

UNOFFICIAL COPY

9 0 5 0 1 9 3 9 6 5 0 1 3 3 2

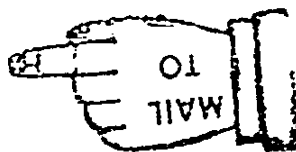
A DUPLICATE ORIGINAL OF THIS MORTGAGE HAS BEEN
PREPARED FOR RECORDING IN DUPAGE COUNTY

THIS INSTRUMENT PREPARED BY:

Michael J. Torchalski
HINSHAW, CULBERTSON, MOELMANN,
HOBAN & FULLER
222 North LaSalle Street
Chicago, Illinois 60601

AFTER RECORDING RETURN TO:

Ms. Harriet Hartig
AETNA BANK
2401 N. Halsted Street
Chicago, Illinois 60614



RECORDED
INDEXED
SEP 20 1990
AETNA BANK

CONSTRUCTION MORTGAGE AND SECURITY AGREEMENT

THIS CONSTRUCTION MORTGAGE AND SECURITY AGREEMENT made this 28th day of September, 1990 by Aetna Bank, not personally but solely as Trustee pursuant to Trust Agreement dated June 16, 1989, and known as Trust Number 10-4233, having its principal office at 2401 N. Halsted Street, Chicago, Illinois 60614 ("Mortgagor"), [the beneficiary of which ("Beneficiary") is the owner of one hundred percent (100%) of the beneficial interest ("Beneficial Interest")] and SHASHIBAR S. SARANG and KIRAN SARANG, married to each other and residing at 701 Sterling Road, Inverness, Illinois in favor of AETNA BANK, having its principal office at 2401 North Halsted Street, Chicago, Illinois 60614 ("Mortgagee"):

WITNESSETH, THAT WHEREAS, Mortgagor is justly indebted to Mortgagee for money borrowed in the principal amount of FIVE HUNDRED SIXTEEN THOUSAND AND NO/100 DOLLARS (\$516,000.00) ("Principal Amount"), as evidenced by note executed by Mortgagor of even date herewith, made payable to the order of and delivered to Mortgagee (which note, together with any and all other notes executed and delivered in substitution therefor or in renewal and extension thereof, in whole or in part, are herein collectively referred to as "Note"), by the provisions of which Mortgagor promises to pay to Mortgagee, at its principal office (or at such other place as the legal owner and holder of Note may, from time to time, designate), Principal Amount (or so much thereof as may be advanced by Mortgagee from time to time), together with interest at the rate set forth in Note ("Note Rate") which varies from time to time in accordance with a specified percentage in addition to "Aetna Base Rate" as provided in Note, and all other sums due and owing to Mortgagee hereunder or pursuant to Note and "Other Loan Documents" (hereafter defined) and such sums as may be advanced by Mortgagee to protect "Mortgaged Premises" (hereafter defined) or to preserve the priority of the lien established hereby [PROVIDED THAT such other sums shall not exceed one hundred fifty per cent (150%) of Principal Amount;] (collectively "Indebtedness"), from the date of disbursement of Principal Amount, in the installments set forth in Note, with a final payment of Indebtedness on November 1, 1991 ("Maturity Date").

50501332

50 main

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 0 5 0 1 9 3 2

Principal Amount, in the installments set forth in Note, with a final payment of Indebtedness on November 1, 1991 ("Maturity Date").

WHEREAS, pursuant to the "Loan Agreement" (hereinafter defined), Mortgagee has conditionally agreed to provide "Take-Out Financing" in an amount equal to the Principal Amount, maturing November 1, 1997. This Mortgage is likewise intended to secure the Take-Out Financing, if, as and when such financing is provided.

NOW, THEREFORE, to secure the payment of Indebtedness and the performance of the terms, covenants, conditions and agreements contained herein, and in commitment issued by Mortgagee in favor of Mortgagor, dated August 23, 1990 as amended from time to time ("Commitment"), Note, Construction Loan Agreement of even date herewith among Mortgagor and Mortgagee (referred to hereinafter as either the "Loan Agreement" or "Construction Loan Agreement") and any and all other documents executed and delivered as a condition to the disbursement of the proceeds of Principal Amount and to secure Indebtedness (collectively "Other Loan Documents"), Mortgagor, by these presents, DOES HEREBY GRANT, MORTGAGE AND CONVEY to Mortgagee, its successors and assigns, forever, certain land situated in Cook County and DuPage County, Illinois, legally described on Exhibit "A" attached hereto and made a part hereof ("Land"), TOGETHER WITH THE FOLLOWING (collectively "Other Interests"):

A. All right, title and interest of Mortgagor, including any after-acquired title or reversion, in and to the rights-of-way, roads, streets, avenues and alleys adjoining Land.

B. All and singular the tenements, hereditaments, easements, appurtenances, passages, waters, water rights, water courses, riparian rights, other rights, liberties and privileges thereof or in anyway now or hereafter appertaining, including any other claim at law or in equity and any after-acquired title, franchise or license and the reversions and remainder and remainders thereof.

C. All buildings and improvements, of every kind, nature and description, now or hereafter located and placed upon Land ("Improvements") and all materials now or hereafter owned by Mortgagor intended for construction, re-construction, alteration and repair of Improvements, all of which shall be deemed a part thereof immediately upon the delivery of the same, and all fixtures and articles of personal property now or hereafter owned by Mortgagor and attached to or contained in and used in connection with Mortgaged Premises, including, but not limited to, all furniture, furnishings, apparatus, machinery, motors, elevators, fittings, radiators, awnings, shades, screens, blinds, office equipment, carpeting and other furnishings and all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air-conditioning, electrical and sprinkler systems and equipment, if any, and fixtures and appurtenances thereto ("Personal Property") and all renewals or replacements of Personal Property or articles in substitution therefor, whether or not the same are or shall be attached to Improvements in any manner, excepting from Personal Property, however, any furniture, fixtures, equipment and articles of personal property, regardless of the manner or mode of attachment, belonging to any present or future tenant

50501932

UNOFFICIAL COPY

9 7 5 0 1 9 8 2

or lessee of Land and Improvements (collectively "Occupancy Tenants") (any reference hereafter made to Personal Property shall be deemed to exclude the same): IT BEING MUTUALLY AGREED that:

(1) all of Personal Property owned by Mortgagor and placed by it on Mortgaged Premises shall, insofar as the same is permitted by law, be deemed to be fixtures and a part of the realty and security for the payment of Indebtedness, and

(2) as to any Personal Property not deemed to be fixtures and a part of Mortgaged Premises, this Mortgage shall be and is a security agreement for the purpose of establishing a security interest in Personal Property, pursuant to the Uniform Commercial Code of the State of Illinois, and additional security for the payment of indebtedness and the performance of all other obligations of Mortgagor herein and in Other Loan Documents set forth.

D. All rents, issues, proceeds and profits accruing and to accrue from Mortgaged Premises and all right, title and interest of Mortgagor in and to any and all leases approved by Mortgagee now or hereafter on or affecting Mortgaged Premises, whether written or oral, and all other leases and agreements for the use thereof (collectively "Leases"), together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission of Mortgagee given to Mortgagor to collect the rentals to be paid pursuant thereto.

E. All proceeds heretofore or hereafter payable to Mortgagor and all subsequent owners of Mortgaged Premises ("Proceeds") by reason of loss or damage by fire and such other hazards, casualties and contingencies insured pursuant to "Insurance Policies" (hereafter defined) and awards and other compensation heretofore or hereafter payable to Mortgagor and all subsequent owners of Mortgaged Premises ("Awards") for any taking by condemnation or eminent domain proceedings, either permanent or temporary ("Condemnation"), of all or any part of Mortgaged Premises or any easement or appurtenance thereof, including severance and consequential damage and change in grade of streets. Proceeds or Awards are hereby assigned to Mortgagee and Mortgagor hereby appoints Mortgagee its attorney-in-fact, coupled with an interest, and authorizes, directs and empowers such attorney-in-fact, at its option, on behalf of Mortgagor, its personal representatives, successors and assigns, to adjust or compromise the claim for Proceeds or Awards and to collect and receive the amounts thereof, to give proper receipts and acquittances therefor and, after deducting expenses of collection, to apply the net Proceeds or Awards received in accordance with Paragraphs 8 and 9 following.

For convenience, Land, Improvements and Other Interests are herein collectively referred to as "Mortgaged Premises."

UNOFFICIAL COPY

Property of Cook County Clerk's Office

TO HAVE AND TO HOLD Mortgaged Premises unto Mortgagee, its successors and assigns, forever, for the uses and purposes herein set forth (Mortgagor hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Illinois); **PROVIDED, HOWEVER**, that if and when Mortgagor shall pay Indebtedness and shall perform all of the terms, covenants, conditions and agreements contained herein and in Loan Agreement, Note and Other Loan Documents, this Mortgage, Note and Other Loan Documents shall be released, at the sole cost and expense of Mortgagor; otherwise, the same shall be and remain in full force and effect.

MORTGAGOR HEREBY FURTHER COVENANTS AND AGREES AS FOLLOWS:

1. **PRIORITY OF LIEN AND SUBORDINATE ENCUMBRANCES:** This Mortgage is and shall remain a first and valid lien on Mortgaged Premises until the payment in full of Indebtedness and Mortgagor shall keep Mortgaged Premises free and clear of all other superior or subordinate liens or claims of every nature and kind and shall not execute, deliver, or grant any other mortgage, trust deed or security interest encumbering Mortgaged Premises. Notwithstanding the forgoing, Mortgagee acknowledges and agrees that, with respect to Parcel 2 and Parcel 3 on Exhibit "A", the lien of this Mortgage is inferior and subordinate to the liens and security interests set forth on Exhibit "B" attached hereto and made a part hereof (collectively, the "Prior Obligations").

2. **CONSTRUCTION MORTGAGE:** Principal Amount shall be used to pay "Budget Costs" (defined in Loan Agreement) in accordance with terms and provisions of the Loan Agreement.

This is a construction mortgage, as said term is defined in Section 9-313(1)(c) of the Uniform Commercial Code. Mortgagor further covenants and agrees that the loan secured hereby is a construction loan and that the Principal Amount shall be disbursed by Mortgagee to Mortgagor in accordance with the terms, covenants, conditions and agreements contained in the Construction Loan Agreement, which are incorporated herein by express reference.

