

# UNOFFICIAL COPY

89609002

## MORTGAGE

89609002

This Mortgage made and entered into as of this 22nd day of November, 1989 by and between FIRST NATIONAL BANK OF NILES, as Trustee under Trust dated November 16, 1989 and known as Trust Number 528, (hereinafter referred to as the "Mortgagor") and LASALLE NORTHWEST NATIONAL BANK, a National Banking Association, organized and existing under the laws of the United States of America (hereinafter referred to as "Mortgagee" or "Association"), its successors and assigns, and pertains to the real estate located in the County of Cook, State of Illinois.

NOW, THEREFORE, in order to secure the payment of the principal and interest and any other sums that may now or hereinafter become due from Mortgagor to Mortgagee under the Adjustable Rate Note ("Note") executed concurrently herewith by the Mortgagor and delivered to the Mortgagee bearing even date herewith, the principal amount of Three Hundred Ninety-five Thousand (\$395,000) Dollars as well as the performance of all the other covenants, provisions, agreements and obligations contained herein, Mortgagor hereby grants, sells, assigns, releases, aliens, transfers, conveys and mortgages to Mortgagee all of the following rights, interests, claims and property (collectively the "Premises").

Lots 22 and 21 in Block 4 in Subdivision of the West 1/4 of Lots 11 and 12 in the School Trustee's Subdivision of Section 16, Township 40 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N.: 13-16-425-025

TOGETHER with all buildings, improvements, fixtures or appurtenances now or hereafter erected thereon or placed therein, including all apparatus, equipment, fixtures or articles, whether in single units or centrally controlled, used to supply heat, gas, air conditioning, water, light, power, refrigeration ventilation or other services, and any other thing now or hereafter thereon or thereon the furnishing of which by lessors to lessees is customary or appropriate, including screens, window shades, storm doors and windows, attached floor coverings, screen doors, venetian blinds, in-a-door beds, awnings, stoves, water heaters and washing and drying machines (all of which are intended to be and are hereby declared to be a part of said real estate whether physically attached thereto or not); and also together with all easements and the rents, issues and profits of the Premises, whether now due or hereafter to become due, all of which are hereby pledged, assigned, transferred and set over unto the Mortgagee.

TO HAVE AND TO HOLD all of the property, with all the rights and privileges thereunto belonging, unto the Mortgagee forever, for the uses herein set forth, free from all rights and benefits under the Homestead Exemption Laws of the State of Illinois, which said rights and benefits the Mortgagor does hereby release and waive.

*John*

5/21/4455 PM

Page 3

89609002

89609002

# UNOFFICIAL COPY

3 2 6 7 9 9 0 2

## I. THE MORTGAGOR COVENANTS:

A. By February 28 of each year for the year just immediately ended, Mortgagor shall provide the Mortgagee with:

(1) an annual operating statement (to be prepared in accordance with generally accepted accounting principles consistent with the previous years' operating statements) for the Premises, which annual operating statement will indicate the total rental income for the Premises and the annual expenses therefor all certified by the Guarantor as being true and correct; and

(2) personal financial statements for Larry Hooker and Robert C. Oberheide on forms reasonably prescribed by, or approved by, the Mortgagee; and

(3) a leasing status report which shall specify for each rental unit the name of the tenant, the identity of the rental unit occupied by such tenant, the annual rental paid therefor and the percentage rental, if any, applicable to such unit, the amount of space being leased, and the lease expiration date.

B. (1) To timely pay the interest and principal provided in the Note, or according to any agreement extending the time of payment thereof; (2) To pay when due and before penalty attaches thereto all taxes, special taxes, special assessments, water charges and sewer service charges against the property (including those theretofore due) and to furnish Mortgagee, upon request, with duplicate receipts therefor, and all such items extended against the property shall be conclusively deemed valid for the purpose of this requirement; (3) To keep the improvements now or hereafter upon the Premises insured in such amounts and against such hazards as the Mortgagee may require to be insured against until said indebtedness is fully paid, in such companies, through such agents or brokers, and in such form as shall be satisfactory to the Mortgagee, such insurance policies shall remain with the Mortgagee during said period and contain the usual clause satisfactory to the Mortgagee making them payable to the Mortgagee; and in case of loss under such policies, the Mortgagee is authorized to adjust, collect and compromise, in its discretion, all claims thereunder and to execute and deliver on behalf of the Mortgagor all necessary proofs of loss, receipts, vouchers, releases and acquittances required to be signed by the insurance companies, and the Mortgagor agrees to sign, upon demand, all receipts, vouchers and releases required of it to be signed by the Mortgagee for such purpose; and the Mortgagee is authorized to apply the proceeds of any insurance claim to the restoration of the property or upon the indebtedness hereby secured in its discretion, but monthly payments shall continue until said indebtedness is paid in full. All insurance policies and renewals (or certificates evidencing same) marked

