No material adverse changes have occurred in the financial condition and operations of the premises reflected therein since their respective dates, and no additional borrowings have been made by Mortgagee since the date thereof other than the borrowing made under the Note and this mortgage and any other borrowing approved in writing by Mortgagee.

23. Liens. Mortgagee hereby represents and warrants that

no liens, encumbrances or defects of any nature whatsoever, whether or not of record, and whether or not customarily shown on title insurance policies other than the permitted exceptions.

22. No litigation or Governmental Controls. Mortgagee hereby

represents and warrants that there are no proceedings of any kind pending, to the knowledge of Mortgagee, threatened against or affecting Mortgagee, the collateral secured hereby (including without limitation any attempt or threat by any governmental authority to condemn or rezone all or any portion of the premises), any party constituting Mortgagee or any general partner in any such party, or involving the validity, enforceability or priority of this mortgage, the Note or any of the other Loan Documents, or enforcing or preventing or threatening to enforce or prevent the use and occupancy of the premises or the performance by Mortgagee of its obligations hereunder, and other than general rent controls, governmental moratoria or environmental controls presently in existence, or to the knowledge of Mortgagee, threatened, affecting the premises, except as identified in writing to, and approved by, Mortgagee.

foregoing is bound or which affects it or any of its property,

except as identified in writing and approved by Mortgagee.

8 8 2 9 8 2 3 3

88298283

15070051

28. Hazardous Waste. (a) Mortgagor represents and warrants that the Premises are in compliance with all Environmental Laws (as hereinafter defined); that there are no conditions existing currently or likely to exist during the term of the Note that require or are likely to require cleanup, removal, remedial action or other response pursuant to any Environmental Laws by Mortgagor; that Mortgagor is not a party to any litigation or administrative proceeding, nor so far as is known by Mortgagor is any litigation or administrative proceeding threatened against it, which asserts or alleges Mortgagor violated Environmental Laws; that neither the Premises nor Mortgagor is subject to any judgment, decree, order or citation related to or arising out of Environmental Laws; and that no permits or licenses are required under Environmental Laws relative to the Premises. The term "Environmental Laws" shall mean all federal, state and local laws including statutes, regulations, ordinances, codes, rules and other governmental restrictions and requirements relating to the environment or hazardous substances including, but not limited to, the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Federal Resource Conservation and

27. Leases. Mortgagor warrants as to each of the Leases now covering all or any part of the Premises, if any; (i) that each of the Leases is in full force and effect; (ii) that to the best of Mortgagor's knowledge, no default exists on the part of the Lessee thereunder or Mortgagor; (iii) that no rent has been collected more than one (1) month in advance; (iv) that none of the Leases or any interest therein has been previously assigned or pledged; (v) that no Lessee under any of the Leases has any defense, setoff or counterclaim against Mortgagor; (vi) except as disclosed to and approved by Mortgagor in writing, that all rent due to date under each of the Leases has been collected and no concession has been granted to any Lessee in the form of a waiver, release, reduction, discount or other alteration of rent due or to become due, except as disclosed in writing to Mortgagor and approved by Mortgagor; (vii) that the interest of the Lessee under each of the Leases is as Lessee only, with no options to purchase or rights of first refusal; and (viii) that, except as disclosed to and approved by Mortgagor in writing, there are no options to extend the term of any such lease.

26. Third Party Agreements. Mortgagor hereby represents and warrants that each agreement with any and all third parties is unmodified and in full force and effect and free from default on the part of each party thereto, and all conditions required to be (or which by their nature can be) satisfied by any party to date have been satisfied. Mortgagor has not done or said or omitted to do or say anything which would give any obligor on any third party agreement any basis for any claims against Mortgagor or any counterclaim to any claim which might be made by Mortgagor against such obligor on the basis of any third party agreement.

any party constituting Mortgagor, contains any omission or mis-
leading or untrue statement of any fact.

29. Default. It shall constitute a default under this Mortgage if Mortgagor shall fail to make any payment under the Note, whether on demand, or by acceleration or otherwise, under the

(b) Mortgagor agrees to hold Mortgagee harmless and indemnify Mortgagee and its officers, directors, employees, attorneys and agents, from and against any and all losses, damages, liabilities, obligations, claims, costs and expenses (including, without limitation, attorneys' fees, costs and expenses) imposed on or incurred by Mortgagee whether prior to or after the date hereof, whether direct, indirect or consequential, as a result of or arising from or relating to any suit, investigation, action or proceeding, whether threatened or initiated, asserting a claim for any legal or equitable remedy under any Environmental Law. Such indemnification for all of the foregoing losses, damages, liabilities, obligations, claims, costs and expenses of Mortgagee shall be part of the indebtedness secured by this Mortgage and the other Loan Documents.