All advances and indebtedness arising and accruing under the Construction Loan Agreement from time to time, whether or not the resulting indebtedness secured hereby may exceed the face amount of the Note, shall be secured hereby to the same extent as though said Construction Loan Agreement were fully incorporated in this Mortgage, and the occurrence of any event of default under said Construction Loan Agreement shall constitute a default under this Mortgage entitling Mortgagee to all of the rights and remedies conferred upon Mortgagee by the terms of this Mortgage and Note shall be subject to the terms and conditions of Construction Loan Agreement and any and all amendments thereto.

3. **PENDING DISBURSEMENTS:** This Mortgage is granted to secure disbursements of Principal Amount, as provided in Construction Loan Agreement.

1005112332

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 0 3 0 1 9 3 2

Pursuant to and subject to the provisions of the Construction Loan Agreement, Mortgagee has committed to advance or apply monies to or on behalf of Mortgagor, and the parties hereby acknowledge and intend that all such advances whenever hereafter made, shall be a lien from the time this Mortgage is recorded, as provided in Section 15-1302(b)(1) of the Illinois Mortgage Foreclosure Law, as now or hereafter amended.

4. SUBROGATION: To the extent that any part of Indebtedness is applied in payment of any existing lien against Mortgaged Premises, or any part thereof, or following the date hereof, Mortgagee pays any sum due pursuant to any provision of law or any instrument or document establishing any lien prior or superior to the lien of this Mortgage, Mortgagee shall have and be entitled to a lien on Mortgaged Premises equal in parity to that discharged and Mortgagee shall be subrogated to, receive and enjoy all rights and liens possessed, held or enjoyed by the holder of such lien, which shall remain in existence and benefit Mortgagee to secure the payment of Indebtedness. Mortgagee shall be subrogated, notwithstanding its release of record, to mortgages, trust deeds, superior titles, vendors' liens, and other liens, charges, encumbrances, rights and equities on Mortgaged Premises to the extent that any obligation thereunder is paid or discharged from Indebtedness or other payments by Mortgagee.

5. PROMPT PAYMENT AND PERFORMANCE OF COVENANTS: Mortgagor or Beneficiary shall promptly pay Indebtedness as the same becomes due and shall duly and Beneficiary shall punctually perform and observe all of the terms, covenants, conditions and agreements to be performed and observed by Mortgagor as provided herein and in Loan Agreement, Note and Other Loan Documents.

6. TAX AND INSURANCE DEPOSITS AND APPLICATION: In addition to the payment of Indebtedness, Mortgagor or Beneficiary shall pay to Mortgagee, concurrently with the payments required pursuant to Note, an amount equal to the real estate taxes and special assessments, if any, next due on Mortgaged Premises, together with the premiums which will next become due and payable on Insurance Policies, as estimated by Mortgagee, less all sums previously paid therefor, divided by the number of months to elapse before one (1) month prior to the dates when such taxes, assessments and premiums will become delinquent. Any funds held by Mortgagee, or its duly authorized agent, will be held in trust for the purpose of paying said real estate taxes, assessments and insurance premiums when the same become due and payable, without any obligation of Mortgagee to pay interest thereon.

In the event that the amounts deposited with Mortgagee:

a). shall not be sufficient to pay said real estate taxes, assessments or insurance premiums in full, when due, Mortgagor shall deposit with Mortgagee, or its duly authorized agent, such additional amounts as shall be sufficient to pay the same and if Mortgagor shall default in making such payments when due, Indebtedness shall, at the option of Mortgagee, become immediately due and payable; or

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 0 3 0 1 9 3 2

b). are in excess of the amounts required to pay real estate taxes, assessments and insurance premiums, such excess shall, upon the written demand of Mortgagor, be refunded to Mortgagor, PROVIDED THAT no "Monetary Default" (defined in Note) or "Non-Monetary Default" (hereafter defined) shall exist.

At such time as Indebtedness is paid in full, whether by reason of maturity or prepayment, as provided in Note, Mortgagee shall refund to Mortgagor all funds held by it pursuant to this Paragraph 6.

If, as a result of a Monetary Default or Non-Monetary Default, Mortgaged Premises are sold, foreclosed upon or otherwise acquired by Mortgagee following a Monetary Default or Non-Monetary Default, Mortgagee shall, concurrently with the commencement of proceedings for sale or foreclosure or at the time Mortgaged Premises are otherwise acquired, apply the balance of the funds deposited by Mortgagor pursuant hereto as a credit against such part of Indebtedness as Mortgagee may elect.

7. PAYMENT OF TAXES AND OTHER IMPOSITIONS: Mortgagor or Beneficiary shall promptly pay, when due and payable, all taxes and assessments (general and special), water and sewer charges, public impositions, levies dues and other charges, of whatsoever nature (collectively "Impositions"), which are now or shall hereafter be levied or assessed or which may otherwise be or become a lien upon or against Mortgaged Premises, or any part thereof, PROVIDED THAT if Mortgagor is making the deposits required pursuant to Paragraph 6, the same shall be made available to Mortgagor for the payment of Impositions.

8. INSURANCE POLICIES; PAYMENT AND APPLICATION OF PROCEEDS AND SETTLEMENT OF CLAIMS: Until such time as Indebtedness shall have been paid in full, Mortgagor or Beneficiary shall keep Mortgaged Premises continuously insured against Casualty by policies of insurance hereafter set forth, in such amounts and for such periods as may, from time to time, be required by Mortgagee ("Insurance Policies"), which Insurance Policies and all renewals thereof shall:

a). be written with companies licensed to do business in the State of Illinois for at least five (5) years, having a Best's "General Policy Holder Rating" of B+ or better and a financial rating class of XII or better and i). if written by a mutual company, the insurance policy holder or its mortgagee must not be assessable; ii). the risk of any one (1) company shall not exceed ten per cent (10%) of the issuer's policyholders' surplus (including capital); and iii). contain co-insurance in an amount not less than eighty per cent (80%);

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 9 3 0 1 9 3 2

b). be written with companies and in amounts acceptable to Mortgagee, provide replacement coverage and otherwise be in form satisfactory to Mortgagee;

c). cite Mortgagee's interest in standard mortgage clauses effective as of the date of disbursement of Principal Amount;

d). be maintained to and including Maturity Date, without cost to Mortgagee;

e). at the option of Mortgagee, be delivered to Mortgagee as issued, together with evidence of payment of premiums therefor in full, not less than fifteen (15) days prior to the expiration of the previous Insurance Policies; and

f). contain a so-called "cut-through" endorsement, in the event that any part of the fire or other risks insured thereby is reinsured;

and the original Insurance Policies shall be held by Mortgagee until such time as Indebtedness is paid in full.

In the event of a sale of Mortgaged Premises pursuant to foreclosure hereof or other transfer of title thereto in lieu of foreclosure and the extinguishment of Indebtedness, complete title to Insurance Policies and renewals thereof, together with all prepaid or unearned premiums thereon, in the possession of Mortgagee shall pass to and vest in the purchaser or grantee of Mortgaged Premises. If any renewal Insurance Policy is not delivered to Mortgagee within fifteen (15) days prior to the expiration of any existing Insurance Policy, with evidence of premium paid, Mortgagee shall pay the premium from the reserve created pursuant to paragraph 6, and if such a reserve is insufficient, Mortgagee may obtain the required insurance on behalf of Mortgagor (or in favor of Mortgagee only) and pay the premiums therefor, in which event any monies so advanced by Mortgagee in excess of the reserves created pursuant to paragraph 6 shall be so much additional indebtedness secured hereby and shall become immediately due and payable, with interest thereon at a percentage rate which is four per cent (4%) above Note Rate ("Default Rate"). Mortgagee shall not, by reason of acceptance, rejection, approval or obtaining Insurance Policies, incur any liability for payment of losses.

Without, in any way, limiting the generality of the foregoing, Mortgagor agrees to maintain the following Insurance Policies on Mortgaged Premises:

<u>Insurance Policy</u>	<u>Amount</u>
i). Builders risk completed value form including vandalism and malicious mischief, in an amount equal to not less than one hundred per cent (100%) of the full replacement cost of the Improvements	Satisfactory to Mortgagee

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 9 3 0 1 9 3 2

- | | | |
|-------|--|---------------------------|
| ii). | Flood Insurance (if Mortgaged Premises are are within a Zone A designated "flood plain" clause naming Mortgagee as first mortgagee | Satisfactory to Mortgagee |
| iii). | Comprehensive General Liability naming Mortgagee as an Additional Insured | Satisfactory to Mortgagee |
| iv). | Such other insurance policies, as may be reasonably required from time to time, by Mortgagee, upon written notice to Mortgagor. | Satisfactory to Mortgagee |

If any part or all of Insurance Policies or other insurance coverages is furnished by Occupancy Tenant, Mortgagor shall furnish to Mortgagee duplicate original Insurance Policies or, with the consent of Mortgagee, certificates evidencing such coverages, which shall be subject to the approval of Mortgagee. Insurance Policies shall be in form and content satisfactory to Mortgagee and, at the option of Mortgagee, contain mortgage clauses in favor of or name Mortgagee as an additional insured and provide for not less than thirty (30) days prior written notice to Mortgagee in the event of cancellation or material modification thereof.

In the event of any loss sustained by Casualty for which Insurance Policies are in effect, Mortgagor may, with the consent of Mortgagee, settle, compromise and adjust any and all rights and claims pursuant to the provisions of Insurance Policies, PROVIDED THAT Proceeds shall be payable to Mortgagee. In the absence of such consent, Mortgagee is hereby authorized to settle, compromise and adjust such claims or rights and receive Proceeds and any Proceeds paid to Mortgagee shall, at the option of Mortgagee, be applied on account of the cost of repair or restoration of that part of Mortgaged Premises damaged or destroyed ("Repair or Restoration") or on account of Intertidness, in such order or priority as Mortgagee may elect.