89609002

# UNOFFICIAL COPY

3 7 6 1 9 7 2

"PAID" shall be delivered to the Mortgagee at least thirty (30) days before the expiration of the old policies; (4) Immediately after destruction or damage, to commence and complete the rebuilding or restoration of buildings and improvements now or hereafter on the Premises, unless the Mortgagee elects to apply on the indebtedness secured hereby the proceeds of any insurance covering such destruction or damage; (5) To keep the Premises in good condition and repair without waste and free from any mechanic's lien or other lien or claim of lien not expressly subordinate to the lien hereof; (6) Not to make, suffer or permit any unlawful use of or any nuisance to exist on the property nor to diminish nor impair its value by any act or omission to act; (7) To comply with all requirements of law with respect to the mortgaged Premises and the use thereof; (8) Not to make, suffer or permit, without the written permission of the Mortgagee being first had or obtained: (a) any use of the property for any purpose other than that for which it is now used; (b) any structural alterations of the improvements, apparatus, appurtenances, fixtures or equipment now or hereafter on the property; and (c) any purchase on conditional sale, lease or agreement under which a title is reserved in vendor, of any apparatus, fixtures or equipment to be placed in or upon any buildings or improvements on the property.

C. (1) From and after default for more than fifteen (15) days in the event of a monetary default or after written notice from Mortgagee of a non-monetary default, in order to provide for the payment of taxes, assessments and other similar current charges upon the property securing this indebtedness, the Mortgagor promises to pay to the Association, monthly, in addition to the above payments, a sum estimated by the Association to be equivalent to one-twelfth (1/12) of the amount payable annually for such taxes and other items, and to make as well whatever additional lump sum payment as is estimated by the Association to be necessary to create on January first of each year a fund in the Association to pay when due all taxes on such real estate security for the prior year. All payments provided for in this paragraph may, at the option of the Association: (a) be held by it in trust for the payment of the items in this paragraph described, without obligation to pay to the Mortgagor any interest thereon or earnings therefrom (in such case the Association may commingle such payments with its own funds); or (b) in the event the Association advances upon this obligation its own funds to pay said items as the same accrue and become payable, be credited to the unpaid balance of said indebtedness as received. If the amount established by the Association to be sufficient to pay said items is not sufficient for such purpose, the Mortgagor promises to pay the difference upon demand. If such sums are held in trust or carried in a savings deposit, the same are hereby pledged to further secure this indebtedness. The Association is authorized and is given the option to pay said items as charged or billed without further inquiry.

20060902

# UNOFFICIAL COPY

8 9 6 0 9 0 1 2

(2) In the event of failure of the Mortgagor to make any payment of whatever nature, periodic or otherwise required by the terms hereof or by the provisions of the Note secured hereby, the Association may, at its option, discharge such obligation of the Mortgagor by itself advancing such payment; and, in that event, all such advances shall be added to the unpaid balance under the Note as of the first day of the month during which such advance is made, and the advance and interest thereon shall be secured hereby.

D. This Mortgage contract provides for additional advances which may be made at the option of the Mortgagee and secured by this Mortgage, not more than an additional Three Hundred Ninety-five Thousand (\$395,000), and it is agreed that, in the event of such advances, the amount thereof may be added to the Mortgage debt and shall increase the unpaid balance of the Note hereby secured by the amount of such advance and shall be a part of the Note indebtedness under all of the terms of the Note and this contract, as fully as if a new such Note and contract were executed and delivered. An additional Advance Agreement may be given and accepted for such advance and provision may be made for different monthly payments and a different interest rate and other express modifications of the contract; but in all other respects, this contract shall remain in full force and effect as to such indebtedness, including all advances.