Recovery Act of 1976, the Federal Comprehensive Environmental Responsibility, Cleanup and Liability Act of 1980, regulations of the Nuclear Regulatory Agency, and regulations of any state department of natural resources or state environmental protection agency now or at any time hereafter in effect. Mortgagor covenants and agrees to comply with all applicable Environmental Laws; provide to Mortgagee, immediately upon receipt, copies of any correspondence, notice, pleading, citation, indictment, complaint, order, decree, or other document from any source asserting or alleging a circumstance or condition that requires or may require a cleanup, removal, remedial action, or other response by or on the part of Mortgagor under Environmental Laws or that seeks criminal or punitive penalties from Mortgagor for an alleged violation of Environmental Laws; and to advise Mortgagee in writing as soon as Mortgagor becomes aware of any condition or circumstance which makes the warranties contained in this Mortgage incomplete or inaccurate. In the event Mortgagee determines in its sole and absolute discretion that there is any evidence that any such circumstance might exist, whether or not described in any such communication to Mortgagor or notice to Mortgagee, Mortgagor agrees, at its expense and at the request of Mortgagee to permit an environmental audit solely for the benefit of Mortgagee, to be conducted by Mortgagee or an independent agent selected by Mortgagee. This provision shall not relieve Mortgagor from conducting its own environmental audits or taking any other steps necessary to comply with Environmental Laws. If in the opinion of Mortgagee there exists any uncorrected violation by Mortgagor of an Environmental Law or any condition which requires, or may require, a cleanup, removal or other remedial action by Mortgagor under any Environmental Laws, and such cleanup, removal or other remedial action is not completed within ninety (90) days from the date of written notice from Mortgagee to Mortgagor, the same shall at the option of Mortgagee constitute a default hereunder, without further notice or cure period.

158376851 88298283

UNOFFICIAL COPY

3 7 3 0 5 1
-17-

Mortgage, or under any loan document (it being agreed that on default in the payment of any tax or assessment or insurance premium, or any payment on account thereof, or in the payment of any cost or expense of litigation, mortgagee shall pay the same and all sums so advanced with interest at the default rate defined in the Note, and such amounts shall immediately attach as a lien hereunder and be payable on demand), or if mortgagee shall fail to perform any of the covenants and agreements herein in the Note, or in any other loan documents, and such failure shall continue for three (3) days after mortgagee receives notice thereof from mortgagee (unless mortgagee diligently proceeds in good faith to remedy such failure and the security for the loan is not jeopardized, which determinations shall be made by mortgagee in its sole and absolute discretion), the entire indebtedness evidenced by the Note and all other obligations of mortgagee under this mortgage or any other loan documents, together with interest thereon at the default rate defined in the Note, shall thereupon be immediately due and payable, and shall thereupon be collectible in a suit at law, or by foreclosure of this mortgage, in the same manner as if the entire indebtedness evidenced by the Note had been made payable at the time when any such default shall occur as aforesaid. Each of the following shall also constitute a default hereunder: (1) any action in bankruptcy, receivership, or reorganization filed by or against mortgagee, any guarantor or surety, which shall not have been discharged within thirty (30) days of the filing thereof, or if mortgagee, any guarantor or surety shall make any general assignment for the benefit of mortgagee's creditors, or shall fail generally to pay mortgagee's debts as they become due or shall take any action in furtherance of any of the foregoing; (ii) the appointment, pursuant to an order of the court of competent jurisdiction, of a trustee, receiver or a liquidator of the premises or any part thereof, or of mortgagee, or any termination or voluntary suspension of the transaction of business of mortgagee, or any attachment, execution or other judicial seizure of all or any substantial portion of the assets of mortgagee, which attachment, execution or seizure is not discharged within thirty (30) days; (iii) any representation, warranty, or disclosure made to mortgagee by mortgagee in connection with or as an inducement to the making of the loan evidenced by the Note, this mortgage or any other loan documents, providing to be false or misleading in any material respect as of the time the same was made or thereafter, whether or not such representation or disclosure appears as a part of this mortgage; (iv) the occurrence of any final, non-appealable judgment in excess of \$10,000.00; (v) any proceeding to foreclose any lien on the premises, exclusive of any such proceeding that is being defended by the company insuring mortgagee as to the priority of the lien of this mortgage and said company shall agree to insure third party purchasers or mortgagees over the consequence of such foreclosure; (vi) any sale, lease, assignment, transfer, pledge, mortgage or other conveyance of a majority of the ownership interest in Diana's Oppa Restaurant, however evidenced, whether accomplished in a single transaction or cumulatively over the course of multiple transactions; (vii)