Any part of Mortgaged Premises damaged or destroyed by a Casualty shall be repaired or rebuilt, in accordance with plans and specifications therefor submitted to and approved by Mortgagee (which approval shall not be unreasonably withheld or delayed) and all life, safety and environmental regulations, laws, ordinances (including zoning), rules and regulations of governmental authorities having jurisdiction thereover (collectively "Applicable Laws"), so as to be as similar, as is reasonably possible, to the condition which existed prior to such Casualty, and in conformity with the terms and conditions of the Loan Agreement.

If Proceeds are to be applied on account of the cost of Repair or Restoration:

A). the same shall be paid to Mortgagor, from time to time, upon the delivery to Mortgagee of satisfactory evidence of the estimated cost of

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 5 1 9 3 2

completing Repair or Restoration, together with such architect's plans and specifications, certificates, contractor's sworn statements, waivers of lien, title insurance policies or certifications and other evidences of cost and payments as Mortgagee may reasonably require and approve; and

B). no payment made prior to final completion of Repair or Restoration shall exceed ninety per cent (90%) of the value thereof and, at all times, the undisbursed balance of Proceeds shall not be less than the amount required to pay for the cost of completion thereof, free and clear of liens or encumbrances.

In the event that, in the reasonable opinion of Mortgagee, Proceeds are insufficient to pay for all costs of Repair or Restoration, Mortgagor shall deposit with Mortgagee an amount equal to such excess costs prior to the disbursement of any part of Proceeds to it. Any surplus Proceeds, following the payment of all costs of Repair or Restoration, shall, at the option of Mortgagee, be applied on account of Indebtedness or paid to Mortgagor.

9. CONDEMNATION: In the event that:

a). Mortgaged Premises, or any part thereof, is taken by Condemnation, Mortgagee is hereby empowered to collect and receive Awards, which shall, at the election of Mortgagee, be applied to the payment of Indebtedness or on account of rebuilding or restoring that part of Mortgaged Premises not so taken or damaged ("Rebuilding or Restoration");

b). Mortgagee elects to permit the use of Awards for Rebuilding or Restoration, Mortgaged Premises shall be so rebuilt or restored, in accordance with plans and specifications therefor submitted to and approved by Mortgagee (which approval shall not be unreasonably withheld or delayed) and Applicable Laws, so as to be as similar, as is reasonably possible, to the condition which existed prior to Condemnation and all disbursements shall be paid in the same manner as provided in Paragraph 8 hereof with respect to a loss by Casualty;

c). Awards are insufficient to pay for all costs of Rebuilding or Restoration, Mortgagor shall deposit with Mortgagee an amount equal to such excess costs prior to any disbursement of Awards to it; or

d). Awards are in excess of Rebuilding or Restoration, any surplus Awards, following payment in full of all costs of Rebuilding or Restoration shall, at the option of Mortgagee, either be applied on account of Indebtedness or paid to Mortgagor.

30501002

UNOFFICIAL COPY

Property of Cook County Clerk's Office

10. CASUALTY OR CONDEMNATION AFTER FORECLOSURE: In the event of Casualty or Condemnation following the institution of foreclosure proceedings, Proceeds or Awards, if not applied as specified in Paragraphs 8 and 9, shall be used to pay the amounts due in accordance with any decree of foreclosure which may be entered in any such proceedings and the balance, if any, shall either be paid to the owner of the equity redemption, if such owner shall be entitled to the same, or as the court may direct.

11. MORTGAGEE'S LIABILITY FOR COLLECTION OF PROCEEDS OR AWARDS: Mortgagee shall not be held responsible for any failure to collect Proceeds or Awards, regardless of the cause of such failure, and:

a). the power and authority granted to Mortgagee to collect Proceeds or Awards is irrevocable and coupled with an interest and shall, in no way, affect the security of this Mortgage or the liability of Mortgagor for payment of Indebtedness; and

b). the entry of a decree of foreclosure of the lien hereof shall not affect or impair said power and authority.

12. USE, CARE OF WASTE: Mortgagor or Beneficiary:

a). Shall constantly maintain and not diminish, in any respect, or materially alter Improvements (including landscaped and recreation areas) or the on-site paved parking area and or structures comprising a part of Mortgaged Premises or materially change the use of Mortgaged Premises so long as Indebtedness, or any part thereof, remains unpaid and shall not erect any buildings or other improvements on Mortgaged Premises without the prior written consent of Mortgagee (which consent shall not be unreasonably withheld or delayed). Without, in any way, limiting the generality of the foregoing, Mortgagor shall:

i). not abandon Mortgaged Premises or do or suffer anything to be done which would depreciate or impair the value thereof or the security of this Mortgage;

ii). not remove or demolish any part of Improvements of a structural nature which would adversely affect the value of Mortgaged Premises;

iii). pay promptly all services, labor and material necessary and required to construct the Improvements in accordance with the Construction Loan Agreement pursuant to contracts therefor;

iv). maintain, preserve and keep Mortgaged Premises in good, safe and insurable condition and repair and promptly make any

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 5 1 9 3 2

needful and proper repairs, replacements, renewals, additions or substitutions required by wear and tear, damage, obsolescence or destruction:

v). not make any changes, additions or alterations to Mortgaged Premises of a structural nature or which would adversely affect the value thereof, except as required by any applicable statute, law or ordinance of any governmental authority having jurisdiction over Mortgaged Premises and the intended use thereof, or as otherwise approved in writing by Mortgagee:

vi). promptly commence and diligently pursue Repair or Restoration or Rebuilding or Restoration, as the case may be:

vii). not commit or permit to exist any waste of Mortgaged Premises; and

viii). maintain all abutting sidewalks in good and neat order and repair.

b). Represents, warrants and agrees that:

i). no friable asbestos containing materials and no hazardous materials, toxic substances, industrial waste, pollution control waste or other substances regulated by any governmental statute or regulation for the protection of the environment (collectively "Hazardous Substances"), are presently stored or otherwise located on Mortgaged Premises and that, within the definition of any such statute, no part of Mortgaged Premises, including the ground-water located thereon, is presently contaminated by any Hazardous Substances, and that no asbestos containing materials or Hazardous Substances shall be included among the materials to be incorporated into construction of the Improvements.

ii). until Indebtedness is paid in full, all Hazardous Substances, which may be used by any person for any purpose upon Mortgaged Premises, shall be used or stored thereon only in a safe, approved manner, in accordance with all industrial standards and all laws, regulations and requirements for such storage promulgated by any governmental authority:

iii). Mortgaged Premises will not be used for the principal purpose of storing Hazardous Substances and that no such storage or use will otherwise be allowed on Mortgaged Premises which will cause

90501932

UNOFFICIAL COPY

Property of Cook County Clerk's Office

or increase the likelihood of causing the release of Hazardous Substances onto Mortgaged Premises; and

iv). Mortgagor shall promptly notify Mortgagee as soon as Mortgagor knows of or suspects that a Hazardous Substance has been released on Mortgaged Premises.

c). Shall, in addition to the indemnification otherwise provided in Paragraph 37, indemnify and hold Mortgagee harmless of and from all loss, cost and expense (including reasonable attorneys' fees), liability, damage and claim whatsoever incurred by Mortgagee by reason of the detection and/or removal of any friable asbestos containing materials on or from the Mortgaged Premises, and for replacements required for functional restoration of the Mortgaged Premises after asbestos removal, and in connection with claims of persons alleging bodily injury as a result of exposure to or inhalation of asbestos on the Mortgaged Premises, or by reason of non-conformity of the Mortgaged Premises and/or Mortgagor's failure to comply with applicable statutes and regulations for the protection of the environment, including occupational health and safety, hazardous waste, toxic substances, air and drinking water quality and all other statutes regulating environmental matters, or by reason of the imposition of any governmental lien for the recovery of environmental cleanup costs expended by reason of such failure to comply (collectively "Environmental Costs"). PROVIDED THAT to the extent Mortgagee is strictly liable pursuant to any such statute, Mortgagor's obligations to Mortgagee pursuant to this indemnity shall likewise be without regard to fault on the part of Mortgagor with respect to the violation of law which results in liability to Mortgagee; and FURTHER PROVIDED that the foregoing indemnity shall survive repayment of all Indebtedness secured hereby, and any voluntary or involuntary transfer of title to the Mortgaged Premises, and foreclosure of the lien hereof, and bankruptcy or other proceeding for relief of debtors; and

d). Shall comply with and cause Mortgaged Premises, and the use and condition thereof, to comply with Applicable Laws and with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits, privileges, franchises and concessions (including, without limitation, those relating to the operation of Mortgaged Premises as a "first-class" building, land use and development, construction, access, water rights, noise and pollution) which are applicable to Mortgagor or have been granted for Mortgaged Premises, or the use thereof.

13. MORTGAGEE'S PERFORMANCE OF MORTGAGOR'S OBLIGATIONS:
In the event of a default by Mortgagor or Beneficiary in:

a). the prompt discharge of any lien or encumbrance;

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 7 5 0 1 9 3 2

- b). defending the title to Mortgaged Premises;
- c). the payment of any Imposition;
- d). diligently and continuously pursuing construction of the Improvements in accordance with the Construction Loan Agreement, Repair or Restoration or Rebuilding or Restoration, as the case may be;
- e). the proper maintenance and preservation of Mortgaged Premises; or
- f). the performance of any obligation specified in Paragraph 12 above;

and said default is not cured to the satisfaction of Mortgagee or other satisfactory security is furnished to Mortgagee within thirty (30) days following written notice by Mortgagee to Mortgagor, or if Mortgagor shall fail to procure and maintain Insurance Policies, Mortgagee may, at its election and without further demand or notice, pay and discharge such lien or encumbrance, defend the title to Mortgaged Premises, pay such Impositions (plus any interest and penalties thereon), perform Rebuilding or Restoration or any obligation of Mortgagor specified in Paragraph 12 hereof, procure Insurance Policies and maintain and preserve Mortgaged Premises. All expenditures therefor, including reasonable attorneys' fees incurred by Mortgagee, shall forthwith become due and payable to Mortgagee, together with interest thereon at Default Rate, which shall be added to and become a part of Indebtedness and shall be secured by the lien of this Mortgage, all without prejudice to the right of Mortgagee to declare Indebtedness immediately due and payable by reason of Mortgagor's default and breach of the terms, covenants, conditions and agreements herein contained. Mortgagee shall have the sole right of determination as to the validity of any lien, encumbrance or Imposition attributable to or assessed against Mortgaged Premises and payment thereof by Mortgagee shall establish its right to recover the amount so paid, with interest at Default Rate, subject to the provisions of Paragraph 14 following.