E. That in case of failure to perform any of the covenants herein, Mortgagee may do on Mortgagor's behalf everything so covenanted; that the Mortgagee may also do any act it may deem necessary to protect the lien hereof; that Mortgagor will repay upon demand any moneys paid or disbursed by Mortgagee for any of the above purposes and such moneys, together with interest thereon at the rate then applicable under the terms of the Note hereby secured shall become so much additional indebtedness secured by this Mortgage with the same priority as the original indebtedness and may be included in any decree foreclosing this Mortgage and be paid out of the rents and proceeds of sale of the Premises if not otherwise paid; that it shall not be obligatory upon the Mortgagee to inquire into the validity of any lien, encumbrance or claim in advancing moneys as above authorized, but nothing herein contained shall be construed as requiring the Mortgagee to advance any moneys for any purpose nor to do any act hereunder; and the Mortgagee shall not incur any personal liability because of anything it may do or omit to do hereunder.

F. That it is the intent hereof to secure payment of the Note and obligation whether the entire amount shall have been advanced to the Mortgagor at the date hereof, or at a later date, and to secure any other amount or amounts that may be added to the Mortgage indebtedness under the terms of this Mortgage contract.

G. At the option of the holder of the Note and obligation hereby secured, all unpaid indebtedness secured by this Mortgage

89609012

# UNOFFICIAL COPY

3 9 6 9 9 1 2

shall, notwithstanding anything in the Note or Mortgage to the contrary, become immediately due and payable (1) if the Mortgagor sells or conveys, contracts to sell or convey, or further encumbers the Premises or any portion thereof; or (2) if ownership of the Premises becomes vested in a person other than the Mortgagor. Acceptance of any payment required by the Note or on account of said indebtedness after the occurrence of any such contingency shall not be taken as a waiver of such option.

H. That time is of the essence hereof and if default be made in performance of any covenant herein contained or in making any payment under the Note or obligation or any extension or renewal thereof, or if proceedings be instituted to enforce any other lien or charge upon any of the property, or if proceedings in bankruptcy be instituted by or against the Mortgagor, or if the Mortgagor make an assignment for the benefit of their creditors or if their property be placed under control of, or in custody of, any court or if the Mortgagor abandons any of the property then and in any of said events, the Mortgagee is hereby authorized and empowered, at its option and without affecting the lien hereby created or the priority of said lien or any right of the Mortgagee hereunder, to declare all sums secured hereby immediately due and payable and apply toward the payment of the Mortgage indebtedness, any indebtedness of the Mortgagee to the Mortgagor, and the Mortgagee may also immediately proceed to foreclose this Mortgage, and in any foreclosure, a sale may be made of the Premises en masse without offering the several parts separately. Notwithstanding anything to the contrary contained herein, in the event of any act allowing acceleration of the indebtedness evidenced hereby or any breach hereof or default hereunder, the Mortgagee shall mail notice to the Mortgagor and to the guarantor of the Note secured hereby specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than fifteen (15) days from the date the notice is mailed to the Mortgagor, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage. If the breach is not cured on or before the date specified in the notice, Mortgagee may proceed to foreclose this Mortgage by judicial proceedings and according to the Illinois Statutes in such case provided. No failure even though repeated, by Mortgagee to exercise any option contained in this Mortgage or the Note secured hereby, and no waiver, even though repeated, of performance of any of the covenants contained in either such instrument shall in any way affect the right of the Mortgagee thereafter to exercise such option or to require or enforce performance of such covenant.

I. Mortgagee may employ counsel for advice or other legal services at the Mortgagee's discretion in connection with: (1) any dispute of whatever nature as to the debt hereby secured or the lien of this instrument or any litigation to which the Mortgagee may be made a party on account of this lien or which may affect the

# UNOFFICIAL COPY

89609002

title to the property securing the indebtedness hereby secured, or which may affect said debt or lien; (2) preparations for the commencement of or for conduct of any suit for the foreclosure hereof after the accrual of the right to foreclose, whether or not such suit is actually commenced. Mortgagee may, in connection with any of the matters in this paragraph mentioned, pay and incur at its discretion all expenses, including but not by way of limitation, court costs, publication expenses, expenses of title examination, guaranty policies, recording fees, Torrens Certificates, and sheriff's or magistrate's commission. All such items of expense in this Paragraph mentioned including reasonable attorney's fees shall become so much additional indebtedness secured hereby and shall be immediately due and payable by the Mortgagor with interest thereon at the rate then applicable under the terms of the Note hereby secured.