88296283
88296283

8 8 2 9 8 2 8 3

86296299

156:46:84

31. Possession of Premises; Remedies under Note, Mortgage and other Loan Documents. Mortgagee hereby waives all right to the possession, income, and rents of the premises from and after the occurrence of any default, and mortgagee is hereby expressly authorized and empowered, at and following any such occurrence, to enter into and upon and take possession of the premises or any part thereof, to complete any construction in progress thereon at the expense of Mortgagee, to lease the same to collect and receive all rents and to apply the same, less the necessary or appropriate expenses of collection thereof, either for the care, operation and preservation of the premises or, at the election of Mortgagee in its sole discretion, to a reduction of such indebtedness secured hereby and any and all expenses or costs incurred by Mortgagee hereunder or under any other Loan Documents in such order as Mortgagee may elect. Mortgagee, in addition to the rights provided under the Note, this Mortgage and any other Loan Documents, is also hereby granted full and complete authority to enter upon the premises, employ watchmen to protect and preserve the premises from depreciation or injury, and to continue any and all outstanding contracts for the erection and completion of improvements to the premises, to make and enter into any contracts and obligations wherever necessary in its own name, and to pay and discharge all debts, obligations and liabilities incurred thereby, all at the expense of Mortgagee. All such expenditures by Mortgagee shall be secured hereby. Upon the occurrence of any

30. Remedies Cumulative. No remedy or right of Mortgagee hereunder, under the Note or any other Loan Documents or otherwise, or available under applicable law, shall be exclusive of any other right or remedy, but each such remedy or right shall be in addition to every other remedy or right now or hereafter existing under any such document or under applicable law. No delay in the exercise of, or omission to exercise, any remedy or right accruing on any default shall impair any such remedy or right or be construed to be a waiver of any such default or an acquiescence therein, nor shall it affect any subsequent default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by Mortgagee. All obligations of Mortgagee, and all rights, powers and remedies of Mortgagee, expressed herein shall be in addition to, and not in limitation of, those provided by law or in the Note, any other Loan Documents, or any other written agreement or instrument relating to any of the obligations of Mortgagee or any security therefor.

any sale, lease, assignment, transfer or other conveyance of all or a substantial portion of the assets of the legal entity doing business as Diana's Oppa Restaurant, whether accomplished in a single transaction or cumulatively over the course of multiple transactions; or (viii) any other event occurring which, under this Mortgage, under the Note, or under any other Loan Documents, constitutes a default by Mortgagee hereunder or thereunder or gives Mortgagee the right to accelerate the maturity of the indebtedness secured by the Note.

88298283

88376851

32. Foreclosure; Receiver. Upon the occurrence of any default, Mortgagee shall also have the right immediately to fore-close this mortgage. Upon the filing of any complaint for that purpose, the court in which such complaint is filed may, upon application of Mortgagee or at any time thereafter, either before or after foreclosure sale, and without notice to Mortgagee or to any party claiming under Mortgagee and without regard to the solvency or insolvency at the time of such application of any person then liable for the payment of any of the indebtedness secured hereby and any and all expenses or costs incurred by Mortgagee hereunder, or under any other loan documents, without regard to the then value of the premises or whether the same shall then be occupied, in whole or in part, as a homestead, by the owner of the equity of redemption, and without regard to any bond from the complainant in such proceedings, appoint a receiver for the benefit of Mortgagee, with power to take possession, charge, and control of the premises, to lease the same, to keep the buildings thereon insured and in good repair, and to collect all rents during the pendency of such foreclosure suit, and, in case of foreclosure sale and a deficiency, during any period of redemption. The court may from time to time, authorize said receiver to apply the net amount remaining in his hands, after deducting reasonable compensation for the receiver and his counsel as allowed by the court, in payment (in whole or in part) of any or all of the indebtedness secured hereby and any and all expenses or costs incurred by Mortgagee hereunder or under any other loan documents, including without limitation the following, in such order of application as Mortgagee may elect: (i) amounts due upon the Note, (ii) amounts due upon any decree entered in any suit foreclosing this mortgage, (iii) costs and expenses of foreclosure and litigation upon the premises, (iv) insurance premiums, repairs, taxes, current installments of special assessments, water charges and interest, penalties and costs, in connection with the premises, (v) any other lien or charge upon the premises that may be or become superior to the lien of this mortgage, or of any decree foreclosing the same and (vi) all moneys advanced by Mortgagee to cure or attempt to cure any default by Mortgagee in the performance of any obligation or condition contained in any loan documents, this mortgage or otherwise, to protect the security hereof provided herein, or in any other loan documents, with interest on such advances at the default rate defined in the Note. The overplus of the proceeds of sale, if any, shall then be paid to Mortgagee upon written request. This mortgage may be fore-closed once against all, or successively against any portion or portions of the premises, as Mortgagee may elect, until all of the premises have been foreclosed against and sold. As part of the foreclosure, Mortgagee in its discretion may, with or without entry, personally or by attorney, sell to the highest bidder all or any part of the premises, and all right, title, interest, claim and demand therein, and the right of redemption thereof, as an entirety, or in separate lots, as Mortgagee may elect, and in one

default, Mortgagee may also exercise any or all rights or remedies under the Note, this mortgage and any other loan documents.