14. CONTEST OF LIENS OR ENCUMBRANCES: In the event Mortgagor desires to contest the validity of any lien, encumbrance or Imposition attributable to or assessed against Mortgaged Premises, it shall:

- a). on or before fifteen (15) days prior to the due date thereof, notify Mortgagee, in writing, that it intends to so contest the same;
- b). on or before the due date thereof, on demand, deposit with Mortgagee security (in form and content satisfactory to Mortgagee) for the payment of the full amount of such lien, encumbrance or Imposition, or any balance thereof then remaining unpaid (or provide to Mortgagee such other indemnity as may be reasonably acceptable to it); and

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 0 3 0 1 7 3 2

c). from time to time, deposit additional security or indemnity, so that, at all times, adequate security or indemnity will be available for the payment of the full amount of the lien, encumbrance or Imposition remaining unpaid, together with all interest, penalties, costs and charges accrued or accumulated thereon.

If the foregoing deposits are made and Mortgagor continues, in good faith, to contest the validity of such lien, encumbrance or Imposition, by appropriate legal proceedings which shall operate to prevent the collection thereof and the sale of Mortgaged Premises, or any part thereof, to satisfy the same, Mortgagor shall be under no obligation to pay such lien, encumbrance or Imposition until such time as the same has been decreed, by court order, to be a valid lien on Mortgaged Premises. Mortgagee shall have full power and authority to reduce any such security or indemnity to cash and apply the amount so received to the payment of any unpaid lien, encumbrance or Imposition to prevent the sale or forfeiture of Mortgaged Premises or non-payment of such lien, encumbrance or imposition, without liability on Mortgagee for any failure to apply the security or indemnity so deposited, unless Mortgagor, in writing, requests the application thereof to the payment of the particular lien, encumbrance or Imposition for which such deposit was made. Any surplus deposit retained by Mortgagee, after the payment of the lien, encumbrance or Imposition for which the same was made, shall be repaid to Mortgagor, unless Monetary Default or Non-Monetary Default exists, in which event, such surplus shall be applied by Mortgagee to cure such default.

15. WAIVERS: To the fullest extent permitted by law, Mortgagor and Beneficiary:

a). shall not, at any time, insist upon or plead or, in any manner whatsoever, claim, or take advantage of any stay, exemption or extension law or any so-called "Moratorium Law" (now or at any time hereafter in force) nor claim, take or insist upon any benefit or advantage of or from any law (now or hereafter in force) providing for the valuation or appraisal of Mortgaged Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained or to any decree, judgment or order of any court of competent jurisdiction or after such sale or sales, claim or exercise any rights pursuant to any statute now or hereafter in force to redeem Mortgaged Premises so sold, or any part thereof, or relating to the marshaling thereof, upon foreclosure sale or other enforcement hereof:

b). hereby expressly waive any and all statutory rights of redemption under any order or decree of foreclosure of this Mortgage, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to Mortgaged Premises subsequent to the date hereof, it being the intent of Mortgagor hereby that any and all statutory

1000110332

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 0 5 1 1 9 3 2

rights of redemption of Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by Applicable Laws:

c). agree that it will not, by invoking or utilizing any applicable law or laws or otherwise hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Mortgagee but will suffer and permit the exercise of every such right, power and remedy as though no such law or laws has, have been or will have been made or enacted; and

d). for itself and all who or which claim by, through or under Mortgagor, waives any and all right to have Mortgaged Premises marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose the lien of this Mortgage may order Mortgaged Premises sold as an entirety.

16. UNPERMITTED TRANSFERS: For the purpose of protecting Mortgagee's security, keeping Mortgaged Premises free from subordinate financing liens and/or permitting Mortgagee to increase Note Rate and to collect assumption fees, Mortgagor agrees that any sale, installment sale, conveyance, assignment, mortgage (other than the Prior Obligations) or other transfer of or grant of a security interest in and to all or any part of the:

- a). legal and/or equitable title to Mortgaged Premises; or
- b). beneficial interest of any trust which holds title to Mortgaged Premises;
- c). stock of any corporate owner of Mortgaged Premises or any corporation which is the beneficiary of any trust which holds title to Mortgaged Premises;
- d). partnership interests of the partners of any partnership owning Mortgaged Premises or any partnership which is the beneficiary of any trust which holds title to Mortgaged Premises.

without the prior written consent of Mortgagee shall be deemed to be an unpermitted transfer (collectively "Unpermitted Transfers").

Notwithstanding the foregoing, Mortgagee may condition its consent to an Unpermitted Transfer upon the payment of a fee to Mortgagee and/or an increase in Note Rate, PROVIDED THAT:

- i). a consent by Mortgagee to an Unpermitted Transfer or a waiver of a Non-Monetary Default by reason thereof, the same shall not constitute

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 2 5 0 1 9 3 2

a consent to or waiver of any right, remedy or power accruing to Mortgagee by reason of any subsequent Unpermitted Transfer;

ii). notwithstanding such consent by Mortgagee, Mortgagor shall not engage in any "prohibited transaction" with any "party-in-interest", as such terms are defined in the Employee Retirement Income Security Act of 1974, as amended, from time to time; and

iii). no such consent shall be given unless Mortgagor agrees, inter alia, that immediately upon the closing of the subject sale or transfer, Mortgagor will provide Mortgagee with a copy of the deed or other instrument of conveyance to the transferee, together with an Affidavit and Agreement of Indemnification, in form and content satisfactory to Mortgagee, executed by such transferee under oath.

17. PROHIBITION AGAINST SUBMITTING MORTGAGED PREMISES TO CONDOMINIUM PROPERTY ACT: Mortgagor shall not, without the prior written consent of Mortgagee, submit Mortgaged Premises to the Condominium Property Act of the State of Illinois or to any similar act or statute or otherwise permit cooperative ownership or the further subdivision thereof.

18. DEFAULT: A default by the Mortgagor or Beneficiary in the payment of Indebtedness, Budget Costs, and all other fees, costs and expenses required to be paid by the Mortgagor pursuant to Construction Loan Agreement or Note within fifteen (15) days following the due dates thereof shall be deemed to be a monetary default pursuant hereto (collectively a "Monetary Default"), and the existence of any one or more of the following events, following thirty (30) days written notice thereof from the Mortgagee to the Mortgagor:

- a). The failure of the Mortgagor or Beneficiary to perform any of the terms, covenants, conditions and agreements required of them, pursuant to Construction Loan Agreement, Note, the Other Loan Documents, and the continuation of such failure beyond the time permitted to cure the same;
- b). The Warranties and Representations, (defined in Construction Loan Agreement) or any one of the same, are, is or shall become untrue in a material adverse respect;
- c). An unreasonable delay in construction of the Improvements, or discontinuance or abandonment of construction such that the Improvements may

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 0 3 0 1 9 8 2

not, in the judgment of Mortgagee, be completed on or before the Completion Date specified in the Loan Agreement.

- d). The disapproval by the Village of Lombard of any material part of the construction and installation of the Improvements and the failure of the Mortgagor or Beneficiary to commence to correct the same, to the satisfaction of the Lender and the Consulting Architect within fifteen (15) days thereafter, and to diligently complete such correction.

- e). The existence of any collusion, fraud, dishonesty or bad faith by or with the acquiescence of the Mortgagor or Beneficiary which, in any way, relates to or affects the Loan:

- f). A default, by the Mortgagor or Beneficiary pursuant to the Note, Other Loan Documents, or any agreements relating to construction of the Improvements, including contracts for lumber, labor or materials, which is not cured within the time specified therein.

- g). The Mortgagor or Beneficiary shall:

- i). make an assignment for the benefit of creditors;
- ii). apply for, seek, consent to or acquiesce in the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or him or for any substantial part of its or his property;
- iii). institute any proceeding seeking the entry of an order for relief pursuant the Federal Bankruptcy Act to adjudicate it or him a bankrupt or insolvent or seeking dissolution, winding-up, liquidation, reorganization, arrangement, adjustment or composition of it or him or its or his debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or failure to file an answer or other pleading denying the material allegations of any such proceeding filed against it or him; or

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 0 5 0 1 9 3 2

- iv). fail to contest in good faith any appointment or proceeding described in paragraph (i) following:
- h). without the application, approval or consent of the Mortgagor or Beneficiary, a receiver, trustee, examiner, liquidator or similar official shall be appointed for the Mortgagor or Beneficiary and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of sixty (60) consecutive days.
- i). the death, incapacity or insolvency of the Beneficiary:
- j). a material adverse misrepresentation in Annual Financial Statements;
- k). of the occurrence of an Unpermitted Transfer; or
- l). that Mortgagor or Beneficiary shall fail to pay Environmental Costs;

(a), through l), collectively "Non-Monetary Defaults", then, or at any time thereafter during the continuance of a Monetary Default or Non-Monetary Default, Mortgagor shall, commencing with the date thereof, pay interest on Indebtedness at a rate equal to Default Rate, and Mortgagee may declare Indebtedness immediately due and payable in full, without further notice, demand or presentment, at the place of payment aforesaid.

Any consent by Mortgagee to a Monetary Default or Non-Monetary Default shall not constitute a consent to or waiver of any right, remedy or power of Mortgagee upon the occurrence of a subsequent Monetary Default or Non-Monetary Default.

In the event of a Monetary Default or Non-Monetary Default and immediately upon the commencement of any action, suit or other legal proceedings by Mortgagee to foreclose this Mortgage, Mortgagor hereby unconditionally and irrevocably consents to the appointment of a receiver or receivers of Mortgaged Premises and the income generated from the operation thereof upon ten (10) days written notice to Mortgagor. Mortgagee shall be entitled to such appointment without regard to the adequacy of any security given for the payment of Indebtedness and said receiver or receivers shall be entitled to take possession of Mortgaged Premises from the owner, tenants and/or occupants of the whole or any part thereof and to collect and receive income for the use and benefit of Mortgagee.