J. In case the mortgaged property, or any part thereof, shall be taken by condemnation, the Mortgagee is hereby empowered to collect and receive all compensation which may be paid for any property taken or for damages to any property not taken and all condemnation compensation so received shall be forthwith applied by the Mortgagee as it may elect, to the immediate reduction of the indebtedness secured hereby, or to the repair and restoration of any property so damaged, provided that any excess over the amount of the indebtedness shall be delivered to the Mortgagor or its assignee.

K. All easements, rents, issues and profits of the Premises are specifically pledged, assigned and transferred to the Mortgagee, whether now due or hereafter to become due under or by virtue of any lease or agreement for the use or occupancy of the property, or any part thereof, whether said lease or agreement be written or verbal, and it is the intention hereby to pledge said rents, issues and profits on a parity with said real estate and not secondarily, and such pledge shall not be deemed merged in any foreclosure decree.

L. That upon the commencement of any foreclosure proceeding hereunder, the court in which suit is filed may at any time, either before or after sale, and without notice to the Mortgagor or any party claiming under it, and without regard to the solvency of the person or persons, if any are liable for the payment of the indebtedness secured hereby, and without regard to the then value of the Premises, appoint a receiver with power to manage and rent and to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and the statutory period of redemption and such rents, issues and profits, when collected, may be applied, before as well as after the foreclosure sale and before as well as after any redemption by any person, towards the payment of the sale and before, as well as after any redemption by any person, towards the payment of the indebtedness, costs, taxes, insurance or other items necessary for the protection and

# UNOFFICIAL COPY

8 9 6 0 9 0 1 2

preservation of the property, including the expenses of such receivership, or on any deficiency decree whether there be a decree therefor in personam or not; and if a receiver shall be appointed, he shall remain in possession until the expiration of the full period allowed by statute for redemption, irrespective of whether there be redemption or not, and no lease of the Premises shall be nullified by the appointment or entry in possession of a receiver but he may elect to terminate any lease junior to the lien hereof.

M. That the Mortgage shall be released by Mortgagee by proper instrument upon payment to it of all indebtedness secured hereby and payment to Mortgagee of a release fee in the amount of Fifty (\$50.00) Dollars which fee shall be so much additional indebtedness secured hereby.

N. That each right, power and remedy herein conferred upon the Mortgagee is cumulative of every other right or remedy of the Mortgagee, whether herein or by law conferred, and may be enforced concurrently, therewith; that wherever the context hereof requires, the masculine gender, as used herein, shall include the feminine and the neuter, and the singular number, as used herein, shall include the plural; that all rights and obligations under this Mortgage shall extend to and be binding upon the respective successors and assigns of the Mortgagor, and the successors and assigns of the Mortgagee; and that the powers herein mentioned may be exercised as often as occasion thereof arises.

O. To the best of Mortgagor's knowledge after due inquiry, the Premises are free of any asbestos and the Premises have not been used and will not be used for the purpose of storing, disposal or treatment of hazardous substances or hazardous waste, and there has not been and will not be any surface or subsurface contamination due to the storing, disposal or treatment of any hazardous substances, hazardous wastes or regulated substances as those terms are defined in the Comprehensive Environmental Response, Liability and Compensation Act, 42 U.S.C. 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., and the Environmental Protection Act, ILL. Rev. Stat. 1985 (supp. 1986 and 1987) ch. 111-1/2 par. 1101 et seq., and neither Mortgagor nor any and all previous owners of the real estate have received any notification of any asserted present or past failure to comply with any such environmental protection laws or any rules or regulations adopted pursuant thereto. Mortgagor shall immediately notify Mortgagee of any notice or threatened action from any governmental agency or from any tenant under a Lease of any portion of the Premises of a failure to comply with any such environmental protection laws and with any rules or regulations adopted pursuant thereto.