86296283

88346954

33. Remedies for Leases and Rents. If any default shall occur, then, whether before or after institution of legal proceedings to foreclose the lien of this mortgage or before or after the sale thereunder, Mortgagee shall be entitled, in its discretion, to do all or any of the following: (i) enter and take actual possession of the premises, the rents, the leases and any other collateral relating thereto or any part thereof personally, or by its agents or attorneys, and exclude Mortgagee therefrom; (ii) with or without process of law, enter upon and take and maintain possession of all of the documents, books, records, papers and accounts of Mortgagee relating to the premises, the rents, the leases and any other collateral relating thereto, (iii) as attorney-in-fact or agent of Mortgagee, or in its own name as Mortgagee and under the powers herein granted, hold, operate, manage and control the premises, the rents, the leases and any other collateral relating thereto and conduct the business, if any, thereof either personally or by its agents, contractors or nominees, with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment of the rents, the leases and any other collateral relating thereto (including actions for the recovery of rent, actions in forcible detainer and actions in distress of rent); (iv) cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagee to cancel the same; (v) elect to disaffirm any lease or sublease made subsequent hereto or subordinated to the lien hereof; (vi) make all necessary or proper

sale or in any number of separate sales held at one time or at any number of times, all in any manner and upon such notice as provided by applicable law. Upon the completion of any such sale or sales, Mortgagee shall transfer and deliver, or cause to be transferred and delivered, to the purchaser or purchasers the property so sold, in the manner and form as provided by applicable law, and Mortgagee is hereby irrevocably appointed the true and lawful attorney-in-fact of Mortgagee, in its name and stead, to make all necessary transfers of property thus sold, and for that purpose Mortgagee may execute and deliver, for and in the name of Mortgagee, all necessary instruments of assignment and transfer, in fact shall lawfully do by virtue hereof. In the case of any sale of the premises pursuant to any judgment or decree of any court at public auction or otherwise, Mortgagee may become the purchaser, and for the purpose of making settlement for or payment of the purchase price, shall be entitled to deliver over and use the Note and any claims for the debt in order that there may be credited as paid on the purchase price the amount of the debt. In case of any foreclosure of this mortgage (or the commencement of or preparation therefor) in any court, all expenses of every kind paid or incurred by Mortgagee for the enforcement, protection or collection of this security, including without limitation court costs, attorneys' fees, photographers' fees, costs of advertising, and costs of title insurance and any other documentary evidence of title, shall be paid by Mortgagee.

86296283

45396284

34. Personal Property. Whenever there exists a default hereunder, Mortgagee may exercise from time to time any rights and remedies available to it under applicable law upon default in payment of indebtedness. Mortgagor shall, promptly upon request by Mortgagee, assemble all personal property of every kind and nature subject to the lien hereof ("personal property") and make it available to the Mortgagee at such place or places, reasonably convenient for Mortgagee, as Mortgagee shall designate. Any notification required by law or intended disposition by Mortgagor of

repairs, decoration, renewals, replacements, alterations, additions, betterments and improvements to the Premises that, in its discretion, may seem appropriate; (vii) insure and reinsure the Premises for all risks incidental to Mortgagee's possession, operation and management thereof; and (viii) receive all such rents and proceeds, and perform such other acts in connection with the management and operation of the Premises, as Mortgagee in its discretion may deem proper, hereby granting Mortgagee full power and authority to exercise each and every one of the rights, privileges and powers contained herein at any and all times after any default without notice to Mortgagor or any other person. Mortgagee, in the exercise of the rights and powers conferred upon it hereby, shall have full power to use and apply the rents to the payment of or on account of the following, in such order as it may determine: (a) to the payment of the operating expenses of the Premises, including the cost of management and leasing thereof (which shall include reasonable compensation to Mortgagee and its agents or contractors, if management be delegated to agents or contractors, and it shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance heretofore authorized; (b) to the payment of taxes, charges and special assessments, the costs of all repairs, decorating, renewals, improvements of the Premises, including, without limitation, the cost from time to time of installing, replacing or repairing the Premises, and of placing the Premises in such condition as will, in the judgment of Mortgagee, make it readily rentable; and (c) to the payment of any of the indebtedness secured hereby and any costs or expenses incurred by Mortgagee hereunder or under any other loan documents. The entering upon and taking possession of the Premises, or any part thereof, and the collection of any rents and the application thereof as aforesaid shall not cure or waive any default theretofore or thereafter occurring or affect any notice or default hereunder or invalidate any act done pursuant to any such default or notice, and, notwithstanding continuance in possession of the Premises or any part thereof by Mortgagee or a receiver, and the collection, receipt and application of the rents, Mortgagee shall be entitled to exercise every right provided for in this Mortgage or by law or in equity upon or after the occurrence of a default. Any of the actions referred to in this paragraph may be taken by Mortgagee irrespective of whether any notice of default has been given hereunder and without regard to the adequacy of the security for the indebtedness hereby secured.