19. REMEDIES NOT EXCLUSIVE: No remedy or right of Mortgagee hereunder or pursuant to Note or Other Loan Documents or otherwise available under applicable law, shall be exclusive of any other remedy or right but each such remedy or right shall be in addition to every other remedy or right now or hereafter existing at law or

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 0 0 1 0 3 2

in equity pursuant thereto. No delay in the exercise of or omission to exercise any remedy or right accruing by reason of a Monetary Default or a Non-Monetary Default shall impair any such remedy or right or be construed to be a waiver thereof or an acquiescence therein nor shall the same affect any subsequent Monetary Default or Non-Monetary Default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, when and as often as may be deemed expedient by Mortgagee. All obligations of Mortgagor and all rights, powers and remedies of Mortgagee expressed herein shall be in addition to and not in limitation of the rights, powers and remedies provided by law, this Mortgage and Other Loan Documents.

20. **REMEDIES:** Upon the occurrence of a Monetary Default or a Non-Monetary Default, Mortgagee shall have the right to immediately foreclose this Mortgage. Upon the filing of any complaint by reason thereof, the court in which the same is filed may:

- a). upon application of Mortgagee or at any time thereafter;
- b). either before or after foreclosure sale and with notice to Mortgagor or to any party claiming under Mortgagor;
- c). without regard to the solvency or insolvency at the time of such application of any person then liable for the payment of Indebtedness, or any part thereof;
- d). without regard to the then value of Mortgaged 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
- e). without requiring 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 Mortgaged Premises, to lease the same, keep Mortgaged Premises insured and in good repair and collect all rentals during the pendency of such foreclosure suit and, in the event of foreclosure sale and a deficiency in the proceeds received therefrom, during any period of redemption. The court may, from time to time, authorize such receiver to apply the net amounts remaining in his possession, after deducting reasonable compensation for himself and his counsel to be allowed by the court, in payment (in whole or in part) of any part or all of Indebtedness and, without limitation, the following, in such order of application as Mortgagee may elect:

- i). Amounts due under Note secured hereby;
- ii). any amount due upon any decree entered in any suit foreclosing this Mortgage;

UNOFFICIAL COPY

9 0 5 0 1 9 3 2

iii). costs and expenses of foreclosure and litigation upon Mortgaged Premises:

iv). premiums due on Insurance Policies or costs of Repair or Restoration, Rebuilding or Restoration, Impositions (and any interest, penalties and costs thereon) or any other lien or charge upon Mortgaged Premises which may be or become superior to the lien of this Mortgage or of any decree foreclosing the same; and

v). all sums advanced by Mortgagee to cure or attempt to cure any Monetary Default or Non-Monetary Default, or to complete construction of the Improvements in accordance with the terms of the Loan Agreement, or to protect the security provided herein and in Note and Other Loan Documents, with interest on such advances at Default Rate.

Any overplus of the proceeds of foreclosure sale shall then be paid to Mortgagor. This Mortgage may be foreclosed at any one time against all or successively against any part or parts of Mortgaged Premises, as Mortgagee may elect and this Mortgage and the right of foreclosure hereunder shall not be impaired or exhausted by one or any foreclosure or by one or any sale and may be foreclosed successively and in parts until all of Mortgaged Premises shall have been foreclosed and sold. In the event of any foreclosure of Mortgaged Premises (or commencement of or preparation for the same) in any court, all expenses of every kind paid or incurred by Mortgagee for the enforcement, protection or collection of this security, including reasonable costs, attorneys' fees, stenographers' fees, costs of advertising, title charges and other costs and expenses shall be paid by Mortgagor.

21. POSSESSORY RIGHTS OF MORTGAGEE: Upon the occurrence of a Monetary Default or a Non-Monetary Default, whether before or after the institution of legal proceedings to foreclose the lien of this Mortgage or any sale thereunder, Mortgagee shall be entitled, in its sole discretion, to perform any of the following:

a). enter and take actual possession of Mortgaged Premises, Leases and the rents payable pursuant thereto, personally or by its agents or attorneys and excluding Mortgagor therefrom:

b). with or without process of law, enter upon and take and maintain possession of all of the documents, books, records, papers and accounts of Mortgagor relating thereto:

c). as attorney-in-fact or agent of Mortgagor, or in its own name as Mortgagee and pursuant to the powers herein granted, hold, operate, manage and control Mortgaged Premises and Leases and collect all rentals payable pursuant thereto and conduct the business, if any, thereof, either personally or by its agents, contractors or nominees, with full power to use

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 0 5 0 1 9 3 2

such measures, legal or equitable, as, in its discretion, may be deemed proper or necessary to enforce the terms and conditions of Leases and the rentals payable pursuant thereto (including actions for the recovery of rents, actions in forcible detainer and actions in distress of rent):

d). cancel or terminate any Lease or sublease for any cause or for any reason which would entitle Mortgagor to cancel the same:

e). elect to disaffirm any Lease or sublease made subsequent hereto or subordinated to the lien hereof:

f). make all necessary or proper repairs, decoration, renewals, replacements, alterations, additions, betterments and improvements to Mortgaged Premises which, in Mortgagee's sole discretion, may seem appropriate:

g). insure and re-insure Mortgaged Premises against all risks incidental to Mortgagee's possession, operation and management thereof; and

h). perform such other acts in connection with the management and operation of Mortgaged Premises as Mortgagee, in its sole discretion, may deem proper:

Mortgagor hereby granting full power and authority to Mortgagee to exercise each and every of the rights, privileges and powers contained herein at any and all times following the occurrence of a Monetary Default or a Non-Monetary Default, without notice to Mortgagor.

Mortgagee, in the exercise of the rights and powers conferred upon it hereby, shall have full power to use and apply the rentals collected by it to the payment of or on account of the following, in such order as it may determine:

i). operating expenses of Mortgaged 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 leasing commissions and other compensation and expenses in seeking and procuring Occupancy Tenants and entering into Leases), established claims for damages, if any, and premiums on Insurance Policies:

ii). Impositions, costs of repairs, decorating, renewals, replacements, alterations, additions or betterments and improvements of Mortgaged Premises, including the cost, from time to time, of installing, replacing or repairing Mortgaged Premises and of placing Mortgaged Premises in such

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 0 5 1 9 3 2

condition as will, in the judgment of Mortgagee, make the same readily rentable; and

iii). Indebtedness, or any part thereof.

22. OTHER REMEDIES: In the event of a Monetary Default or a Non-Monetary Default, Mortgagee may exercise, from time to time, any rights and remedies available to it pursuant to applicable law. Mortgagor shall, promptly upon request by Mortgagee, assemble Personal Property and make the same available to Mortgagee at such place or places reasonably convenient for Mortgagee and Mortgagor, as Mortgagee shall designate. Any notification required by law of intended disposition by Mortgagor of any part of Mortgaged Premises shall be deemed reasonably and properly given if served as herein provided at least five (5) days prior to such disposition. Without limiting the foregoing, whenever a Monetary Default or Non-Monetary Default is existing, Mortgagee may, with respect to Personal Property, without further notice, advertisement, hearing, or process of law of any kind:

a). notify any person obligated on Personal Property to perform, directly for Mortgagee, its obligations thereunder;

b). enforce collection of any part of Personal Property by suit or otherwise and surrender, release or exchange all or any part thereof or compromise, extend or renew, for any period (whether or not in excess of the original period), any obligations of any nature of any party with respect thereto;

c). endorse any checks, drafts or other writings in the name of Mortgagor to permit collection of Personal Property and control of any proceeds thereof;

d). enter upon any part of Mortgaged Premises where Personal Property may be located and take possession of and remove the same;

e). sell any part or all of Personal Property free of all rights and claims of Mortgagor therein and thereto, at any public or private sale; and

f). bid for and purchase any part or all of Personal Property at any such sale.

Any proceeds of any disposition by Mortgagee of any part of Personal Property may be applied by Mortgagee to the payment of expenses incurred in connection therewith, including reasonable attorneys' fees and legal expenses, and any balance of such proceeds shall be applied by Mortgagee in the payment of such part of Indebtedness and in such order of application as Mortgagee may, from time to time, elect. Mortgagee may exercise,

UNOFFICIAL COPY

9 1 5 0 1 9 3 2

from time to time, any rights and remedies available to it pursuant to the Uniform Commercial Code, other applicable laws in effect from time to time or otherwise available to it by reason of any applicable law. Mortgagor hereby expressly waives presentment, demand, notice of dishonor and protest in connection with Indebtedness and, to the fullest extent permitted by applicable law, any and all other notices, advertisements, hearings or process of law in connection with the exercise by Mortgagee of any of its rights and remedies hereunder.

Mortgagor hereby constitutes Mortgagee its attorney-in-fact, with full power of substitution, to take possession of Personal Property upon the occurrence of a Monetary Default or Non-Monetary Default, as Mortgagee, in its sole discretion (reasonably exercised) seems necessary or proper, to execute and deliver all instruments required by Mortgagor to accomplish the disposition of Personal Property, or any part thereof, which power of attorney is a power coupled with an interest, irrevocable until such time as Indebtedness is paid in full.

23. NON-LIABILITY OF 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 pursuant to Leases or otherwise and Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur pursuant thereto or by reason of its exercise of its rights hereunder and of and from any 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 with respect to Mortgaged Premises. Mortgagee shall not have responsibility for the control, care, management or repair of Mortgaged Premises nor shall Mortgagee be responsible or liable for any negligence in the management, operation, upkeep, repair or control of Mortgaged Premises resulting in loss, injury or death to any Occupancy Tenant, licensee, employee or stranger upon Mortgaged Premises. No liability shall be enforced or asserted against Mortgagee in the exercise of the powers herein granted to it and Mortgagor expressly waives and releases any such liability. In the event Mortgagee incurs any such liability, loss or damage pursuant hereto and to any Lease or in the defense of any claim or demand, Mortgagor agrees to reimburse Mortgagee, immediately upon demand, for the amount thereof, including costs, expenses and reasonable attorneys' fees.

24. USURY: Mortgagor represents and warrants that the proceeds of the Loan will be used solely for construction purposes, and agrees that the Loan is a business loan exempt from limitations upon lawful interest, pursuant to the terms of the Illinois Revised Statutes, Chapter 17, Paragraph 6404.