This Mortgage is executed by FIRST NATIONAL BANK OF NILES not personally but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in as such Trustee (and

# UNOFFICIAL COPY

3 9 3 0 9 0 1 2

said FIRST NATIONAL BANK OF NILES, hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein or contained in the Note shall be construed as creating any liability on the said FIRST NATIONAL BANK OF NILES personally to pay the Note or any interest that may accrue thereon, or any indebtedness occurring hereunder, or to perform any covenant either claiming any right or security hereunder, and that so far as FIRST NATIONAL BANK OF NILES and its successors personally are concerned, the legal holder or holders of the Note and the owner or owners of any indebtedness accruing hereunder shall look solely to the Premises hereby conveyed for the payment thereof, by the enforcement of the lien hereby created, in the manner herein and in the Note provided or by action to enforce the personal liability of the guarantor, if any.

## II. MISCELLANEOUS:

A. **Severability.** In the event any one or more of the provisions contained in this Mortgage, the Note or in any of the loan documents shall, for any reason whatsoever, be held to be inapplicable, invalid, illegal or unenforceable in any respect, such inapplicability, invalidity, illegality or unenforceability shall, at the option of Mortgagee, not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such inapplicable, invalid, illegal or unenforceable provision had never been contained herein or therein.

B. **Successors.** All of the grants, covenants, terms, provisions and conditions herein shall run with the land and shall apply to, bind and inure to the benefit of, the successors and assigns of Mortgagor and the successors and assigns of Mortgagee.

C. **Estoppel.** That Mortgagor will, on the request of Mortgagee, furnish a written statement of the amount owing on the obligation which this Mortgage secures and therein state whether or not Mortgagor claims any defenses or offsets thereto.

This Mortgage is executed by the undersigned, not personally but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee (and the undersigned thereby warrants that it possesses full power and authority to execute this instrument) and it is expressly understood and agreed that nothing herein or in said Note contained shall be construed as creating any liability on the undersigned personally to pay the said Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained, all such liability, if any, being expressly waived by the Mortgage and by every person now or hereafter claiming any right or security hereunder, and that so far as the undersigned and its successors personally are concerned, the legal holder or holders of said Note and the owner or owners of any indebtedness accruing hereunder shall look solely to the premises hereby conveyed for the payment thereof, by the enforcement of the lien hereby created, in the manner herein and in said Note provided or by action to enforce the personal liability of the guarantor, if any.

20060902



# UNOFFICIAL COPY

3 9 5 7 9 0 2

IN WITNESS WHEREOF, FIRST NATIONAL BANK OF NILES, not personally, but as Trustee aforesaid, has caused these presents to be signed by one of its Vice Presidents, or Assistant Vice Presidents, and its corporate seal to be hereunto affixed and attested by its Assistant Secretary, the day and year first above written.

FIRST NATIONAL BANK OF NILES not personally, but as Trustee under Trust Dated November 16, 1989 and known as Trust No. 528

By: *K.V. Troken*  
Vice President K.V. Troken

Attest:  
*Kathleen A. Nelleser*  
Assistant ~~Secretary~~ Trust Officer  
Kathleen A Nelleser  
STATE OF ILLINOIS  
COUNTY OF C O O K } SS

I, the undersigned, a Notary Public in and for said County, DO HEREBY CERTIFY THAT K.V. Troken Vice President of FIRST NATIONAL BANK OF NILES, and Kathleen A Nelleser Assistant ~~Secretary~~ Trust Officer of said Company, who are personally known to me to be the same person(s) whose name(s) are subscribed to the foregoing instrument as such Vice President and Assistant Secretary, respectively, appeared before me this day in person, and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Company, as Trustee as aforesaid, for the uses and purposes therein set forth; and as custodian of the corporate seal of said Company, did affix the corporate seal of said Company to said instrument as his own free and voluntary act and as the free and voluntary act of said Company as Trustee as aforesaid, for the uses and purposes therein set forth.

Given under my hand and seal this 22nd day of November, 1989.

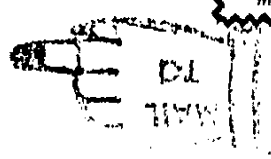
*Frances E. Gast*  
Notary Public

My Commission Expires: 7-1-92

This Instrument was Prepared by:

Edwin Josephson, Esq.  
Chuhak Tecson Kienlen Feinberg  
Grasso & Josephson, P.C.  
225 West Washington Street  
Suite 1300  
Chicago, Illinois 60606  
(312) 368-4666 or (312) 444-9300

"OFFICIAL SEAL"  
FRANCIS E. GAST  
NOTARY PUBLIC, STATE OF ILLINOIS  
My Commission Expires 7/1/92



89609002