35. Performance of Third Party Agreements. Mortgagee may, in its sole discretion at any time after the occurrence of a default notify any third party obligated to Mortgagee under or with respect to any third party agreements of the existence of a default, require that performance be made directly to Mortgagee at Mortgagee's expense, and advance such sums as are necessary or

any of the personal property shall be deemed reasonably and properly given it given at least five (5) days before such disposition. Without limiting the foregoing, whenever there exists a default hereunder, Mortgagee may, with respect to so much of the premises as is personal property under applicable law, to the fullest extent permitted by applicable law, without further notice, advertisement, hearing or process of law of any kind, (1) notify any person obligated on the personal property to perform directly for Mortgagee its obligations thereunder, (11) enforce collection of any of the personal property by suit or otherwise, and surrender, release or exchange all or any part thereof or compromise or extend or renew for any period (whether or not longer than the original period) any obligation of any nature of any party with respect thereto, (111) endorse any checks, drafts or other writings in the name of Mortgagee to allow collection of the personal property, (1V) take control of any proceeds of the personal property, (V) enter upon any premises where any of the personal property may be located and take possession of and remove such personal property, (VI) sell any or all of the personal property, free of all rights and claims of Mortgagee therein and thereto, at any public or private sale, and (VII) bid for and purchase any or all of the personal property at any such sale. Any proceeds of any disposition by Mortgagee of any of the personal property may be applied by Mortgagee to the payment of expenses in connection with the personal property, including, without limitation, attorneys' fees and legal expenses, and any balance of such proceeds shall be applied by Mortgagee toward the payment of such of the indebtedness secured hereby and any and all expenses and costs incurred by Mortgagee hereunder, or under any other loan documents and in such order of application as Mortgagee may from time to time elect. Mortgagee may exercise from time to time any rights and remedies available to it under the Uniform Commercial Code or other applicable laws in effect from time to time or otherwise available to it under applicable law. Mortgagee hereby expressly waives presentment, demand, notice of dishonor, protest and notice of protest in connection with the Note and, to the fullest extent permitted by applicable law, any and all other notices, demands, advertisements, hearings or process of law in connection with the exercise by Mortgagee of any of its rights and remedies hereunder. Mortgagee hereby constitutes Mortgagee its attorney-in-fact with full power of substitution to take possession of the personal property upon any default and, as Mortgagee in its sole discretion deems necessary or proper, to execute and deliver all instruments required by Mortgagee to accomplish the disposition of the personal property; this power of attorney is a power coupled with an interest and is irrevocable while the indebtedness secured hereby is outstanding.

88298298

88298298

UNOFFICIAL COPY

1 5 8 9 7 3 0 3 1 -23-

36. Notices. Each notice, demand or other communication in connection with this Mortgage shall be in writing and shall be deemed to be given to and served upon the addressee thereof (1) upon actual delivery to such addressee at its address set out above, or (11) on the third Business Day (as hereinafter defined) after the deposit thereof in the United States mail by registered or certified mail, first-class postage prepaid, addressed to such

37. Detachment. Upon full payment of all indebtedness secured hereby and satisfaction of all the covenants and agreements in accordance with their respective terms and at the time and in the manner provided, and when Mortgagee has no further obligation to make any advance, or extend any credit hereunder, under the Note, or any other loan documents, this conveyance shall be null and void, and thereafter, upon demand therefor, an appropriate instrument of reconveyance or release shall in due course be made by Mortgagee to Mortgagor upon payment by Mortgagor to Mortgagee of a release fee, if permitted by applicable law.

38. No Liability on Mortgagee. Notwithstanding anything contained herein, Mortgagee shall not be obligated to perform or discharge, and does not hereby undertake to perform or discharge, any obligation, duty or liability of Mortgagor, whether hereunder, under any of the third party agreements or otherwise, and Mortgagor shall and does hereby agree to indemnify against and hold Mortgagee harmless of and from; any and all liabilities, losses or damages which Mortgagee may incur or pay under or with respect to any of the collateral secured hereby or under or by reason of its exercise of rights hereunder; and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any of the collateral secured hereby or in any of the contracts, documents or instruments evidencing or creating any of the collateral secured hereby. Mortgagee shall not have responsibility for the control, care, management or repair of the premises or be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the premises resulting in loss, injury or death to any tenant, licensee, employee, stranger or other person or the property of the same. No liability shall be enforced or asserted against Mortgagee in its exercise of the powers herein granted to it, and Mortgagee expressly waives and releases any such liability. Should Mortgagee incur any such liability, loss or damage under any of the leases or under or by reason hereof, or in the defense of any claims or demands, Mortgagor agrees to reimburse Mortgagee immediately upon demand for the full amount thereof, including costs, expenses and attorneys' fees.

appropriate to satisfy Mortgagor's obligations thereunder; and Mortgagor agrees to cooperate with Mortgagee in all ways reasonably requested by Mortgagee (including without limitation the giving of any notices requested by, or joining in any notices given by, Mortgagee) to accomplish the foregoing.