25. CHANGE OF LAW: In the event of the enactment, following the date hereof, of any law in the State of Illinois deducting from the value of Mortgaged Premises, for the purpose of taxation, the amount of any lien, encumbrance or Imposition or imposing upon Mortgagee the payment of the whole or any part thereof or changing, in any way, the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 3 3 0 1 9 3 2

laws relating to the taxation of mortgages or debts secured by mortgages or the manner of collection of liens, encumbrances or Impositions, so as to affect this Mortgage, Indebtedness or Mortgagee. Mortgagor shall, in any such event, upon demand by Mortgagee, pay such liens, encumbrances or Impositions or reimburse Mortgagee therefor; PROVIDED, HOWEVER, that if, in the opinion of counsel for Mortgagee, it may be unlawful to require Mortgagor to make such payment or the making of such payment may result in the payment of interest beyond the maximum amount permitted by law, then, and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare Indebtedness and all interest due and owing thereon to be and become due and payable within one (1) year from the giving of such notice. Notwithstanding the foregoing, it is understood and agreed that Mortgagor is not obligated to pay any part of Mortgagee's federal or state income tax.

26. COMPLIANCE WITH AGREEMENTS: Mortgagor and Beneficiary shall pay promptly and keep, observe, perform and comply with all covenants, terms and provisions of operating agreements, Leases, instruments and documents relating to Mortgaged Premises or evidencing or securing any indebtedness secured thereby and shall observe all covenants, conditions and restrictions affecting the same.

27. ASSIGNMENT OF LEASES, RENTS AND PROFITS OF MORTGAGOR, AS LESSOR: To further secure Indebtedness and the performance of all of the terms, covenants, conditions and agreements contained herein and in Note and Other Loan Documents, Mortgagor hereby sells, assigns and transfers to Mortgagee all of its right, title and interest in and to Leases and all rentals, issues, proceeds and profits now due and which may hereafter become due pursuant thereto, it being the intention hereby to establish an absolute transfer and assignment thereof to Mortgagee. Mortgagor hereby irrevocably appoints Mortgagee its agent, in its name and stead (with or without taking possession of Mortgaged Premises, as provided in Paragraph 21 hereof), to rent, lease or let all or any part of Mortgaged Premises to any party or parties, at such rental and upon such terms as Mortgagee shall, in its discretion, determine and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter and all presently due or which may hereafter become due pursuant to each and every Lease, written or oral, or other tenancy existing or which hereafter exist on Mortgaged Premises, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Mortgagee would have upon a taking of possession pursuant to the provisions of Paragraph 21 hereof. Mortgagor represents and agrees that no rent has been or will be paid by any person in possession of any part of Mortgaged Premise for more than one (1) installment in advance and that the payment of no part of the rents to accrue for any part of Mortgaged Premises has been or will be waived, released, reduced, discounted or otherwise discharged or compromised by Mortgagor. Mortgagor waives any rights of set-off against any person in possession of any part of Mortgaged Premises and agrees that it will not assign any of the rents or profits from Mortgaged Premises except with the consent of Mortgagee.

30501932

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 0 5 0 1 9 8 2

Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the taking of actual possession of Mortgaged Premises by Mortgagee pursuant to Paragraph 21 hereof. In the exercise of the powers granted herein to Mortgagee, no liability shall be asserted or enforced against Mortgagee, all such liability being expressly waived and released by Mortgagor. Mortgagor further agrees to assign and transfer Leases to Mortgagee and to execute and deliver, at the request of Mortgagee, all such further assurances and assignments in Mortgaged Premises as Mortgagee shall, from time to time, require. Although it is the intention of Mortgagor and Mortgagee that the assignment contained in this paragraph shall be a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Mortgagee shall not exercise any of the rights or powers conferred upon it pursuant hereto until a Monetary Default or a Non-Monetary Default shall exist. Within forty five (45) days following Mortgagee's written request therefor, Mortgagor will furnish to Mortgagee executed copies of Leases, which shall be in form and content satisfactory to Mortgagee. In the event that Mortgagee requires the same, Mortgagor shall execute and record a separate Collateral Assignment of Rents or separate Assignment of Leases, in form and content satisfactory to Mortgagee, and the terms and provisions of said Assignments shall control in the event of a conflict between the terms hereof and the terms thereof.

Mortgagor shall faithfully perform the covenants of Mortgagor, as Lessor under any present and future Leases affecting all or any portion of Mortgaged Premises, and neither do nor neglect to do or permit to be done anything which may cause the termination of Leases, or any part thereof, or which may diminish or impair the value thereof, the rents provided for therein or the interest of Mortgagor or Mortgagee therein or thereunder. Mortgagor agrees:

- a). that Leases shall remain in full force and effect, irrespective of any merger of the interest of the Lessor and Occupancy Tenants thereunder;
- b). that except in the ordinary course of business, it will not terminate, modify or amend Leases or any of the terms thereof or grant any concessions in connection therewith, either orally or in writing, or to accept a surrender thereof, without the prior written consent of Mortgagee, and it will not enter into any new leases;
- c). not to collect any of the rents, income and profits arising or accruing pursuant to Leases for more than one (1) month in advance of the time the same become due under the terms thereof;
- d). not to discount any future accruing rents;
- e). not to execute any other assignments of Leases or any interest therein or any of the rents payable thereunder;

90501982

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 0 5 8 1 9 3 2

f). to perform all of Mortgagor's covenants and agreements, as Lessor, pursuant to Leases and not suffer or permit to occur any release of liability of Occupancy Tenants or any rights of Occupancy Tenants to withhold payment of rents;

g). to give prompt notice to Mortgagee of any notice of default on the part of Mortgagor with respect to Leases received from Occupancy Tenants thereunder and to furnish Mortgagee with complete copies of said notices;

h). if so requested by Mortgagee, to enforce Leases and all remedies available to Mortgagor in the event of default by Occupancy Tenants thereof;

i). that none of the rights or remedies of Mortgagee provided herein shall be delayed or in any way prejudiced by assignment;

j). that notwithstanding any variation of the terms of this Mortgage or any extension of time for the payment of Indebtedness or any release of any part of Mortgaged Premises, Leases and the benefits thereby assigned shall continue as additional security in accordance with the terms hereof;

k). except in the ordinary course of business, it will not alter, modify or change the terms of any guarantees of any of Leases or cancel or terminate the same or consent to any assignments thereof or any subletting thereunder, whether or not in accordance with the terms of Leases, without the prior written consent of the Mortgagee;

l). not to request, consent to, agree to or accept a subordination of Leases to any mortgage or other encumbrance now or hereafter affecting Mortgaged Premises, except for this Mortgage and if requested by Mortgagee;

m). not to exercise any right of election, whether specifically set forth in any Lease or otherwise, which would in any way diminish the liability of Occupancy Tenants or have the effect of shortening the stated term of thereof; and

n). not to sell, transfer, assign, or remove any Personal Property unless such action results in the substitution or replacement thereof with similar items owned by Mortgagor, not otherwise encumbered and of equal value, without the prior written consent of Mortgagee.

Mortgagor shall, in addition to the assignment provisions contained herein, deliver (for collateral purposes only) to Mortgagee a recorded assignment of all of its interest, as Lessor, in and to Leases, in form and substance satisfactory to Mortgagee.

UNOFFICIAL COPY

9 2 5 0 1 9 3 2

28. SECURITY AGREEMENT: Mortgagor and Mortgagee agree that:

a). this Mortgage shall constitute a security agreement within the meaning of the Illinois Uniform Commercial Code ("Code") with respect to any and all sums at any time on deposit for the benefit of or held by Mortgagee (whether deposited by or on behalf of Mortgagor or others) pursuant to any provision of this Mortgage, Note or Other Loan Documents and any Personal Property now or hereafter owned by Mortgagor which may not be deemed to be affixed to the Mortgaged Premises or may not constitute a "Fixture" (within the meaning of Section 9-313 of Code) and all replacements thereof, substitutions therefor, additions thereto and the proceeds thereof (collectively "Collateral");

b). a security interest in and to Collateral is hereby granted to Mortgagee;

c). Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to Mortgagee to secure the payment of Indebtedness;

d). all of the terms, provisions, conditions and agreements contained herein shall pertain and apply to Collateral as fully and to the same extent as the same apply to any other property comprising Mortgaged Premises; and

e). the following provisions shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto.

i). Mortgagor (being the "Debtor" as such term is defined in Code) is and will be the true and lawful owner of Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefitting Mortgagee only and liens and encumbrances, if any, expressly permitted pursuant hereto and to Note and Other Loan Documents;

ii). Collateral shall be used by Mortgagor solely for business purposes;

iii). Collateral shall be kept at Mortgaged Premises and, except for obsolete Collateral, will not be removed therefrom without the prior consent of Mortgagee;

iv). no financing statement (other than financing statements indicating Mortgagee as the sole "Secured Party" [as such term is defined in Code] or except as permitted in writing by Mortgagee or with respect to liens or encumbrances, if any, expressly permitted

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 1 3 0 1 9 3 2

pursuant hereto and to Note and Other Loan Documents) applicable to any part of Collateral or any proceeds thereof is on file in any public office:

v). Mortgagor shall, upon demand and at its sole cost and expense, furnish to Mortgagee such further information, execute and deliver such financing statements and other documents (in form satisfactory to Mortgagee) and do all such acts and things as Mortgagee may, at any time or from time to time, request or as may be necessary or appropriate to establish and maintain a perfected security interest in Collateral as security for Indebtedness, free and clear of all liens or encumbrances, other than liens or encumbrances benefiting Mortgagee only and liens and encumbrances, if any, expressly permitted hereby or pursuant to Note or Other Loan Documents and Mortgagor will pay the cost of filing or recording this instrument and such financing statements or other documents in all public offices wherever filing or recording is deemed necessary or desirable by Mortgagee:

vi). in the event of the occurrence of a Monetary Default or a Non-Monetary Default, Mortgagee: 1). shall have the remedies of a Secured Party pursuant to Code, including, without limitation, the right to take immediate and exclusive possession of Collateral, or any part thereof and, for that purpose, may, insofar as Mortgagor can give authority therefor, with or without judicial process, enter (if the same can be done without breach of the peace) upon any place in which Collateral, or any part thereof, may be situated and remove the same therefrom (PROVIDED THAT if Collateral is affixed to real estate, such removal shall be subject to the conditions stated in Code), u). shall be entitled to hold, maintain, preserve and prepare Collateral for sale (until disposed of) or may propose to retain the same subject to Mortgagor's equity of redemption, in satisfaction of Mortgagor's obligations, as provided in Code, vi). may render Collateral unusable without removal and may dispose of the same on Mortgaged Premises, w). may require Mortgagor to assemble Collateral and make the same available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both Mortgagee and Mortgagor, x). will furnish to Mortgagor not less than twenty (20) days' prior written notice of the time and place of any public sale of Collateral or of the time after which any private sale or any other intended disposition thereof is made and the requirements of reasonable notice shall be met if such notice is mailed by certified United States mail (or equivalent), postage prepaid, to the address of Mortgagor set forth in the introduction hereof, y). may purchase, at any public sale and, if Collateral is of a type customarily sold in a