8 8 2 9 0 2 8 3

15837684 88296283

43. Governing Law and Business Purpose. This Mortgage, the Note, and the other Loan Documents shall be construed in accordance with and governed by the Internal Laws of the State of

42. No Waiver; Writing. No delay on the part of Mortgagee in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by Mortgagee of any right or remedy shall preclude another or further exercise thereof or the exercise of any other right or remedy. The granting or withholding of consent by Mortgagee to any transaction as required by the terms hereof shall not be deemed a waiver of the right to require consent to future or successive transactions.

41. No Obligation on Mortgagee. This Mortgage is intended only as security for the indebtedness secured hereby. Anything herein to the contrary notwithstanding, (i) Mortgagee shall be and remain liable under and with respect to the collateral secured hereby to perform all of the obligations assumed by it under or with respect to each thereof, (ii) Mortgagee shall have no obligation or liability under or with respect to the collateral secured hereby by reason or arising out of this Mortgage and (iii) Mortgagee shall not be required or obligated in any manner to perform or fulfill any of the obligations of Mortgagee under, pursuant to or with respect to any of the collateral secured hereby

40. Care by Mortgagee. Mortgagee shall be deemed to have exercised reasonable care in the custody and preservation of any of the collateral secured hereby in its possession if it takes such action for that purpose as Mortgagee reasonably requests in writing, but failure of Mortgagee to comply with any such request shall not be deemed to be (or to be evidence of) a failure to exercise reasonable care, and no failure of Mortgagee to preserve or protect any rights with respect to such collateral secured hereby against prior parties, or to do any act with respect to the preservation of such collateral secured hereby not so requested by Mortgagee, shall be deemed a failure to exercise reasonable care in the custody or preservation of such collateral secured hereby.

39. Successors; Mortgagee; Gender. All provisions hereof shall inure to and bind the parties and their respective successors, vendors and assigns. The word "mortgagee" shall include all persons liable for the payment or performance of any of the indebtedness secured hereby whether or not such persons shall have executed the Note or this Mortgage. Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

addresses at its address set out above. By notice complying with this paragraph, any party may from time to time designate a different address as its address for the purpose of the receipt of notices hereunder. "Business Day" shall mean any day when Mortgagee is open for business, other than Saturday, Sunday or any other day on which banks in Chicago, Illinois are not open for business.

86298283

88376851

UNOFFICIAL COPY

1 5 0 9 7 3 3 25-

88296283

88376851

45. No Merger. It being the desire and intention of the parties hereto that this Mortgage and the Lien hereof do not merge in fee simple title to the Premises, it is hereby understood and agreed that should Mortgagee acquire an additional or other interests in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the Lien hereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

46. Waiver. Mortgagor, on behalf of itself and all persons now or hereafter interested in the Premises or the collateral secured hereby, to the fullest extent permitted by applicable law hereby waives all rights under all appraisement, homestead, moratorium, valuation, exemption, stay, extension, and redemption statutes, laws or equities now or hereafter existing, and hereby further waives the pleading of any statute of limitations as a defense to any and all of the indebtedness secured by this Mortgage, and Mortgagor agrees that no defense, claim or right based on any thereof will be asserted, or may be enforced, in any action enforcing or relating to this Mortgage or any of the collateral secured hereby. Without limiting the generality of the preceding sentence, Mortgagor, on its own behalf and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date of this Mortgage, hereby irrevocably waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage or under any powers contained herein or under any sale pursuant to any statute, order, decree or judgment of any court. Mortgagor, for itself and for all persons hereafter claiming through or under it or who may at any time hereafter become holders of liens junior to the Lien of this Mortgage, hereby expressly waives and releases all rights to direct the order in which any of the collateral secured hereby shall be sold in the event of any sale or sales pursuant hereto and to have any of the collateral secured hereby and/or any other property now or hereafter constituting security for any of the indebtedness secured hereby marshalled upon any foreclosure of this Mortgage or of any other security for any of said indebtedness.

Illinois. Mortgagor represents and agrees that the proceeds of the Note secured by this Mortgage will be used for business purposes as defined in Illinois Revised Statutes, Ch. 17, §6404(1)(c) (1985) and that the indebtedness secured by this Mortgage constitutes a "business loan" under such section. When- ever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Mortgage shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Mortgage.

8 8 2 9 8 2 8 3

UNOFFICIAL COPY

1 5 0 0 / 0 0 2 6 -

86295283

88376851

(b) Land Trustee hereby represents that it possesses full power and authority to execute and deliver this instrument.

49. Land Trustee: Execution and Authority. (a) This mortgage is executed by Land Trustees not individually or personally, but solely as trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such trustee, and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on any Land Trustee personally to pay the Note or any interest that may accrue thereon or any of the indebtedness arising or accruing under or pursuant hereto or to the Note, or to perform any covenant, undertaking, representation or agreement, either express or implied, contained herein or in the Note, all such personal liability of any Land Trustee, if any, being expressly waived by Mortgagee and by each and every person now or hereafter claiming any right or security under this Mortgage; provided, however, that nothing herein contained shall in any way limit the liability of Petros N. Kogionos or of any guarantor or other obligor (not including Land Trustee) hereunder or under the Mortgage, the Note or any other Loan Documents.

48. No Third Party Benefits. This Mortgage, the Note and the other Loan Documents, if any, are made for sole benefit of Mortgagee and Mortgagee and their successors and assigns, and in no other party shall have any legal interest of any kind under or by reason of any of the foregoing. Whether or not Mortgagee elects to employ any or all the rights, powers or remedies available to it under any of the foregoing, Mortgagee shall have no obligation or liability of any kind to any third party by reason of any of the foregoing or any of Mortgagee's actions or omissions pursuant thereto or otherwise in connection with this transaction.

47. Time of Essence. Time is declared to be of the essence in this Mortgage, the Note and any other Loan Documents and of every part hereof and thereof.

46. Mortgagee Not a Joint Venture or Partner. Mortgagee and Mortgagee acknowledge and agree that in no event shall Mortgagee be deemed to be a partner or joint venturer with Mortgagee. Without limitation of the foregoing, Mortgagee shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this mortgage or pursuant to any other instrument or document evidencing or securing any of the indebtedness secured hereby, or otherwise.

8 8 2 9 3 2 3 3

UNOFFICIAL COPY

1 5 8 9 / 0 1 0 -27-

88298283

88376851

Property of Cook County Clerk's Office

IN WITNESS WHEREOF, Mortgagor has caused these presents to be duly executed and delivered in Chicago, Illinois on the day and year first above written.

PETROS N. KOGIONES

FIRST NATIONAL BANK OF CICERO, not personally, but solely as Trustee under Trust Agreement dated June 12, 1981 and known as Trust No. 7391

By: *[Signature]*
Name: Glenn J. Richter
Title: Vice President

The Petros N. Kogiones, the First National Bank of Cicero, not individually, but as trustee, the First National Bank of Cicero, not known as Trust No. 7391...
Name: Nancy Tomback
Title: Assistant Secretary

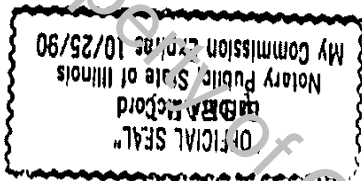
ATTEST:
[Signature]
By: Nancy Tomback
Title: Assistant Secretary

8 8 2 9 8 2 8 3

88296283

88376851

Property of C O K



My Commission expires: 10-25-90

Notary Public
Barbara McLeod

GIVEN under my hand and notarial seal this _____ day of _____, 1988.

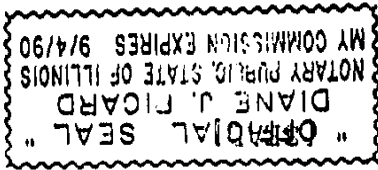
I, the undersigned, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT
Glenn J. Richter
Vice President of FIRST NATIONAL BANK OF CICERO, a national banking association, as aforesaid
Nancy Tomlin
Secretary of said association, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and generally acknowledged that as such Vice President and Secretary of said association, they signed and delivered the said instrument as Vice President and Secretary of said association, and caused the corporate seal of said association to be affixed thereto, pursuant to authority given by the Board of Directors of said association as Trustee as aforesaid as their free and voluntary act, and as the free and voluntary act and deed of said association, as Trustee as aforesaid, for the uses and purposes therein set forth.

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

88298283

88376851

Property of Cook County Clerk's Office



Diane J. Ricard
Notary Public

My Commission expires: 9/4/90

GIVEN under my hand and notarial seal this 7 day of July, 1988.

I, the undersigned, a notary public in and for said County, in the state aforesaid, DO HEREBY CERTIFY THAT PETROS N. KOCIONES, known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such person signed and delivered the said instrument as the free and voluntary act and deed of said person for the uses and purposes therein set forth.