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 0 5 0 1 9 3 2

recognized market or the subject of widely distributed standard price quotations. Mortgagee may purchase Collateral at private sale, which sale may be held as a part of and in conjunction with any foreclosure sale of Mortgaged Premises and Collateral and Mortgaged Premises may be sold as one lot, if Mortgagee so elects, and the net proceeds realized upon any such disposition, after deduction for the expenses of re-taking, holding, preparing for sale, selling or the like, and reasonable attorneys' fees and legal expenses incurred by Mortgagee shall be applied against Indebtedness in such order or manner as Mortgagee shall select, and z). will account to Mortgagor for any surplus realized on such disposition:

vii). the terms and provisions contained in this Paragraph 28 shall unless the context otherwise requires, have the meanings contained and be construed as provided in Code:

viii). this Mortgage is intended to be a financing statement within the purview of Section 9-402(6) of Code with respect to Collateral and the goods described herein, which are or may become fixtures relating to Mortgaged Premises, and: x). the addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are herein set forth, y). this Mortgage shall be recorded with the Recorder of Deeds of Cook and DuPage County, Illinois, and z). Mortgagor is the record owner of Mortgaged Premises, and

ix). to the extent permitted by applicable law, the security interest established hereby is specifically intended to cover and include all of the right, title and interest of Mortgagor, as landlord, in and to Leases, including all extended terms and extensions and renewals thereof, together with any amendments to or replacements thereof and all right, title and interest of Mortgagor, as landlord thereunder, including, without limitation, the present and continuing right to: x). make claim for, collect, receive and receipt for any and all rents, income, revenues, issues, profits and monies payable as damages or, in lieu of the rents and moneys payable, as the purchase price, of Mortgaged Premises, or any part thereof or of awards or claims of money and other sums of money payable or receivable thereunder, howsoever payable, y). bring actions and proceedings thereunder or for the enforcement thereof, and z). do any and all things which Mortgagor or any landlord is or may become entitled to do pursuant to Leases.

29. EXECUTION OF SEPARATE SECURITY AGREEMENT AND FINANCING STATEMENT: In addition to this Mortgage being deemed a security agreement, Beneficiary shall, as additional security for the payment of Indebtedness and the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 0 5 0 1 9 3 2

performance of all of the terms, covenants, conditions and agreements set forth herein and in Note and Other Loan Documents, execute and deliver to Mortgagee a security agreement, granting to Mortgagee a security interest in and to Collateral, all right, title and interest of Mortgagor, as landlord, in and to Leases and all rents, issues and profits due or which may hereafter become due and payable pursuant to the terms and provisions thereof; and, further, execute and deliver Financing Statements pursuant to the Uniform Commercial Code, State of Illinois. Beneficiary shall, from time to time, execute such additional Security Agreements and Financing Statements as may be necessary to vest in Mortgagee a security interest in and to Collateral and Leases until Indebtedness is paid in full.

30. ANNUAL FINANCIAL STATEMENTS: Within ninety (90) days of the close of each fiscal year of Mortgagor, Beneficiary shall furnish Mortgagee with an annual statement of the operations of Mortgaged Premises during such fiscal year, in form satisfactory to Mortgagee, which may be prepared pursuant to audit and certified by an independent certified public accountant ("Annual Financial Statements").

Mortgagee shall have the right, upon five (5) days' prior written notice to Mortgagor, to inspect and make copies of Mortgagor's books, records and income tax returns with respect to Mortgaged Premises for the purpose of verifying any Annual Financial Statement.

31. PAYMENT AND PERFORMANCE BY MORTGAGEE: In the event that Mortgagor or Beneficiary shall fail to pay or perform any of its obligations contained herein and in Note and Other Loan Documents (including the payment of expenses of foreclosure and court costs), Mortgagee may, but need not, pay or perform (or cause to be paid or performed) any obligation of Mortgagor or Beneficiary pursuant thereto, in any form and manner deemed reasonably expedient by Mortgagee, as agent or attorney-in-fact of Mortgagor or Beneficiary and any amount so paid or expended (plus reimbursement to Mortgagee for its out-of-pocket and other expenses for each matter for which it acts hereunder), with interest thereon at Default Rate, shall be and become a part of Indebtedness and shall be paid to Mortgagee upon demand. By way of illustration and not in limitation of the foregoing, Mortgagee may, but need not:

a) complete construction of Improvements pursuant to Construction Loan Agreement or complete Repair or Restoration or Rebuilding or Restoration or make any repairs to Improvements deemed necessary by Mortgagee;

b) collect rentals due and owing pursuant to Leases and prosecute the collection of Collateral or the proceeds thereof;

c) purchase, discharge, compromise or settle any Imposition, lien or any other lien, encumbrance, suit, proceeding, title or claim thereof;

90501932

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 7 5 0 1 9 3 2

d). redeem from any tax sale or forfeiture affecting Mortgaged Premises or contest any Imposition; and

e). perform any act or deed reasonably necessary and required to protect the value of Mortgaged Premises and the security given for Indebtedness.

In making any payment or securing any performance relating to any obligation of Mortgagor hereunder, Mortgagee, so long as it acts in good faith, shall have the sole discretion as to the legality, validity and amount of any lien, encumbrance or Imposition and of all other matters necessary to be determined in satisfaction thereof. No such action of Mortgagee shall be considered a waiver of any right accruing to it on account of the occurrence of any Monetary Default or Non-Monetary Default.

32. RELEASE: Upon payment in full of Indebtedness, at the time and in the manner herein provided, this conveyance shall be null and void and, upon demand therefor following such payment, an appropriate instrument of reconveyance or release shall, in due course, be made by Mortgagee to Mortgagor, at Mortgagor's expense.

33. CONSENT OF MORTGAGEE: The consent by Mortgagee in any single instance shall not be deemed or construed to be Mortgagee's consent in any like matter arising at a subsequent date and the failure of Mortgagee to promptly exercise any right, power, remedy or consent provided herein or at law or in equity shall not constitute or be construed as a waiver of the same nor shall Mortgagee be estopped from exercising such right, power, remedy or consent at a later date and, except with respect to any request to extend credit or grant additional time to cure a Monetary Default or Non-Monetary Default, Mortgagee shall reasonably consider all requests for its consent or approval.

Any consent or approval requested of and granted by Mortgagee pursuant hereto shall be narrowly construed to be applicable only to Mortgagor and the matter identified in such consent or approval and no third party shall claim any benefit by reason thereof, and not be deemed to constitute Mortgagee a venturer or partner with Mortgagor whatsoever nor shall privity of contract be presumed to have been established with any such third party.

If Mortgagee deems it to be to its best interest to retain the assistance of persons, firms or corporations (including, but not limited to, attorneys, appraisers, engineers and surveyors) with respect to a request for consent, Mortgagor shall reimburse Mortgagee for all reasonable costs incurred in connection with the employment of such persons, firms or corporations.

34. CARE: Mortgagee shall be deemed to have exercised reasonable care in the custody and preservation of any part of Mortgaged Premises in its possession if it takes such action for that purpose, as Mortgagor requests in writing, but failure of Mortgagee to comply with any such request shall not, of itself, be deemed a failure to exercise

UNOFFICIAL COPY

Property of Cook County Clerk's Office

reasonable care and no failure of Mortgagee to preserve or protect any rights with respect to Mortgaged Premises against prior parties or do any act with respect to the preservation thereof not so requested by Mortgagor shall be deemed a failure to exercise reasonable care in the custody or preservation of Mortgaged Premises.

35. MORTGAGOR'S CONTINUING LIABILITY: This Mortgage is intended only as security for Indebtedness and the performance of the terms, covenants, conditions and agreements contained herein and in Note and Other Loan Documents. Mortgagor shall be and remain liable to perform all of the obligations assumed by it pursuant hereto and Mortgagee shall have no obligation or liability by reason of or arising out of this Mortgage and shall not be required or obligated, in any manner, to perform or fulfill any of the obligations of Mortgagor pursuant hereto, anything contained herein or in Note and Other Loan Documents to the contrary notwithstanding.

36. INSPECTIONS: Mortgagee, by any authorized agent or employee and for the protection of its interest in Mortgaged Premises, is hereby authorized and empowered to enter in and upon Mortgaged Premises at any and all reasonable times, for the purpose of inspecting the same and ascertaining the condition thereof.

37. INDEMNIFICATION: Mortgagor shall indemnify Mortgagee from all losses, damages and expenses, including reasonable attorneys' fees, incurred in connection with any suit or proceeding in or to which Mortgagee maybe made a party for the purpose of protecting the lien of this Mortgage.

38. TAX SERVICE CONTRACT: Mortgagor shall, at the request of Mortgagee, enter into a contract with a tax reporting agency, approved by Mortgagee for the purpose of making annual tax searches to assure the prompt payment of real estate taxes and special assessments levied against Mortgaged Premises; PROVIDED, HOWEVER, that if Mortgagee does not require such an agency contract, Mortgagor shall reimburse Mortgagee or its loan servicing agent for the cost of such annual searches.

39. MORTGAGEE'S RIGHT TO COMPLETE: In the event of a Monetary Default or Non-Monetary Default:

- a). Mortgagor hereby waives all right to possession of Mortgaged Premises and the income and rents applicable thereto and Mortgagee is hereby expressly authorized and empowered to enter into and upon Mortgaged Premises, or any part thereof, and take possession of the same and complete construction of Improvements pursuant to Construction Loan Agreement, at the expense of Mortgagor, lease the same, collect and receive all rents therefor and apply the same, less the necessary or appropriate expenses of collection thereof, including attorneys' fees, either for the care, operation and preservation of Mortgaged Premises or, at the election of Mortgagee, in its sole discretion, to a reduction of Indebtedness, in such order of priority as Mortgagee may elect;

2025 RELEASE UNDER E.O. 14176

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 0 5 0 1 9 3 2

- b) Mortgagee, in addition to the exercise of any and all other rights and remedies provided pursuant to this Mortgage, Note, Construction Loan Agreement and Other Loan Documents, is granted full and complete authority to employ watchmen for the purpose of protecting and preserving the same from damage or depreciation, continue any and all outstanding agreements relating to construction of the Improvements, including contracts for lumber, labor or materials, and make and enter into any contracts and obligations, wherever necessary, in its own name, and pay and discharge all debts, obligations and liabilities incurred by reason of the foregoing, at the expense of Mortgagor, which expenditures by Mortgagee shall be added to and become a part of Indebtedness and shall become immediately due and payable with interest at Default Rate; and
- c) Mortgagee may disburse that part of Indebtedness not previously disbursed on account of Budget Costs to complete construction of Improvements and may disburse Proceeds or Awards pursuant to the provisions hereof.

40. PERFORMANCE OF CONSTRUCTION CONTRACTS: Mortgagor shall notify any person obligated to it pursuant to construction contracts applicable to Improvements of the existence of a Monetary Default or a Non-Monetary Default and require that performance of such contracts by it be made directly for the benefit of Mortgagee, at the expense of Mortgagor, and Mortgagor shall advance such sums as may be necessary or appropriate to satisfy Mortgagor's obligations thereunder.

41. PERFORMANCE OF CONTRACTUAL AGREEMENTS AND OTHER CONTRACTS: Mortgagor shall perform, for the benefit of Mortgagee, fully and promptly, each obligation and satisfy each condition imposed upon it pursuant to any and all contracts and agreements relative to the construction, maintenance or operation of Improvements so that no default will occur thereunder and all persons (other than Mortgagor) obligated thereon shall be and remain, at all times, obligated to perform, for the benefit of Mortgagee, their respective covenants, conditions and agreements pursuant hereto and not permit to exist any condition, event or fact which could permit any such person to avoid such performance.

42. LATE CHARGE: In addition to the payment of Indebtedness, Mortgagee shall have the right to demand and Mortgagor shall pay a late charge equal to FIVE CENTS (\$.05) for each ONE DOLLAR (\$1.00) of payments due and owing on account of Indebtedness not made when due.

43. CORRECTIVE DOCUMENTS: Mortgagor shall, at the request of Mortgagee, promptly correct any defect, error or omission which may be discovered in the contents of this Mortgage or in the execution or acknowledgment hereof or in any other

10501932

instrument executed in connection herewith or in the execution or acknowledgment of such instrument and will execute and deliver any and all additional instruments as may be requested by Mortgagee to correct such defect, error or omission.

44. GOVERNING LAW: This Mortgage shall be construed in accordance with and governed pursuant to the laws of the State of Illinois, without regard to its conflict of law principles. Whenever possible, each provision of this Mortgage shall be interpreted in such a manner as to be effective and valid pursuant to applicable law; PROVIDED, HOWEVER, that if any part hereof shall be prohibited by or invalid thereunder, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder hereof or the remaining provisions of this Mortgage.

45. TIME OF THE ESSENCE: It is specifically agreed that time is of the essence of this Mortgage and that a waiver of the options or obligations secured hereby shall not, at any time thereafter, be held to be abandonment of such rights. Notice of the exercise of any option granted to Mortgagee pursuant hereto or to Note or Other Loan Documents is not required to be given.

46. NOTICES: Any notice, consent or other communication to be served hereunder or pursuant to Note or Other Loan Documents shall be deemed properly delivered if delivered personally or by Federal Express or comparable "over-night" courier service (which shall be deemed received on the date of delivery thereof) or by United States certified or registered mail, postage prepaid (which shall be deemed received three (3) days following the postmark date thereof), to Mortgagor, Mortgagee and "Notice Receiver" (hereafter defined) at the addresses set forth below or to such other address as Mortgagor, Mortgagee or Notice Receiver may direct in writing:

If to Mortgagor, at 701 Sterling Road Joliet, Illinois 60067.

If to Mortgagee, at 2401 North Halsted, Chicago, Illinois 60614.

47. CAPTIONS: The headings or captions of the paragraphs or subparagraphs hereof are for convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms of this Mortgage.

48. BENEFIT: All grants, conditions and provisions hereof shall apply, extend to and be binding upon Mortgagor and all persons claiming any interest in Mortgaged Premises by, through or under Mortgagor, and shall inure to the benefit of Mortgagee, its successors and assigns.

49. In addition to "Indebtedness" (as defined in Note), Mortgagee shall have full recourse to recover from Beneficiary, and others:

- (a) all losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by Mortgagee as a result of fraud.

3005012332

UNOFFICIAL COPY

Property of Cook County Clerk's Office

material misrepresentation made by Beneficiary or a material breach of any warranty or representation contained in any document delivered to Mortgagee by or at the request of Beneficiary, or as a result of waste of the Mortgaged Premises:

- (b) all rents, revenues, issues and profits from Mortgaged Premises received during the period of any Monetary Default or Non-Monetary Default or after acceleration of Indebtedness and not applied to the payment of Indebtedness or the normal operating expenses of Mortgaged Premises;
- (c) all rents from Mortgaged Premises collected more than one (1) month in advance which are not earned at the time of the occurrence of any Monetary Default or Non-Monetary Default and which are not applied to the payment of Indebtedness or the normal operating expenses of Mortgaged Premises;
- (d) all Proceeds and Awards which are not applied in accordance with the provisions hereof and of Other Loan Documents; and
- (e) any and all costs, expenses, damages or liabilities incurred by Mortgagee, including, without limitation, all reasonable attorneys' fees, directly or indirectly arising out of or attributable to the detection and/or removal of any friable asbestos containing materials on or from the Mortgaged Premises, and for replacements required for functional restoration of the Mortgaged Premises after asbestos removal, and in connection with claims of persons alleging bodily injury as a result of exposure to or inhalation of asbestos on the Mortgaged Premises, or directly or indirectly attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence on, under or about Mortgaged Premises of any materials, wastes or substances defined, regulated or classified as hazardous or toxic under any federal, state or local laws or regulations for protection of the environment.

With the exception of the matters set forth in the foregoing subparagraph (e), all liability of Beneficiary hereunder shall cease and extinguish at such time as all Indebtedness is paid to Mortgagee.

Nothing contained herein or in Note and Other Loan Documents to the contrary notwithstanding shall be deemed to release, affect or impair Indebtedness or the rights of Mortgagee to enforce its remedies pursuant hereto and to Note and Other Loan Documents, including, without limitation, the right to pursue any remedy for injunctive or other equitable relief.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 5 1 9 3 2

This Mortgage is executed by Mortgagor, not personally but solely as trustee under the terms of the aforesaid Trust Agreement, solely in the exercise of the power and authority conferred upon and vested in it as such Trustee (and Mortgagor hereby warrants that it possesses full power and authority to execute this instrument).

Property of Cook County Clerk's Office

90501332

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

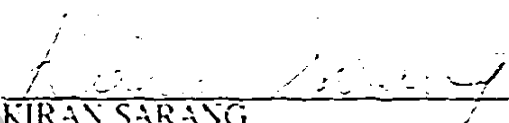
9 0 5 0 1 9 3 2

JOINDER

The undersigned SHASHIBAR S. SARANG and KIRAN SARANG, married to each other and residing 701 Sterling Road, Inverness, Illinois 60067, hereby join in this Mortgage for the purpose of encumbering Parcel 3 on Exhibit "A".



SHASHIBAR S. SARANG

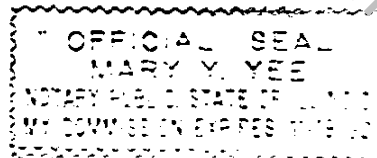


KIRAN SARANG

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

Subscribed and sworn to before me this 22nd day of September, 1990 by SHASHIBAR S. SARANG and KIRAN SARANG.

Notary Public



90501232

UNOFFICIAL COPY

Property of Cook County Clerk's Office

11/11/2011

UNOFFICIAL COPY

9 1 3 0 1 9 3 2

LEGAL DESCRIPTION OF LAND:

PARCEL 1:

LOT 19 IN HOEPNER'S SUBDIVISION, BEING A SUBDIVISION OF PART OF THE SOUTHEAST QUARTER OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 25, 1949 AS DOCUMENT 563460, IN DUPAGE COUNTY, ILLINOIS.

COMMON ADDRESS: 660 E. ROOSEVELT ROAD, LOMBARD, ILLINOIS
PERMANENT INDEX NUMBER: 06-17-435-015

PARCEL 2:

THE EAST 70 FEET OF THE WEST 430 FEET OF THE SOUTH 200 FEET OF LOT 22 (EXCEPT THE SOUTH 50 FEET TAKEN FOR BARTLETT ROAD) IN COUNTY CLERK'S DIVISION OF UNSUBDIVIDED LANDS IN SECTION 34, TOWNSHIP 43 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMON ADDRESS: 840 W. BARTLETT ROAD, BARTLETT, ILLINOIS

PERMANENT INDEX NUMBER:

PARCEL 3:

LOT 2 IN NORTH MEADOWS, A SUBDIVISION OF PARTS OF THE EAST AND WEST 1/2 OF SECTIONS 8 AND 17, TOWNSHIP 42 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 7, 1947 AS DOCUMENT NUMBER 14009292 AND FILED AS DOCUMENT NUMBER LR1139851, IN COOK COUNTY, ILLINOIS.

COMMON ADDRESS: 701 STERLING ROAD, INVERNESS, ILLINOIS

PERMANENT INDEX NUMBER:

EXHIBIT "A"

30501332

UNOFFICIAL COPY

Property of Cook County Clerk's Office

90501220