STATE OF ILLINOIS)
COUNTY OF COOK)
SS 1988 JUL -7 PM 1:56)
88298283

COOK COUNTY CLERK'S OFFICE

8 8 2 9 3 2 8 3

UNOFFICIAL COPY

3 3 3 7 6 8 5 1

88208283

#7060 # A 38-276851
COOK COUNTY RECORDER
#11111 TRN 2885 08/18/88 15:44:00
DEPT 9101
\$42.00

88376851

Property of Cook County Clerk's Office

EASEMENT FOR
INGRESS AND EGRESS FOR TRUCK USE ONLY (NO PARKING EXCEPT FOR LOADING AND
UNLOADING) FOR THE BENEFIT OF PARCEL 1 OVER, UPON AND ACROSS THE NORTH 13.09
FEET OF THE NORTH 25.09 FEET OF THE NORTH 1/2 OF LOT 14 IN BLOCK 11 IN SUNCAN'S
ADDITION TO CHICAGO APFORSAID, AS CREATED BY EASEMENT AGREEMENT MADE BY AND
BETWEEN AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE AS
TRUSTEE UNDER TRUST AGREEMENT DATED JANUARY 1, 1977 AND KNOWN AS TRUST NUMBER
39982 AND PETROS N. KOGIONES, DATED NOVEMBER 15, 1978 AND RECORDED DECEMBER
20, 1978 AS DOCUMENT 24772832

ALSO

THE SOUTH 12.0 FEET OF THE NORTH 25.09 FEET OF THE NORTH 1/2
OF LOT 14 AND THE WEST 12.0 FEET OF THE NORTH 25.13 FEET OF THE NORTH 1/2 OF
LOT 3 (EXCEPT THE EAST 95.85 FEET THEREOF) AND THE NORTH 13.13 FEET OF THE
NORTH 25.13 FEET OF THE NORTH 1/2 OF LOT 3 (EXCEPT THE EAST 95.85 FEET
THEREOF) IN BLOCK 11 IN SUNCAN'S ADD TO CHICAGO APFORSAID

PARCEL 3:
EASEMENT FOR
INGRESS AND EGRESS FOR TRUCK USE ONLY (NO PARKING EXCEPT FOR LOADING AND
UNLOADING) FOR THE BENEFIT OF PARCEL 1 OVER, UPON AND ACROSS THE FOLLOWING
DESCRIBED LAND:

PARCEL 2:
THE EAST 95.85
FEET OF THE NORTH 1/2 OF LOT 3 AND THE SOUTH 1/2 OF LOT 3 AND ALL OF LOT 4 IN
BLOCK 11 IN SUNCAN'S ADDITION TO CHICAGO BEING A SUBDIVISION OF THE EAST 1/2
OF THE NORTH EAST 1/4 OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE
THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL 1:
LATS 1 TO 8 (EXCEPT SOUTH 12 FEET OF LOT 8) IN RILEY'S SUBDIVISION
OF LOT 1 IN G. A. BANCHARD'S SUBDIVISION OF BLOCK 3 IN SCHOOL TRUSTEE'S
SUBDIVISION OF CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE
THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

LEGAL DESCRIPTION

UNOFFICIAL COPY

8 8 3 7 6 3 5 1

Handwritten signature/initials

862952283

88376851

Property of Cook County Clerk

1. EASEMENT OVER THE SOUTH 9 FEET 8 INCHES OF LOT 4 AFORESAID FOR PASSAGEWAY IN FAVOR OF OWNERS OF LOT 5 CREATED IN AGREEMENT DOCUMENT 13727842 AND MODIFIED BY AGREEMENT RECORDED AS DOCUMENT 14077994

2. RESERVATION OF A NON-EXCLUSIVE EASEMENT OF INGRESS AND EGRESS FOR TRUCK USE ONLY (NO PARKING EXCEPT FOR LOADING AND UNLOADING) UNTO AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED JANUARY 1, 1977 AND KNOWN AS TRUST NUMBER 89882, GRANTOR IN AN EASEMENT AGREEMENT TO PETROS N. KOJONES DATED NOVEMBER 15, 1978 AND RECORDED DECEMBER 20, 1978 AS DOCUMENT 24722832 OVER, UPON AND ACROSS THE SOUTH 1/2 OF LOT 3 (EXCEPT EAST 95.85 FEET)

3. TERMS, PROVISIONS AND CONDITIONS RELATING TO THE EASEMENT DESCRIBED AS PARCEL 2 CONTAINED IN THE INSTRUMENT CREATING SUCH EASEMENT.

4. RIGHTS OF THE ADJOINING OWNER OR OWNERS TO THE CONCURRENT USE OF THE EASEMENT

EXHIBIT B
PERMITTED EXCEPTIONS

8 8 2 9 3 2 3 3